

23 April, 1998

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 23rd April, 1998
9:00 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Adams, Angeles, Arnup, Backhouse, Carpenter-Gunn, Carter, Chahbar, Crowe, DelZotto, MacKenzie, Manes, Martin, Puccini, Ruby, Scott and Wright.

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IN PUBLIC

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The reporter was sworn.

Ms. Lesley Cameron, Senior Counsel - Discipline reviewed the order in which the matters would proceed and introduced Mr. John Rosen who acted as Duty Counsel.

APPLICATION FOR READMISSION

Re: Joel E. TENCER - Toronto

The Secretary placed the matter before Convocation.

Mr. Thomas Lockwood appeared for the Society and Mr. Douglas Crane appeared for the applicant. The applicant was not present.

The Report of the Application for Readmission dated November 28th, 1997 was marked as Exhibit 1.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE LAW SOCIETY ACT

AND IN THE MATTER OF JOEL E. TENCER

AND IN THE MATTER OF an Application for Re-admission
to the Law Society of Upper Canada

REPORT TO CONVOCATION

Jane Harvey, Benchers
Nora Angeles, Benchers

Douglas Crane, Q.C.
Counsel for the Applicant

Thomas J. Lockwood, Q.C.
Rena G. Krasnow
Counsel for the Law Society

REPORT TO CONVOCATION

This is an application by Joel Emmanuel Tencer pursuant to section 46 of the *Law Society Act*, R.S.O. 1990, c. L. 8, for re-admission to the Law Society of Upper Canada. The application was heard in public on March 26, 1997 by a committee composed of Jane Harvey (Chair), Denise Bellamy and Nora Angeles. Douglas Crane, Q.C. appeared as counsel for the Applicant Thomas J. Lockwood, Q.C. and Rena G. Krasnow appeared as counsel for the Law Society.

At the beginning of the hearing Denise Bellamy informed counsel of her employment with the Ministry of the Attorney General while Ian Scott was the Attorney General. Counsel indicated they were content that she remain on the panel and they were satisfied there was no conflict.

Denise Bellamy was appointed a Judge of the Ontario Court (General Division) prior to the issuance of the Reasons in this matter.

RECOMMENDATION OF THE COMMITTEE

The Committee recommends that Joel Tencer not be readmitted to practice at the present time.

REASONS FOR RECOMMENDATION

The Committee considered the case law on readmissions and in particular the following requirements for readmission:

1. Applicants must make out a case of very special circumstances and show that they have entirely purged their guilt.
2. A sufficient period of time must have elapsed before an application for readmission will be granted.
3. Current proficiency in law.
4. Type of misconduct which led to disbarment.
5. Sufficiency of discipline and restitution.
6. Pre-disbarment character, standing and professional reputation in the community.
7. Applicant's sincerity, truthfulness and frankness in presenting and discussing issues surrounding his disbarment or readmission.
8. Applicants must show that their conduct is unimpeached and now unimpeachable, and this can only be established by the evidence of trustworthy persons, especially members of the profession and persons with whom applicants have been associated since disbarment or resignation.
As an overriding principle, applicants must show by a long course of conduct that they are persons to be trusted who are in every way fit to be lawyers.
9. Applicants must show that there is no probability of their offending again in the future.

We considered the evidence of the applicant, his character witnesses, written character evidence and reviewed the circumstances of Mr. Tencer's disbarment, appeals and subsequent civil litigation against Ian Scott, his counsel at the Discipline Hearing as well as the Law Society's evidence.

We then applied the facts before us to the principles enumerated above to the following effect:

1. SPECIAL CIRCUMSTANCES: GUILT PURGED

The Applicant commenced his application for readmission on June 12, 1988.

Subsequent to this Application for readmission he went to trial against his counsel before the Discipline Committee, Ian Scott. In his examination-in-chief on February 6, 1989, Mr. Tencer said that he had not agreed with the Statement of Facts signed by Mr. Scott on his behalf. This action against Mr. Scott was not successful.

At the readmission hearing before us Mr. Tencer said he regretted his allegations against Mr. Scott, which were false, but has not apologized directly in writing or otherwise to Mr. Scott.

In his Divisional Court Appeal, Mr. Tencer also claimed that Stephen Sherriff, the Counsel for the Law Society in Mr. Tencer's Discipline Hearing fabricated evidence against him.

At the readmission hearing Mr. Tencer agreed with the facts of Tab 63 of the Document Brief, which was Stephen Sherriff's willsay statement as a witness at the readmission hearing. Mr. Tencer gave us a copy of a letter of apology he sent to Stephen Sherriff a few weeks before the readmission hearing. There was no address for Stephen Sherriff on the letter.

We frankly questioned the sincerity of the apologies and judged them to be more for our benefit than that of Mr. Scott or Mr. Sherriff. The entire course of behaviour on the part of the applicant, involving false allegations against a fellow lawyer in court under oath was subsequent to the application for readmission. Hence, the committee felt the applicant did not meet this requirement.

2. SUFFICIENT PERIOD OF TIME

Although the time period of 14 years between disbarment (1983) and the hearing for readmission (1997) would ordinarily be sufficient, in this case we would calculate the time period from the conclusion of the Applicant's false allegations against Mr. Scott which were not withdrawn until the earliest in 1993 when his counsel admitted his error in correspondence with the Law Society (Tab 22, Joint Document Book) and the conclusion of the applicant's false allegations against Mr. Sherriff which were not withdrawn until Mr. Tencer sent the letter of apology to Mr. Sherriff just prior to the readmission hearing in 1997.

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3. CURRENT PROFICIENCY

After 14 years out of practice, Mr. Tencer would need some requalification prior to reinstatement. As we did not conclude that readmission was appropriate, we did not consider what requalification might be necessary, or what practice requirements should, if any, be imposed.

4. DISBARMENT MISCONDUCT

Mr. Tencer's conduct leading to disbarment was dishonesty in dealing with a client that could have resulted in a breach of trust/dishonesty to Legal Aid, and lying to Law Society investigators.

The nature of the disbarment conduct would not itself preclude readmission.

5. SUFFICIENCY OF DISCIPLINE AND RESTITUTION

The disbarment penalty was a sufficient penalty for Mr. Tencer's conduct in 1983. There was no need for restitution.

6. PRE-DISBARMENT CHARACTER, STANDING AND PROFESSIONAL REPUTATION

There was no evidence before the panel of any negative character, standing or professional reputation pre-disbarment except one minor prior discipline matter.

The evidence of character witnesses, 18 of whom were lawyers, as to Mr. Tencer's pre-disbarment character, standing and professional reputation was positive.

Hence there was nothing here which would preclude readmission.

7. APPLICANT'S PRESENTATION AND DISCUSSION OF DISBARMENT/READMISSION ISSUES

Mr. Tencer admitted to the readmission hearing that his actions in dealing with the Duperrons, the Law Society investigators, with Ian Scott and Stephen Sherriff were wrong and he was sorry for them. He indicated that he had been "accumulating income" at the time of the disbarment fact situation and he was now more mature and wise.

Mr. Tencer acknowledged that he had not discussed the Scott or Sherriff incidents with Dr. Orchard prior to obtaining a psychiatric opinion from him. The panel feels that Mr. Tencer should have done so and this further information may well have altered Dr. Orchard's opinion. Mr. Tencer also refused to be interviewed by Dr. Malcolm, the psychiatrist for the Law Society.

In discipline/readmission hearings, where a lawyer/ex-lawyer obtains psychiatric opinions and character evidence, it should be clear in the opinion/evidence that the lawyer/ex-lawyer has provided the psychiatrist/character witness, with at the least the complaint or application for readmission, agreed statement of facts or other summary of the facts alleged by the Law Society against the lawyer/ex-lawyer prior to the opinion/evidence being given.

Mr. Tencer appeared to the panel to be pragmatic and sorry the events had occurred.

We have already discussed the apologies to Messrs. Scott and Sherriff and the timing of same.

8. OVER A LONG COURSE OF CONDUCT, A PERSON TO BE TRUSTED, IN EVERY WAY FIT TO BE A LAWYER

A lawyer is an officer of the Court, committed to the administration of justice. Clients must be able to rely on their lawyer for truthfulness and integrity in dealing with them and others on their behalf. Fellow lawyers must be able to rely on the word of a lawyer, in undertakings and otherwise. A lawyer must have a reputation for honesty in the community, so as not to bring the profession into disrepute. A lawyer must place the interest of clients and the judicial system above his own interest.

The panel does not find that Mr. Tencer has demonstrated the necessary long course of trustworthy conduct post disbarment to satisfy us that he is in every way fit to be a lawyer.

9. NO PROBABILITY OF OFFENDING AGAIN

In 1983 the Applicant was found guilty of professional misconduct for attempting to get his Legal Aid client, Josee Duperron, to pay Legal Aid and himself directly, contrary to the Rules. In the course of the Law Society of Upper Canada investigation of misconduct in 1983 he lied to investigators, which he now admits.

Subsequent to those proceedings in 1983, he falsely accused Mr. Scott and Mr. Sherriff, unsuccessfully brought a civil action against Mr. Scott and made false statements under oath.

The Applicant has lied in the course of providing legal services, *i.e.*, to clients, in dealing with the Law Society of Upper Canada and other solicitors (Messrs Scott and Sherriff) and in giving evidence in court, over a period of time.

RABBI'S EVIDENCE

The Applicant's Rabbi gave evidence that he had known the Applicant for twenty years and that the Applicant had told him he was remorseful for his actions both in connection with the events leading to disbarment and in connection with Mr. Scott. The Rabbi advised that he thought Mr. Tencer's negative behaviour was out of character. The Rabbi indicated that Mr. Tencer held ethics courses in his home and was interested in ethics.

MRS. TENCER'S EVIDENCE

Mrs. Tencer testified that she was surprised by her husband's negative behaviour and felt it was out of character. She told us that she worked for Mr. Tencer when he was practising law and she had a good opinion of his work. She also felt that he was now changed and rehabilitated.

MR. WELLMAN'S EVIDENCE

We also heard from Mr. Allen Wellman who offered to supervise Mr. Tencer if he were re-admitted.

CHARACTER EVIDENCE

We reviewed the favourable character evidence on behalf of Mr. Tencer. Sixty-one letters were received although most of them were written four years prior to the hearing. Though almost everyone mentioned reinstatement which assumed knowledge of his disbarment, we were concerned that none of the letters mentioned any knowledge of lying under oath.

APPLICANT'S PSYCHIATRIC EVIDENCE

We had written evidence, but no oral evidence on behalf of the applicant from Drs. Coulthard, Hanick and Orchard.

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DR. HANICK

His first letter of September 6, 1983 (Tab 54) states that Mr. Tencer told him that "he perceived that his client's family was in a sufficient enough financial position to bear this fee and that should his client have produced such monies he would then have returned the Legal Aid Certificate. He did not perceive that any harm would befall this individual because of the fee that he had charged; he was aware of the exorbitant nature of this fee."

He concluded that Mr. Tencer was "suffering from a neurotic personality disorder and that his questionable behaviour stemmed from a combination of this personality disorder and a further diagnosis of an acute and severe situational disturbance" but found that "the repetition of such an action is considered unlikely. Mr. Tencer is basically a very honest and upright individual."

His second letter of November 10, 1983 states "Lastly, it is important to understand that Mr. Tencer's intentions were to protect and not to harm anyone. There is no element within this individual of intent to harm others or to deceive them."

In his third letter of May 29, 1985 he states "Further, the idea of maintaining the Legal Aid Certifications and charging a fee was not fully Mr. Tencer's own idea" in recounting the events, Mr. Tencer had revealed that his client too had such an idea and may well have even proposed such a scheme, and that "Mr. Tencer had subsequently explained that such a fee might truly be representative of the work involved."

DR. COULTHARD

Dr. Coulthard's first letter (Tab 56) of November 22, 1983 stated that he found Mr. Tencer bright and normal. Dr. Coulthard's second letter (Tab 57) of November 23, 1983 stated that Mr. Tencer told him that [Josee Duperron] "introduced the idea of paying extra money, that is in addition to the Two Thousand dollars (\$2,000.00) value of the Legal Aid Certificate." and "after his client brought up the topic of the extra money, he 'mulled it over' and appears to have decided that her family could afford the money" and "She indicated she wanted the Legal Aid Certificate to remain and he said that he went along with this but it was his intention to not use that money if other money was paid."

Dr. Coulthard's conclusion was that "it seems unlikely that further similar behaviour would occur."

DR. ORCHARD

Mr. Tencer saw Dr. Orchard in connection with his application for readmission. From Dr. Orchard's letter of August 20, 1983, it is clear that Dr. Orchard was unaware of Mr. Tencer's action against Ian Scott which came to trial in 1989, because he listed the documentation before him and there is no mention of that matter there or in Dr. Orchard's letters of opinion. Mr. Tencer confirmed this in his testimony before us. Dr. Orchard's letters made no mention of Mr. Tencer's assertion to Drs. Hanick and Coulthard that the Duperrons suggested Mr. Tencer charge Legal Aid and themselves directly. Dr. Orchard's letter indicates that Mr. Tencer told him that "he was found guilty of professional misconduct in that he attempted to mislead a client into paying him a fee as well as having a Legal Aid Certificate." Dr. Orchard states that he reviewed the materials with the subject and Mr. Tencer admitted that what he had done was indeed quite wrong and he did not offer any excuses for his behaviour. When asked, he did indicate that income from the practice had been dropping and that he was trying to run three offices.

Dr. Orchard states that it is his opinion that the chance of recidivism is virtually nil "and there is a fairly good level of reliability in my prediction that such behaviour will not recur".

Dr. Orchard's letter of December 11, 1995 indicates that the only additional information he had before him was copies of additional character evidence and the opinions of Drs. Hanick and Coulthard, but again nothing concerning his action against Ian Scott. He states his opinion that within the bounds of medical probability, the subject's chance of recidivism is nil."

LAW SOCIETY'S PSYCHIATRIC EVIDENCE

DR. MALCOLM

Mr. Tencer refused to be interviewed by Dr. Malcolm. Accordingly, Dr. Malcolm's opinion is based only on documentary evidence before him which included all of Mr. Tencer's psychiatric evidence, except the last 1995 letter of Dr. Orchard. Dr. Malcolm had much more evidence before him than Dr. Orchard, specifically a transcript of the taped meeting between Mr. Tencer and the Duperrons, the Draft Agreement Statement of Facts and Joint Document Brief for the readmission hearing. These documents included a very complete summary of Mr. Tencer's discipline history, Divisional Court application, action against Ian Scott and action against the Law Society.

Dr. Malcolm states that "I have reviewed these several matters because they afford a series of opportunities for Mr. Tencer to comment, under oath, on diverse subjects. And the importance of this is that Mr. Tencer seems to offer opinions that are not always in agreement with each other. His views are clearly changeable."

Dr. Malcolm also notes that Mr. Tencer's comments about his use of marijuana are inconsistent.

He does not express any opinion as to what, if any, psychiatric disorder he felt Mr. Tencer had or has. He expresses concern over Dr. Hanick's September 1983 diagnosis of a "neurotic personality disorder" on Mr. Tencer's part which caused his questionable behaviour. Dr. Malcolm states that "neurotic personality disorder is not a recognized diagnosis." Dr. Malcolm also states that Dr. Coulthard did not make a clear-cut clinical diagnosis of Mr. Tencer in his letter.

Dr. Malcolm disagrees with Mr. Tencer's psychiatrists in their prediction that Mr. Tencer's negative behaviour will not reoccur. He opines that "the tendency to lie can be a trait deeply ingrained in the personality. If there is evidence of a pattern of lying that occurs throughout a period of years, then the possibility of a further exhibition of this trait in the future is anything but remote".

CONCLUSION

The panel was not persuaded that Mr. Tencer would not offend again if reinstated.

The expression "*virtute non verbis*", (Deeds not words) is applicable here. Mr. Tencer's actions are the basis of our conclusions, not the assurances of Mr. Tencer and others that he will not re-offend.

The evidence is that Mr. Tencer lied, and even made changes to his lies to his personal advantage over a long period of time, both as a practising lawyer and thereafter, misusing the judicial system and lying under oath. He persisted in specific lies for long periods of time and, most frightening of all, targeted others as victims of his falsehoods and took aggressive legal steps against them. (Ian Scott and Stephen Sherrieff).

The evidence of Mr. Spencer, his rabbi, wife and character witnesses was not persuasive on this point. The psychiatric evidence of Mr. Tencer's psychiatrists was largely discounted by his behaviour after he consulted with Drs. Hanick and Dr. Coulthard and the opinion of Dr. Orchard was discounted by the fact that he was not made aware of Mr. Tencer's post 1983 behaviour. The opinion letters of Mr. Tencer's psychiatrists in fact revealed the evolution of Mr. Tencer's story of what transpired with the Duperrons.

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Although Dr. Malcolm never met with Mr. Tencer, a fact we took into account, we found his opinion that "If there is evidence of a pattern of lying that occurs throughout a period of years then the possibility of a further exhibition of this trait in the future is anything but remote" persuasive.

ALL OF WHICH is respectfully submitted

DATED THIS 28th day of November, 1997

Jane Harvey

Both Counsel made brief submissions in support of the recommendation of the Committee.

It was moved by Mr. Wright, seconded by Ms. Backhouse that the applicant not be readmitted to the practice of law.

Carried

Mr. MacKenzie abstained.

DISCIPLINE MATTERS

Re: Bonnie Esther Turner DERBY - Toronto

The Secretary placed the matter before Convocation.

Mr. Ruby withdrew for this matter.

Mr. Glenn Stuart appeared for the Society and Mr. Morris Manning appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 11th March, 1998, together with an Affidavit of Service sworn 24th March, 1998 by Pal Singh that he had effected service on the solicitor by registered mail on 16th March, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 3rd April, 1998 (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

Paul D. Copeland

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

Glenn Stuart
for the Society

BONNIE ESTHER TURNER DERBY
of the City
of Toronto
a barrister and solicitor

Morris Manning, Q.C.
for the solicitor

Heard: March 3, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 9, 1997, Complaint D169/97 was issued, and on August 28, 1997 Complaint D317/97 was issued against Bonnie Esther Turner Derby alleging that she was guilty of professional misconduct.

The matter was heard in public on March 3, 1998 before Paul D. Copeland sitting as a single bencher. The Solicitor attended the hearing and was represented by Morris Manning, Q.C. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D169/97

2. a) She failed to fully reply to the Law Society in a timely manner regarding a complaint by Marylin Dearman despite letters dated November 18, 1996 and December 19, 1996 and telephone communications on December 3, 1996 and December 12, 1996; and,
- b) she failed to file with the Society within six months of the termination of her fiscal year ended February 28, 1996, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Complaint D317/97

2. a) She failed to produce the books and records of her practice in a timely manner despite requests from the Law Society, contrary to Section 18 of Regulation 708.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D169/97 and is prepared to proceed with a hearing of this matter on a date to be set.

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 D169/97 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 9, 1976. At all relevant times, she has practised as a sole practitioner.

Particular 2a) She failed to reply to the Law Society regarding a complaint by Marylin Dearman despite letters dated November 18 and December 19, 1996 and telephone communications on December 3 and December 12, 1996.

5. The Solicitor was retained on or about January 20, 1995 by Josephine Scott with respect to the estate of her late husband, Roland W. Scott. In spite of several assurances from the Solicitor that she was taking steps to complete the administration of the estate, the matter has not yet been finalized.

6. By letter dated June 10, 1996 (Tab 1, Document Book), Marylin Dearman, daughter of Josephine Scott, made a complaint about the Solicitor's delay in completing the matter.

7. By letter dated June 27, 1996 (Tab 2, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Dearman's letter dated June 10, 1996. The Law Society reminded the Solicitor of her professional obligation to respond promptly to communications from the Law Society and requested her comments within two weeks.

8. On July 22, 1996, the Law Society called the Solicitor and was advised that she would send a response by facsimile on July 24, 1996. On July 29, 1996, the Law Society called the Solicitor and left a message inquiring about her response. The Solicitor returned the call and apologized for the delay in responding. She advised that a close friend had recently passed away and the funeral was the following day but that she would respond by July 31, 1996.

9. By letter dated July 31, 1996 (Tab 3, Document Book), the Solicitor advised the Law Society that she agreed with the sequence of events in Ms. Dearman's letter of June 10, 1996. The Solicitor further advised that she expected to complete the administration of the estate within four weeks.

10. On October 2, 1996, the Law Society received a call from Ms. Dearman advising that she had not heard from the Solicitor since August 12, 1996, at which time the Solicitor had advised that the court had approved the distribution of the estate. Ms. Dearman further advised that she called the Solicitor numerous times but the Solicitor had not responded to her. The Law Society called the Solicitor and left a message for her to return the call to discuss the matter.

11. On October 3, 1996, the Solicitor returned the Law Society's call and advised that the court had not yet approved distribution of the estate but an application had been filed to appoint Ms. Scott as the Administrator of the estate. The Solicitor anticipated that this Order would be granted by October 10, 1996. The Law Society requested the Solicitor to provide Ms. Dearman with a reporting letter and to provide the Law Society with a detailed response to the allegations of delay and unfulfilled promises to these clients. A copy of the notes of the telephone conversation is contained at Tab 4 of the Document Book.

12. On October 11, 1996, the Law Society called the Solicitor and left a message reminding her to forward her report to Ms. Dearman and her response to the Law Society. The Law Society asked her to return the call and reminded her that continuing delay would not be tolerated. The Solicitor did not reply. On October 15, 1996, the Law Society called the Solicitor and was advised that she was investigating the file with the Surrogate Court and that her response would be sent by October 18, 1996. A copy of the notes of the telephone communications is contained at Tab 5 of the Document Book.

13. On October 21, October 24 and October 30, 1996, the Law Society called the Solicitor and left messages for her to return the calls. On October 30, 1996, the Solicitor returned the call and advised the Law Society that she had spoken with Ms. Dearman that morning and provided her with an update. The Solicitor also explained that she had been upgrading her computer and moving her office. The Solicitor advised that she would fax her response to the Law Society that day or the following day. A copy of the notes of the telephone communications is contained at Tab 6 of the Document Book.

14. By facsimile dated November 7, 1996 (Tab 7, Document Book), the Solicitor advised the Law Society that the final papers should be issued within the next week and that the administration of the estate would be completed then. The Solicitor enclosed a copy of the Notice of Fees.

15. By letter dated November 18, 1996 (Tab 8, Document Book), the Law Society requested that the Solicitor advise whether she had received the Certificate of Appointment and whether the administration of the estate was now completed. The Solicitor was also asked to forward to the Law Society a copy of her reporting letters to Ms. Dearman.

16. On December 3, 1996, the Law Society called the Solicitor and was advised that she would try to forward her response by December 6, 1996. The Solicitor did not reply by that date.

17. On December 12, 1996, the Law Society called the Solicitor and left a message for her to return the call. The Solicitor did not return the call.

18. By registered mail dated December 19, 1996 (Tab 9, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered on December 20, 1996. The Solicitor did not respond.

19. On October 20, 1997 the Solicitor provided certain information to the Society. There is still some information to be provided by the Solicitor.

Particular 2b) She failed to file with the Society within six months of the termination of her fiscal year ended February 28, 1996.

20. The Solicitor's fiscal year end is February 28. The Solicitor filed for her fiscal year ending February 28, 1995. The Solicitor did not file her Form 2 and Form 3 within six months of the fiscal year ending February 28, 1996, as required by s.16(2) of Regulation 708 under the *Law Society Act*.

21. By letter dated September 14, 1996 (Tab 10, Document Book), the Law Society advised the Solicitor she had not complied with the annual filing requirements of section 16 of Regulation 708 of the *Law Society Act*. The Solicitor was advised the last filing received from her was for the period ended February 28, 1995. The Solicitor was requested to contact the Law Society should she believe her filing had already been made.

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22. By registered mail dated October 22, 1996 (Tab 11, Document Book), the Law Society advised the Solicitor she had not taken the necessary steps to bring her filings up-to-date. The Solicitor was advised failure to comply with section 16 of Regulation 708 of the *Law Society Act* may result in disciplinary action being taken against her. The Solicitor was requested to give this matter her immediate attention. The Law Society's letter was signed for and delivered on October 24, 1996. The Solicitor did not respond to this correspondence.

23. To date, the Solicitor has not provided the outstanding filing.

V. PRIOR DISCIPLINE

24. On December 12, 1996, the Solicitor was found guilty of professional misconduct for failing to respond to the Law Society regarding inadequacies in her books and records. On April 3, 1997, the Solicitor was reprimanded in Convocation and ordered to pay costs in the amount of \$1,075.00. The costs were paid May 8, 1997.

25. On April 10, 1996, the Solicitor was found guilty of professional misconduct for failing to file for the fiscal year ended February 28, 1995. She was reprimanded in Committee and ordered to pay costs in the amount of \$200.00. The costs were paid on May 31, 1996.

26. On November 30, 1994, the Solicitor was found guilty of professional misconduct for failing to file for the fiscal year ended February 28, 1993. The Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$200.00. The costs were paid on January 31, 1995.

27. On July 30, 1991, the Solicitor was found guilty of professional misconduct for failing to serve and misleading a client. She was reprimanded in Committee.

DATED at Toronto, this 20th day of October, 1997."

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D317/97 and is prepared to proceed with a hearing of this matter on October 28 and 29, 1997.

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 D317/97 and this Agreed Statement of Facts with her counsel, Morris Manning, Q.C., and admits the particulars and facts contained therein. The Solicitor further admits that the said particulars, supported by the facts in this Agreed Statement, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 9, 1976. At all relevant times she practised as a sole practitioner.

Particular 2a) She failed to produce the books and records of her practice in a timely manner despite requests from the Law Society, contrary to Section 18 of Regulation 708.

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5. On May 1, 1997, John Schoales, Examiner with the Audit and Investigation Department of the Law Society, attended at the Solicitor's office and provided her with a letter dated April 30, 1997 (Tab 1, Document Book), advising that an audit had been instructed with respect to her books and records. The Solicitor advised that her books and records were not current. As a result, co-signing controls were placed on the Solicitor's trust account that day, to continue until she had brought her books and records up to date.
6. On May 5, 1997, Mr. Schoales called the Solicitor and left a message for her requesting an update with respect to the status of her books and records. The Solicitor returned the call that day and advised that she was making progress and hoped to bring her books and records up to date within the next couple of days.
7. By letter dated May 5, 1997 (Tab 4, Document Book), sent by fax and regular mail to the Solicitor's last address according to the records of the Law Society, Mr. Schoales advised the Solicitor of what material was needed for the audit. The Solicitor was also provided with a copy of section 15 of Regulation 708 of the *Law Society Act*.
8. On May 12, 1997, Mr. Schoales left a message for the Solicitor requesting her to return the call and advise of her progress in completing her books and records. On May 13, 1997, the Solicitor returned the call and left a message requesting that Mr. Schoales return her call. When Mr. Schoales called the Solicitor later the same day, she advised him that she had been ill but expected to have her books and records ready by the following Tuesday.
9. On May 21, 1997, Mr. Schoales called the Solicitor and reminded her that her books and records were to have been completed prior to that date. Mr. Schoales asked the Solicitor to contact him to schedule an appointment to review her books and records as soon as possible.
10. On May 27, 1997, the Solicitor returned Mr. Schoales' telephone call of May 21, 1997 and left a message requesting him to return her call. On May 27 and May 28, 1997, Mr. Schoales left messages for the Solicitor her to return the calls. The Solicitor did not return the calls.
11. By letter dated May 28, 1997 (Tab 10, Document Book), sent by regular mail to the Solicitor's last address according to the Law Society's records, Mr. Schoales reminded the Solicitor that co-signing controls had been placed on her trust account as her books and records were not available for his review. The Solicitor was asked to advise Mr. Schoales as to when she expected her books and records would be up to date.
12. On June 2, 1997, the Solicitor called and left a message for Mr. Schoales to return her call. Mr. Schoales returned the call and left a message for her.
13. On June 5, 1997, the Solicitor called and left a message for Mr. Schoales to return her call. Mr. Schoales returned her call that day and asked her to leave him a message advising when she would be available to meet about her books and records. The Solicitor did not return the call.
14. By letter dated June 12, 1997 (Tab 13, Document Book), sent by regular mail to the Solicitor's last address according to the Law Society's records, Mr. Schoales wrote to the Solicitor enclosing a copy of his letter dated May 28, 1997 and requested the Solicitor to contact him to schedule an appointment. Mr. Schoales also called the Solicitor that day and left a message for her.
15. On June 13, 1997, the Solicitor called and left a message on Mr. Schoales' voice mail advising that she would not be in the office that day but would contact him the following Monday to arrange a date for a meeting.
16. By letter dated June 26, 1997 (Tab 16, Document Book), sent by registered mail to the Solicitor's last address according to the Law Society's records, the Solicitor was advised that if this matter was not resolved by July 10, 1997, it would be referred to the Discipline Committee. The Law Society's letter was signed for and delivered on June 27, 1997 (Tab 17, Document Book). The Solicitor did not respond.

23 April, 1998

17. On July 9, 1997, Mr. Schoales attended at the Solicitor's office and was advised that the Solicitor would be away all week. Mr. Schoales left his card and requested that the Solicitor be advised that he had stopped by to see her.

18. To date, the Solicitor has not produced her books and records to the Law Society.

V. PRIOR DISCIPLINE

19. On December 12, 1996, the Solicitor was found guilty of professional misconduct for failing to respond to the Law Society regarding inadequacies in her books and records. On April 3, 1997, the Solicitor was reprimanded in Convocation and ordered to pay costs in the amount of \$1,075.00. The costs were paid on May 8, 1997.

20. On April 10, 1996, the Solicitor was found guilty of professional misconduct for failing to file for the fiscal year ended February 28, 1995. She was reprimanded in Committee and ordered to pay costs in the amount of \$200.00. The costs were paid on May 31, 1996.

21. On November 30, 1994, the Solicitor was found guilty of professional misconduct for failing to file for the fiscal year ended February 28, 1993. The Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$200.00. The costs were paid on January 31, 1995.

22. On July 30, 1991, the Solicitor was found guilty of professional misconduct for failing to serve and misleading a client. She was reprimanded in Committee.

DATED at Toronto, this 20th day of October, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends the following penalty:

1. that the Solicitor be suspended for a fixed term of three months and continuing indefinitely until she fully responds to the Law Society with respect to the Complaint matter, makes her outstanding filings and produces all of the books and records which she is required to maintain under Regulation 708, to the satisfaction of the Law Society;
2. that she pay costs, fixed in the amount of \$1,000.00 to the Law Society, on or before the start of her suspension; and,
3. upon her reinstatement, she enrol in and cooperate with the Practice Review Program, the cost of her participation in that Program to be borne by the Solicitor at the rate of \$50 per hour of the Reviewer's time, up to a maximum of \$1,400.00.

ORAL REASONS FOR RECOMMENDATION

I am prepared to accept the joint submission by counsel for Ms. Derby and for the Society and recommend the penalty as set out above.

23 April, 1998

There are two separate Complaints before me documented in the Agreed Statements of Facts. One relates to Ms. Derby's inability to complete the administration of an estate and inability really to respond to the Law Society in regard to her non-completion of that estate. As well, connected with that Complaint, there is a failure to file her financial reports within six months of the end of her fiscal year, February 28th, 1996.

The other Complaint relates to Ms. Derby's non-cooperation with the Society in conducting an audit of her books and records and it indicates that her books and records at that time were not complete.

Mr. Manning has indicated that there are a number of personal matters that affected Ms. Derby's ability to look after the business end of her practice of law and Mr. Stuart has not indicated any disagreement with that proposition.

Ms. Derby has four prior discipline matters, the last of which ended up before Convocation in April of last year, and at that point she was reprimanded in Convocation and required to pay some costs. The time period of these seem to be slightly beyond the time periods of those matters.

The discipline history is disturbing given its frequency, but it would appear to me that the suspension of three months will be sufficient to indicate to Ms. Derby the seriousness of what she has done and indicate to the public that the Law Society is attempting to ensure that the Solicitor practises in a manner that is appropriate.

I don't know whether Convocation will caution Ms. Derby, but certainly I would caution her that another discipline matter may result in somebody beginning to regard her as non-governable and someone who should not be available to practise law in our province.

I would indicate as well, based on submissions made to me, that the Solicitor would prefer that the suspension start in mid-May of this year. It is hoped by both counsel that this matter will reach Convocation in April. Mr. Manning, on behalf of Ms. Derby, indicates that she needs until mid-May to have time to organize her practice for the suspension.

Again through Mr. Manning, Ms. Derby has indicated that she is not intending to take on new matters prior to the time that the suspension is incurred. The Solicitor appears to be cooperating with the Society at this point in regard to these matters, and hopefully when the suspension is finished, and if the material the Society wants is provided, she will be able to return to practice without coming back to see us.

Bonnie Esther Turner Derby was called to the Bar on April 9, 1976.

ALL OF WHICH is respectfully submitted

DATED this 11th day of March, 1998

Paul D. Copeland

There were no submissions.

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

Carried

23 April, 1998

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a fixed term of 3 months to continue indefinitely until she fully responds to the Law Society with respect to the Complaint matter and makes her outstanding filings and produces all of the books and records which she is required to maintain under Regulation 708, to the satisfaction of the Society. In addition the solicitor was to pay costs in the amount of \$1,000 and upon reinstatement she is to enrol in and cooperate with the Practice Review Program, the cost of her participation to be borne by the solicitor at the rate of \$50 per hour, up to a maximum of \$1,400.

Mr. Stuart made submissions in support of the joint submissions made at the hearing for a suspension of 3 months. He requested that an amendment be made to paragraph 2 of the Recommendation as to Penalty respecting costs that they be paid on or before May 31st, 1998.

Mr. Manning was in agreement with the amendment and supported the recommended penalty.

It was moved by Mr. Wright, seconded by Mr. Carter that the recommended penalty be adopted as amended.

Carried

Convocation granted the request for the suspension to commence June 1st, 1998.

Re: Mark Hansher FROMKIN - Toronto

The Secretary placed the matter before Convocation.

Mr. Ruby withdrew for this matter.

Mr. Stuart appeared for the Society and Mr. Brian Greenspan appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 11th March, 1998, together with an Affidavit of Service sworn 24th March, 1998 by Pal Singh that he had effected service on the solicitor by registered mail on 16th March, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd April, 1998 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby

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

MARK HANSHER FROMKIN
of the City
of Toronto
a barrister and solicitor

Catherine Braid
for the Society

Brian Greenspan
for the solicitor

Heard: March 4, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 1, 1997 Complaint D327/97 was issued against Mark Hansher Fromkin alleging that he was guilty of professional misconduct.

The matter was heard in public on March 4, 1998 before Clayton C. Ruby sitting as a single bencher. The Solicitor attended the hearing and was represented by Brian Greenspan. Catherine Braid appeared on behalf of the Law Society.

DECISION

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

Complaint D327/97

2. a) He breached an Order of Convocation dated December 31, 1995, which suspended his rights and privileges as a member of the Law Society, including his right to practise law, by acting on behalf of clients throughout the period from December 31, 1995 to February 16, 1996.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D327/97 and is prepared to proceed with a hearing of this matter on March 4, 1998.

II. IN PUBLIC / IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D327/97 and this agreed statement of facts with his counsel, Brian Greenspan, and admits the particular contained therein. The Solicitor also admits that the facts alleged in the Complaint supported by the facts as set out below constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 6, 1982 and currently practises as a sole practitioner.

5. In a notice dated July 1, 1995, the Solicitor was advised by the Law Society that his Errors and Omissions levy for the period from July 1, 1995 until December 31, 1995 was due. On the second page of this notice, the Solicitor was advised that failure to pay the levy within four months after the day on which payment was due could result in Convocation ordering the suspension of the Solicitor's rights and privileges, pursuant to s. 36 of the *Law Society Act*. (Tab 1 of the *Disclosure Brief*)

6. A second and final, notice, dated October 26, 1995, was sent to the Solicitor by the Law Society, advising him that any outstanding balance had to be paid by the close of business on November 15, 1995 in order to avoid suspension. Also included on the second page of this final notice was a section advising the Solicitor that failure to pay within four months after the day on which payment was due could result in Convocation ordering the suspension of the Solicitor's rights and privileges, pursuant to s. 36 of the *Law Society Act*. (Tab 2 of the *Disclosure Brief*).

7. In a registered letter dated January 5, 1996, the Solicitor was advised that his rights and privileges as a member of the Society had been suspended on December 31, 1995, by order of Convocation. (Tab 3 of the *Disclosure Brief*) A memorandum explaining the restrictions and obligations imposed on suspended members was enclosed with the letter. The registered letter was received and signed for on January 10, 1996. (Tab 4 of the *Disclosure Brief*)

8. On January 24, 1996, an employee of the Law Society telephoned and spoke to the Solicitor. The Solicitor advised the Society's employee that he was not practising but was only performing administrative duties. The Solicitor was directed to contact the Law Society's membership department concerning his outstanding payment. (Tab 5 of the *Disclosure Brief*)

9. On February 16, 1996, the Solicitor made arrangements for payment of his outstanding Errors and Omissions levy and was reinstated by the Law Society.

10. On February 18, 1997, during the course of an ongoing audit by the Law Society, Christine Phillips, an Examiner with the Society's Department of Audit and Investigations, questioned the Solicitor about his period of suspension. (Tab 10 of the *Disclosure Brief*) A questionnaire was partially completed. (Tab 11 of the *Disclosure Brief*) In that questionnaire, the Solicitor advised that he had received the notices regarding his outstanding Errors and Omission levy as well as the Law Society's January 5, 1996 letter advising him that he was suspended. In response to Ms. Phillip's question "What did you do at that time?", the Solicitor responded that he continued to practice. He felt that he did not have any other choice as he had to continue to work in order to earn the funds to pay the levy. He stated that after he received the January 24, 1996 telephone call from the Law Society about his practice status, he immediately sought out a loan to make the payment and to bring himself into good standing.

11. Enclosed with a letter to the Law Society dated April 23, 1997 (Tab 19 of the *Disclosure Brief*), the Solicitor provided the Society with a completed version of the questionnaire concerning his period of suspension. (Tab 28 of the *Disclosure Brief*) He advised the Society that he was not aware of the implications of practising while under suspension. He also indicated that he had spoken with Lawyers' Professional Indemnity Company ("LPIC") as to whether or not he could make some arrangements for deferral of his payment, however due to his cash flow problems with the Ontario Legal Aid Plan ("OLAP"), he could not meet the necessary terms. He also advised that he inquired about setting off the LPIC premium against the money OLAP owed him, however he was told that this was not an available option. The Solicitor was not able to recall who he spoke with at LPIC.

12. While LPIC do enter into agreements with solicitors to have any payment owed them by the OLAP remitted to LPIC in payment of the solicitor's errors and omissions levy, LPIC does not have any recorded request from the Solicitor in this case to have payments owing him by OLAP remitted directly to LPIC. However, according to LPIC, the Solicitor did make other attempts to arrange for payment of his errors and omissions levy. On August 10, 1995, The Solicitor remitted \$500.00 towards his errors and omissions levy, indicating that he was unable to forward a larger payment due to severe financial constraints. (Attached as Appendix "A") In a letter to LPIC, dated September 27, 1995, the Solicitor advised them that he was unable to pay the balance owing and would not issue a post-dated cheque because he could not guarantee that the cash flow would be there to support the cheque. He again expressed his difficulties receiving payment from OLAP, given the Plan's financial state and advised LPIC that, consequently, he didn't know if he would be able to continue practising. (Attached as Appendix "B")

13. A review of the Solicitor's files by Ms. Phillips disclosed that the Solicitor practised law throughout the period he was under suspension (December 31, 1995 until February 16, 1996) as evidenced by the following:

- (a) In a letter dated January 2, 1996, the Solicitor wrote to the Department of Social Services on behalf of his clients, the Tharmalingams. In that letter, the Solicitor advised that he was the Tharmalingam's lawyer. He updated his clients' situation with Social Services as he had been told that a letter from his office was required in order that his clients continue to receive benefits from Social Services. (Tab 29 of the *Disclosure Brief*) In the subscription below his signature, the Solicitor identifies himself as a "Barrister & Solicitor".
- (b) In a letter to the Immigration and Refugee Board, dated January 11, 1996, the Solicitor advised that he was the lawyer for Tetiana Vivchariuk. He requested that the Board make available to him a tape of the CRDD hearing which he attended on January 9, 1996 so that he could "submit his submissions". (Tab 30 of the *Disclosure Brief*) In the subscription below his signature, the Solicitor identifies himself as a "Barrister & Solicitor".
- (c) On January 12, 1996, the Solicitor accepted funds, in the amount of \$636.00, into trust in relation to his client Tirino Corporation. (Tab 34 of the *Disclosure Brief*)
- (d) On January 16, 1996, the Solicitor accepted funds, in the amount of \$400, into trust in relation to his client Dong Hai Huang. (Tab 33 of the *Disclosure Brief*)
- (e) In a letter to the Immigration and Refugee Board, dated January 24, 1996, the Solicitor identified himself as the lawyer for Shen Xing (Zhu) and requested that the Board review his client's matter. (Tab 31 of the *Disclosure Brief*) In relation to this same client, the Solicitor wrote another letter to the Immigration and Refugee Board, dated January 30, 1996, providing the Board with information concerning his client. (Tab 32 of the *Disclosure Brief*) In both letters, in the subscription below his signature, the Solicitor identifies himself as a "Barrister & Solicitor".

V. DISCIPLINE HISTORY

14. The Solicitor does not have a discipline history.

DATED at Toronto, this 4th day of March, 1998."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Mark Hansher Fromkin be suspended for a period of one month.

REASONS FOR RECOMMENDATION

Counsel in this case came before me with a joint submission which I heartily endorse. It involves a penalty which is slightly less than that which is usually imposed and therefore requires a brief explanation. The period of time during which the Solicitor practised law despite being suspended is slightly more than one month. Ordinarily, an equal period together with an additional month would be imposed as a period of suspension. That additional month is imposed to make clear the element of general deterrence and to ensure that there is a significant penalty attached to those who knowingly practise while suspended.

In this case, the joint submission is for a period of suspension of one month. But, there are very good reasons for this departure from what is usual.

Firstly, the Solicitor is presently forty-three years of age. He has attained his present educational levels despite the need to overcome difficulty, particularly significant in earlier years, caused by a significant hearing loss from which he suffers. He has managed to practise law since his call to the Bar on April 6, 1982 without any discipline history whatsoever.

In this case, it is significant that part of the amount which the Solicitor owed to the Lawyers Professional Indemnity Company and which was the source of the suspension by reason of its non-payment was indeed forwarded to the insurance company in a timely way. On August 10, 1995, the Solicitor wrote to the insurance company saying:

"Further to my telephone conversation with you yesterday, please find enclosed my firm's cheque in the amount of \$500.00. I am unable to forward a larger payment at this time due to severe financial constraints.

My practice is composed of 95% of Refugee work paid by Legal Aid. As you may know, the Legal Aid Plan's future is highly uncertain. My problem with cash flow is that the Immigration and Refugee Board has expanded its time frame so the Board is not scheduling cases as fast as usual. It now takes up to four months to set a date for a hearing after the Personal Information Form is submitted. Accordingly, the turn around time on case billings has been suddenly, unexpectedly and greatly increased.

I do not feel confident in providing post-dated cheques to you under such circumstances."

Secondly, it is apparent to us now with hindsight that the economic problems that the Solicitor was suffering from were caused in large part by a delay in the Legal Aid program in paying accounts during this period. Since such a high degree of his practice was reliant upon Legal Aid, the effect upon his practice was striking. There was very little that he could do.

Thirdly, the Solicitor additionally discussed with the Lawyers Professional Indemnity Company the possibility of assigning to that insurance company amounts which were to be paid by the Legal Aid Plan for work that had already been performed. The insurance company during this period, and at present, still does this. For some reason which is unknown, the insurance company did not accept that offer in this case. Had they accepted the offer, this suspension would never have occurred. Quite simply, apart from some unexplained bureaucratic difficulty, which may be the Solicitor's fault or it may be the insurance company's fault or maybe both, this should not have happened.

Fourthly, some of the cause of the inability of the Solicitor to pay the required insurance fees was due to his own misadministration of his office. It now appears that he has taken effective steps to solve those problems by involving his wife in the actual administration, particularly the paying of accounts and the rendering of accounts, in his office. She now spends approximately twenty hours each week making certain that these administrative aspects of the running of a law practice are performed effectively and it would appear that this has been achieved in a straightforward and appropriate manner.

In these circumstances, the period of one month suspension is more than ample to meet all the needs of general deterrence, specific deterrence, and to mark the seriousness of the conduct. Indeed some would say we have gone too far.

23 April, 1998

Accordingly, I have no hesitation in recommending the joint submission to Convocation as the appropriate one in this case.

Mark Hansher Fromkin was called to the Bar on April 6, 1982.

ALL OF WHICH is respectfully submitted

DATED this 11th day of March, 1998

Clayton C. Ruby

There were no submissions.

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

Carried

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

Both Counsel supported the joint submissions made at the hearing for the recommended penalty of a 1 month suspension.

Mr. Greenspan requested that the suspension commence May 1st, 1998.

It was moved by Mr. Carter, seconded by Mr. Wright that the solicitor be suspended for a period of 1 month commencing May 1st, 1998.

Carried

Re: Peter Frederick PIROTH - Toronto

The Secretary placed the matter before Convocation.

Mr. Scott and Mr. MacKenzie withdrew for this matter.

Mr. Stuart appeared for the Society and Mr. Rosen, Duty Counsel appeared on behalf of the solicitor. The solicitor was not present.

Mr. Rosen made submissions as to the solicitor's current health and he advised that the solicitor was living out of the province.

Mr. Rosen advised that he had spoken to the solicitor who understood and was aware of the consequences of today's hearing.

Convocation had before it the Report of the Discipline Committee dated 18th August, 1997, together with an Affidavit of Service sworn 21st August, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 19th August, 1997 (marked Exhibit I). 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

Gavin MacKenzie
Shirley O'Connor

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

Neil Perrier
for the Society

PETER FREDERICK PIROTH
of the City
of Toronto
a barrister and solicitor

Harry G. Black, Q.C. and Joanne E. Mulcahy
for the solicitor

Heard: October 2 and 3, 1996
December 16, 17, 18, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 17, 1996, Complaint D118/96 was issued against Peter Frederick Piroth alleging that he is guilty of professional misconduct.

The matter was heard in public on October 2, and 3, 1996 and December 16, 17 and 18, 1996 before this Committee composed of Denise Bellamy (Chair), Gavin MacKenzie and Shirley O'Connor. Mr. Piroth appeared at the hearing on his own behalf on October 2 and 3, 1996, and was represented by Harry G. Black, Q.C. and Joanne Mulcahy on December 16, 17 and 18, 1996. Neil Perrier appeared on behalf of the Law Society.

After the completion of the hearing, the Committee's chair was appointed a Justice of the Ontario Court of Justice (General Division). The remaining two members of the Committee issue this report pursuant to section 9(5) of Regulation 708 under the Law Society Act which reads as follows:

"(5) Except in the case of a hearing before a single benchler, if a member of the Committee, after beginning the hearing of a complaint, is unable to continue because he or she has been appointed to the judiciary, has ceased to be a benchler, has become permanently physically or mentally disable, suffers from a long-term illness or has died, the quorum of the Committee for the purpose of completing the hearing of the complaint and reporting to Convocation is two members of the Committee who are not benchlers by virtue of their office."

DECISION

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

“SOON YOON

- (a) He misappropriated from his client, Soon Yoon, the sum of \$74,108.66;
- (b) He failed to serve his client, Soon Yoon, in a conscientious diligent and efficient manner in that he:
 - (i) failed to follow the instructions of his client; and
 - (ii) misled his client as to the fulfilment of her instructions.
- (c) He misled the Law Society of Upper Canada in respect of the amount of funds held in his trust account as at August 30, 1994 and November 2, 1994.
- (d) He failed to respond with reasonable promptness to communications from another solicitor.

MR. CHONG DA SHIN

- (e) He improperly borrowed \$74, 108.66 more or less from a client, Mr. Shin, contrary to Rule 7 of the Rules of Professional Conduct.

SUNG HOON CHUNG

- (f) He misappropriated from his client, Sung Hoon Chung, the sum of \$20,000.00.

SUNG PIL AND HWA JA CHUN

- (g) He misappropriated from his clients, Sung Pil and Hwa Ja Chun, the sum of \$3,711.41

568819 ONTARIO LIMITED

- (h) He misappropriated from his client, 568819 Ontario Limited, the sum of \$7,981.42.

WONG KEUN LEE

- (i) He misappropriated from his client, Won Keun Lee, the sum of \$2,800.50.

KWANG YU LEE AND YUNG LEE

- (j) He misapplied from client trust funds the sum of \$20,425.32.
- (k) He failed to answer communications from another solicitor, John Christie.

BOOKS AND RECORDS

- (l) He failed to maintain his books, records and accounts on a current basis and failed to maintain a fee book or chronological file of billings pursuant to Section 15 of Regulation 708 made pursuant to the Law Society Act.

EVIDENCE

On October 2 and 3, 1996, the Committee received the evidence of Michael Kovach, Soon Yoon, Kyung Hee Lee, Hwa Ja Chun, Kwang Yul Lee and Chong Da Shin.

Upon the resumption of the hearing on December 16, the Committee was informed by Mr. Perrier and Mr. Black that the parties had signed an Agreed Statement of Facts, which the Committee received in evidence as Exhibit 8. We were also informed that Mr. Piroth admitted the particulars in the complaint as set forth above, subject to the reservation that he did not admit that Soon Yoon was his client. In his evidence, however, Mr. Piroth acknowledged that Soon Yoon was his client and, based upon his admissions, the Agreed Statement of Facts and the viva voce evidence received on October 2 and 3, 1996, the Committee found Mr. Piroth guilty of professional misconduct, and found each of the particulars established.

The Agreed Statement of Facts reads as follows:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D118/96 and is prepared to proceed with a hearing of this matter on December 16, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D118/96 and this agreed statement of facts with his counsel. The Solicitor also admits that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

Particular 2

SOON YOON

- (a) He misappropriated from his client, Soon Yoon, the sum of \$74,108.66.
 - (b) He failed to serve his client, Soon Yoon, in a conscientious diligent and efficient manner in that he:
 - (i) failed to follow the instructions of his client; and
 - (ii) misled his client as to the fulfilment of her instructions.
 - (c) He misled the Law Society of Upper Canada in respect of the amount of funds held in his trust account as at August 30, 1994.
 - (d) He failed to respond with reasonable promptness to communications from another solicitor.
4. On October 18, 1993, Mr. and Mrs. Lee (the "Lees") asked Soon H. Yoon ("Yoon") to loan them the sum of \$15,000.00. The Lees promised repayment to Yoon by the end of April 1994.
5. In April 1994, the Lees did not have sufficient funds to repay Yoon. Instead, the Lees offered Yoon their house at 36 Wildlark Drive, Scarborough (the "property"). Yoon accepted the offer and agreed to pay out the only mortgage believed to be registered on title to the property in favour of the Royal Bank of Canada (the Royal Mortgage") in the principal amount of approximately \$140,000.00.
6. On May 12, 1994, Yoon contacted the law office of Mr. Bruce Olmstead for the purposes of preparing the documentation necessary to complete the transfer transaction. Mr. Olmstead was unavailable, and Yoon spoke with and explained the circumstances to Mr. Joseph Chung ("Chung") a law clerk employed by the Solicitor.

23 April, 1998

7. On May 24, 1994, Yoon attended at Mr. Olmstead's office with Mrs. Lee. When they arrived for their appointment, Mr. Olmstead was not present. Instead, the Solicitor introduced himself. Yoon instructed the Solicitor to prepare the transfer deed and the cheque for the repayment of the Royal Mortgage. Yoon instructed the Solicitor to transfer the property into the name of her daughter, Shirley Yoon, a minor. The Solicitor requested from Yoon a cheque in the amount of \$142,000.00 to pay out the Royal Mortgage plus an additional \$1,000.00 for taxes and a further \$1,000.00 on account of legal fees.
8. On May 30, 1994, Yoon wired the amount of \$144,000.00 from the Bank of Nova Scotia to the Solicitor's personal account at the Bank of Montreal (account #1534-402). The same day, that sum was transferred to the Solicitor's general account at the Bank of Montreal (account #1034-402). The following day, a cheque was written to transfer the sum of \$143,500 to the Solicitor's trust account at the Korea Exchange Bank of Canada (account #4151002 (400093) (Document Book, Tabs 4A, 4B and 4C).
9. By letter dated May 31, 1994, the solicitors for the Royal Bank of Canada advised the Solicitor that the total amount required to pay out the Royal Mortgage was the sum of \$163,731.91, being the principal and interest on the Royal Mortgage and various other costs (Document Book, Tab 2).
10. On June 10th, 1994, the property was transferred to Yoon's daughter, Shirley Yoon. (Document Book, Tab 2).
11. On July 8, 1994, Yoon telephoned the Solicitor's office to confirm the amount of the second mortgage. At that time, Paul Chung stated that he was not aware of Yoon's matter. Yoon immediately asked Paul Chung to fax to her the documents relating to the transfer of the property. This was done. The Solicitor's file contained:
 - (a) a Discharge Statement from Household Realty Corporation dated June 9, 1994 (Document Book, Tab 3)
 - (b) a letter from Goodman and Carr dated June 9, 1994 confirming an execution against Mr. Lee, and that the amount required to lift the writ against Mr. Lee was \$8,594.79 (U.S.) (Document Book, Tab 4) ("the Execution"); and
 - (c) a letter from the solicitors for the Royal Bank dated May 31, 1994 indicating that the amount necessary to discharge the Royal Mortgage was \$163,731.91 (Document Book, Tab 5).
12. On July 8, 1994, Mr. John Chan ("Chan"), a manager at the Royal Bank of Canada, telephoned Yoon to enquire why the Royal Mortgage had not been paid out. Yoon immediately called the Solicitor's office. Neither the Solicitor nor Chung returned the call.
13. By faxed letter dated July 8, 1994, the Solicitor delivered to Yoon a Trust Ledger Statement indicating a balance held in trust of \$133,195.88 (Document Book, Tab 10).
14. A review of the Solicitor's Client Ledger indicates that as at July 8, 1994, only \$100,698.72 was being held in trust for Yoon. Accordingly, the Solicitor misled his client as to the amount being held for her in trust (Document Book, Tab 11).
15. The same day, July 8, 1994, Yoon retained another solicitor, Michael Kovach.
16. By letter dated July 12, 1994, Michael Kovach advised the Solicitor that he had been retained by Yoon with regards to the Yoon purchase from Lee (Document Book, Tab 7). The Solicitor responded as follows: "someone from my office...will drop off the file at your office" (Document Book, Tab 8).

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17. On July 15, 1994, the Solicitor sent to Mr. Kovach a Document General for Power of Attorney and a copy of the registered Transfer in respect of the property (Document Book, Tab 9). The Solicitor advised Mr. Kovach that the other documentation would be delivered "as promptly as possible". The Solicitor did not deliver any other documentation from his file.

18. Mr. Kovach then contacted Chan at the Royal Bank of Canada who advised that the Bank had not yet received funds from the Solicitor other than those funds required to pay the arrears on the Royal Mortgage. Chan further advised that the Solicitor had requested a discharge statement.

19. A few days later, on July 20, 1994, a cheque in the amount of \$63,195.88 was sent from the Solicitor to the Royal Bank.

20. When Mr. Kovach learned of the transfer he contacted the Solicitor who advised Mr. Kovach that he had intended to send a further \$70,000.00 to the Bank but that there complications because of the discovery of the second mortgage as well as the Execution.

21. By faxed letter dated July 21, 1994, the Solicitor directed Mr. Kovach to register a transfer back from Yoon to the Lees in exchange for the return of Yoon's money as the deal was purportedly cancelled (Document Book, Tab 12).

22. The Solicitor's statement that the deal had been cancelled was false.

23. That same day, the Solicitor also wrote to Chan at the Royal Bank of Canada requesting that he return the \$63,195.88 which had been sent the previous day (Document Book, Tab 13).

24. Chan replied to the Solicitor by fax letter dated July 21, 1994, confirming receipt of a cheque in the amount of 63,195.88 which had apparently arrived at the Bank without a cover letter directing the application of funds. Chan also advised that the funds were insufficient to discharge the Royal Mortgage, and returned the cheque (Document Book, Tab 14).

25. Lisa Steinberg, of the Law Society contacted the Solicitor in mid-August, 1994.

26. On or about October 17, 1994, Mr. Kovach delivered to the Solicitor a further authorization and direction requesting that the file contents be delivered to Mr. Kovach, and further that the balance in trust for Yoon be forwarded to the Royal Bank of Canada (Document Book, Tab 15). The Solicitor did not respond.

27. In a letter dated October 24, 1994, from Mr. Kovach to the Law Society of Upper Canada, Mr. Kovach advised, among other things, that both Yoon and Mrs. Lee wanted to complete the transaction, that Yoon was agreeable to assuming the title "as is" together with all encumbrances, that the Solicitor had apparently moved his office without informing his client or Mr. Kovach, and that Chung (the Solicitor's clerk) would not disclose the Solicitor's new address or fax number.

Analysis of the Accounting Records

28. According to the Solicitor's Client Trust Ledger, on May 31, 1994, the Solicitor transferred \$143,500.00 from his general account at the Bank of Montreal to his trust account (i.e. \$144,000.00 less \$500.00 in fees and disbursements) (Document Book, Tab 17). The Solicitor then made the following supportable disbursements:

Date	Description	Amount
		\$143,500.00
June 3/94	Sandler, Gordon, Saperia & Walman - legal fee (solicitors for the Royal Bank)	4428.00
June 6/94	Min. of Finance - Lee execution search	-22.00
June 6/94	Min. of Finance - Lee title search	-5.00
June 10/94	Min. of Finance - title search update	-5.00
June 10/94	Min. of Finance - execution search update	-22.00
June 10/94	Min. of Finance - Document General registration	-50.00
June 10/94	Min. of Finance - Transfer registration and LTT	-1,199.32
June 13/94	Royal Bank - arrears payment	-3,373.94
June 13/94	Household Realty - arrears payment	-1,476.53
June 17/94	Royal Bank - arrears payment	-3,012.66
June 28/94	Royal Bank - mortgage payment	-580.60
June 28/94	Household Realty - mortgage payment	-129.07
	Balance	133,195.88

(Document Book, Tabs 18 and 19)

29. By letter dated August 30, 1994 to the Law Society of Upper Canada - Complaints Department, the Solicitor advised that \$133,195.88 was being held in his trust account for Yoon (Document Book, Tab 23).

30. In fact, only \$83,760.66 remained in trust in relation to this account at that date (Document Book, Tabs 18 and 19). Thus, the Solicitor misled the Law Society.

31. According to the Solicitor's Client Trust Ledger, between June 6 and December 9, 1994, the Solicitor appropriated \$75,915.44 from his trust account purportedly on account of "fees" (Document Book, Tabs 18 and 19).

32. There are no fee billings to support these appropriations. An analysis of the cancelled trust cheques indicates that the majority of the trust funds were transferred to the Solicitor's general account (Document Book, Tab 19) and used for the Solicitor's personal purposes (Document Book, Tab 20).

33. In October 1994, the Lawyer's Professional Indemnity Company ("LPIC") became involved as a result of a complaint by Mr. Kovach. In early December, 1994, the Solicitor was advised by LPIC counsel to pay the \$133,195.88 trust balance to Mr. Kovach, in trust by December 16, 1994, and by agreement this was extended to December 19, 1994.

34. The Solicitor admits that he misappropriated the said funds for personal purposes.

35. On December 19, 1994, following the Law Society's investigation, the Solicitor replaced the funds misappropriated by him by:

- (i) depositing \$74,108.66 into his trust account (Document Book, Tab 21);
- (ii) transferring a further \$1,806.78 (in relation to an unrelated matter #94-066) into his trust account (Document Book, Tab 19); and
- (iii) issuing a certified trust cheque to Mr. Kovach, in trust, in the amount of \$133,195.88 (Document Book, Tab 22).

MR. SHIN

- (e) He improperly borrowed money from a client, Mr. Shin, contrary to Rule 7 of the Rules of Professional Conduct.

36. The \$74,108.66 referred to above was loaned to the Solicitor by a family friend and client Mr. Shin. Mr. Shin gave to the Solicitor the sum of \$20,000.00 by bank draft in August of 1994. A promissory note acknowledging the debt was signed by the Solicitor. The Solicitor paid interest on the loan in an agreed amount of \$200 per month for 3 months (\$600).

37. In December of 1994, Mr. Shin loaned a further \$54,108.66 to the Solicitor from settlement funds received by the Solicitor on a real estate dispute. Mr. Shin was aware that the Solicitor intended to use the loan to replenish a trust shortage.

38. The Solicitor entered into an oral agreement with Mr. Shin to pay the sum of \$1,250 on the 15th and 30th of each month. The Solicitor was to repay the principal of \$74,108.66 within 4 years. Though the Solicitor made some of the bi-monthly payments, he has not repaid any of the principal sum of \$74,108.66. The Solicitor has done some work for free for Mr. Shin. The Solicitor continues to act for Mr. Shin.

39. There was no security for the loans.

SUNG HOON CHUNG

- (f) He misappropriated from his client, Sung Hoon Chung, the sum of \$20,000.00.

40. On February 2, 1994, Ik Hyun Kim, as purchaser ("Kim") and Sung Hoon Chung, as vendor ("Chung"), entered into an agreement of purchase and sale, by which Kim was to purchase all of the assets of the business known as The Bagel Stop situated at 40 King Street West, Scotia, Plaza. The purchase price was \$230,000.00 which included a \$20,000.00 deposit to be paid to the vendor's solicitor (Document Book, Tab 28).

41. The Solicitor acted for the vendor, Chung. On February 9, 1994, the Solicitor received \$20,000.00 to be held in trust in connection with this transaction (Document Book, Tab 29).

42. Commencing February 12, 1994, without Chung's knowledge or consent, the Solicitor began to transfer funds held for Chung in the Solicitor's mixed trust account to the Solicitor's general account. In the aggregate, approximately 26 transfers took place over a period of six weeks. At the conclusion of the six week period (March 25, 1994), the entirety of the \$20,000.00 deposit had been appropriated by the Solicitor (Document Book, Tab 34).

43. The closing date for the transaction was March 7, 1994. However, the Landlord refused to consent to the transaction and the closing was postponed several times. Finally, on April 29, 1994, the transaction was cancelled and Kim requested that the Solicitor return to him that day the \$20,000.00 deposit (Document Book, Tab 30). The Solicitor did not return the funds.

44. According to the Solicitor's Client Ledger, on February 9, 1994, he issued a fee billing to Chung in the amount of \$20,000.00 (Document Book, Tab 34).

45. No account was delivered to Chung or produced by the Solicitor. The Solicitor admits that he applied the appropriated funds to his personal use and benefit and thereby did misappropriate the funds (Document Book, Tab 34).

46. On or about January 12, 1995, following the investigation by the Law Society, the Solicitor deposited the sum of \$20,000.00 into a separate interest bearing account to be held in trust for Chung (Document Book, Tab 36).

SUNG PIL and HWA JA CHUN

(g) He misappropriated from his clients, Sung Pil and Hwa Ja Chun, the sum of \$3,711.42.

47. On December 16, 1994, Bock Kyu Lee ("Lee") purchased from Sung Pil and Hwa Ja Chun (the "Chuns") each of 126-128 Clara Street, Thorold, Ontario and Clara Variety. The purchase price was \$200,000.00. The Solicitor acted for the vendor, the Chuns.

48. According to the Direction re: Funds, \$65,950.45 of the sale proceeds were to be paid to the Solicitor, in trust for the Chuns (Document Book, Tabs 37 and 38).

49. According to the Solicitor's Client Ledger and Duplicate deposit slip, \$65,950.45 was received into trust on December 19, 1994 (Document Book, Tabs 29 and 40). Thereafter, the Solicitor made supportable disbursements in the aggregate amount of \$60,925.50 leaving a balance of \$5,024.95:

Date	Description	Amount
		\$65,950.45
Dec. 19/94	Sung Pil & Hwa Ja Chun - payout of closing proceeds	-60,000.00
Dec. 19/94	Dorea Exchange Bank of Canada - cheque certifying fee	-8.00
Dec. 22/94	Korea Exchange Bank of Canada - interest on loan	-46.03
Dec. 28/94	Thorold Hydro-Electric Commission - final bill	-798.84
Jan. 12/95	City of Thorold - final water bill	-72.63
	Balance	5,024.95

50. According to the Solicitor's Client Ledger, he issued a fee billing on December 16, 1994 in the amount of \$5,029.00 (\$4,700.00 plus \$329.00 tax). This billing was reversed and the same day a new billing was issued in the amount of \$4,815.00. This billing was also reversed and the same day a new billing was issued in the amount of \$1,070.00. Disbursements totalled \$68.58 (Document Book, Tab 39). The Solicitor delivered an account to the Chuns for the total amount of \$1,070.00 (Document Book, Tab 41).

51. According to the Solicitor's Client Ledger, throughout the period December 19 to 30, 1994, the Solicitor appropriated \$4,850.00 from the Chuns' trust account purportedly on account of "fees" (Document Book, Tab 39).

52. The Solicitor admits that he misappropriated the sum of \$3,711.42 (\$4,850.00 - \$1,070.00 - \$68.58 = \$3,711.42)

53. On January 13, 1995, following the investigation of the Law Society's audit department, the Solicitor deposited \$3,627.08 into the Chuns' trust account (Document Book, Tab 43). This deposit was recorded as a "reversing entry" in the Client Ledger. The Solicitor subsequently transferred a further \$84.34 from his personal account to the Chuns' account thereby restoring the funds which had been misappropriated.

568819 ONTARIO LIMITED

(h) He misappropriated from his client, 568819 Ontario Limited, the sum of \$7,981.42.

54. On December 12, 1994, Xu Qin ("Quin") purchased from 568819 Ontario Limited ("568") the Danish Donuts at 4700 Dufferin Street, North York. The purchase price was \$109,000.00. The Solicitor acted for the vendor, 568. According to the Direction re: Funds, \$79,073.34 was to be paid to the Solicitor, in trust for the vendor (Document Book, Tabs 52 and 53).

55. \$79,073.34 was received into the Solicitor's trust account on December 13, 1994 (Document Book, Tabs 54 and 55). Thereafter, the following supportable disbursements were made:

Date	Description	Amount
		\$79,073.34
Dec. 14/94	568819 Ontario Limited - payout of closing proceeds	-70,000.00
Dec. 16/94	Minister of Finance - financing statement registration	-40.00
	Balance	9,033.33

56. According to the Solicitor's Client Ledger, he issued a fee billing to 568 on December 13, 1994 in the amount of \$2,461.00. The same day, this billing was reversed and a new billing was issued in the amount of \$1,070.00. Disbursements totalled \$39.00 (Document Book, Tabs 54 and 56).

57. Throughout the period December 13, 1994 to January 6, 1995, the Solicitor appropriated \$6,874.64 from this client trust account purportedly on account of fees (Document Book, Tab 54). The Solicitor's file contains one account to the client in the sum of \$660.00. Accordingly, as the Solicitor admits, the Solicitor misappropriated the sum of \$6,214.64.

58. On December 19, 1994, the Solicitor also misapplied \$1,806.78 from this account to an unrelated matter (Mrs. Yoon's account) in order to cover a shortage in that latter client account (Document Book, Tab 54). The total amount misapplied and misappropriated was therefore \$7,981.42.

59. The Solicitor reported to his client by letter dated January 10, 1995 (Document Book, Tab 57).

60. In 1995, following the Law Society's investigation, the Solicitor returned the misappropriated funds to his client. The Solicitor continues to act on matters for Mr. Lee.

WON KEUN LEE

- (i) He misappropriated from his client, Won Keun Lee, the sum of \$2,800.50

61. On November 18, 1994, Ket Tran ("Tran") purchased from Won Keun Lee ("Lee") the Baker's Dozen Donuts located at 277 Davenport Road, Toronto. The purchase price was \$265,000.00. The Solicitor acted for the vendor, Lee. According to the Direction re: Funds on November 25, 1995, \$245,514.02 was to be paid to the Solicitor, in trust for Lee (Document Book, Tabs 44 and 45).

62. \$245,514.02 was received by the Solicitor into trust on November 24, 1994. Of these funds \$239,514.02 was paid to the vendor, Lee, leaving a balance of \$6,000.00 (Document Book, Tabs 46 and 47).

63. The Solicitor "issued" a fee billing on November 24, 1994 for the sum of \$3,370.50. That same day, this billing was reversed and a new billing was issued for the sum of \$1,070.00. Disbursements totalled \$29.50 (Document Book, Tab 46).

64. The Solicitor has produced an account addressed to Lee dated November 24, 1994 in the amount of \$1,070.00. There is no evidence that the account was sent to or received by Lee (Document Book, Tab 48).

65. Throughout the period November 25, 1994 to January 10, 1995, the Solicitor appropriated \$2,800.50 from this client account purportedly on account of "fees" (Document Book, Tab 46). No accounts were rendered for at least \$2,800.50 (\$3,900 - \$1,070 - \$29.50 = \$2,800.50)

66. The Solicitor admits that he misappropriated the sum of \$2,800.50 from his client, Lee.

67. On January 12 and 13, 1995, following the investigation by the Law Society's audit department, the Solicitor deposited a total of \$2,800.50 into the Lee's trust account. These deposits were recorded as "reversing entries" in the Solicitor's Client Ledger (Document Book, Tab 46). The trust account was subsequently frozen. In the spring of 1995, the Solicitor made a direct payment to the Lees in the sum of \$4,900.50.

KWANG YU LEE and YUNG LEE

- (j) He misappropriated from client trust funds the sum of \$20,425.32.

- (k) He failed to answer communications from another solicitor.

68. The Solicitor acted for Kwang Yu Lee and Jung Lee (the "Lees"), the purchasers of the assets of Enjoy Convenience Store Ltd. ("Enjoy"). The vendor was John Ingle ("Ingle"), a creditor of Enjoy, who, prior to the sale tot he Lees held the assets of Enjoy as security for the debt owed to him by Enjoy. When Enjoy was petitioned into receivership, Ingle seized the assets and sold them to the Lees. The Solicitor acted for the Lees on the transaction.

69. On August 10, 1990, at the closing of the sale of the assets, the Solicitor gave an undertaking to hold the proceeds of the sale in trust and to disperse them according to a written direction (Document Book, Tab 59). In particular, in paragraph 3 of the direction, the Solicitor undertook to make a payment to Hayden MacDonald (Oshawa) Limited ("Hayden MacDonald") and Ingle in the amount of \$18,452.27 upon receipt of a release and direction from those parties. In paragraph 5, the Solicitor undertook to hold in trust the amount of \$3,000.00 for 60 days to be applied to legal costs, if any, in the event that legal proceedings were commenced against the Lees by any of Enjoy's creditors.

70. On April 18, 1991, Hayden MacDonald commenced proceedings against each of Enjoy, the Lees and Ingle seeking payment of the \$18,452.27 claimed to be owing to it (Document Book, Tab 60). Ingle defended the action as did Enjoy and the Lees (Document Book, Tabs 61 and 62). The Lees also cross-claimed against Ingle was struck out. No appeal from the Order was taken.

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71. In November 1992, a settlement was reached between Hayden MacDonald and Ingle whereby \$10,000 of the funds held in trust by the Solicitor were to be released to Hayden MacDonald and the balance to Mr. Ingle, Hayden MacDonald was then to consent to a dismissal of the action against all of the defendants, including the Lees.

72. In November 1992, Stein & Price, solicitors for Hayden MacDonald, sent to the Solicitor an executed Consent to the dismissal of the action and cross-claim without costs. The Solicitor did not respond to this correspondence.

73. On March 31, 1993, the Solicitor received a Direction from Hayden MacDonald authorizing and directing him to make payment of the settlement funds to Stein & Price (Document Book, Tab 63).

74. On July 19, 1993, Antoniani & Christie, solicitors for Ingle, sent a letter to the Solicitor enclosing a Direction of John Ingle, and instructing the Solicitor to release \$10,000.00 to Stein & Price and the balance to Antoniani & Christie in trust for Ingle (Document Book, Tab 64). The Solicitor did not respond.

75. According to Mr. Christie, solicitor for Ingle the Solicitor on behalf of the Lees, claimed an interest in the subject funds by virtue of the Lees' cross-claim. However, the cross-claim had been struck out by Order dated June 13, 1991.

76. The Solicitor was unable to pay out to Mr. Ingle the sum of \$3,000.00 (Document Book, Tab 64A).

77. The Solicitor also moved his office and refused to advise Mr. Christie of his new address for service.

Analysis of the Trust Account

78. The Solicitor received from Mr. Lee an aggregate sum of \$104,561.84 (\$75,000 + \$20,200 + \$9,361.84) in relation to the purchase of Enjoy (Document Book, Tab 65). Included in that amount was \$21,452.27 (\$1,845.27 + \$3,000.00) to be held on behalf of Ingle as per the Direction and Undertaking. Several supportable disbursements were made. On October 25, 1990, the balance of \$20,350.48 was paid into a special trust account for Ingle (\$1,845.27 respecting Hayden MacDonald and \$1,898.21 respecting the Lees' legal fees.) A summary of the activity in this account is as follows:

Description	Ingle/Hayden	Lee Legal	Total
Opening Balance - Oct. 25/90	\$1,452.27	\$1,898.21	\$20,350.48
Document filing charge (attributable to the Lees)		37.45	
Interest earned less service charges	1,973.05	195.14	
Balance prior to withdrawals on account of fees	20,425.32	2,055.90	22,481.22

79. On May 19, 1991, the Solicitor appropriated fees in the amount of \$1,070.00 on account of a billing sent to the Lees dated May 14, 1991 (Document Book, Tab 66). The account states that it relates to fees for "Managing your special trust account". However, the funds in this account were being held on account of the Hayden MacDonald litigation. Thus, by taking his fees charged to the Lees from this account the Solicitor misapplied \$1,070.00 of client trust funds designated for other purposes.

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80. On September 21, 1992, the Solicitor sent a fee billing to the Lees in the amount of \$21,400.00 in connection with his representation of them regarding the competing claims of Ingle & Hayden MacDonald (including the cross-claim against Ingle) (Document Book, Tab 67). The Solicitor paid himself the \$21,400.00, in part from the special trust monies being held on behalf of the Lees (then in the amount of \$985.90) and in part from the special trust monies being held on behalf of Hayden MacDonald per the Direction referred to above (\$20,425.32).

81. As at January 29, 1993, there remained in the trust account the sum of \$11.22. The Solicitor appropriated this amount purportedly on account of a "disbursement", thereby reducing the balance in the special trust account to zero.

82. The Solicitor admits that during the period September 21, 1992 to January 29, 1993, the Solicitor misapplied trust funds in the aggregate amount of \$20,425.32 (\$22,481.22 - \$2,055.90 = \$20,425.32).

83. Sandra Antoniani wrote a letter to the Law Society in January 1996 stating that the matter had been settled and that they wished to withdraw the complaint.

BOOKS AND RECORDS

- (1) He failed to maintain his books, records and accounts on a current basis and failed to maintain a fee book or chronological file of billings pursuant to Section 15 of Regulation 708 made pursuant to the Law Society Act.

84. In January, 1995, the Law Society's investigator confirmed that the books and records for the Solicitor's law office had not been entered since May 1994 and no trust reconciliations had been performed since April 1994. In addition, the Solicitor stated that his trust statements were not available for the period commencing April 1994 since he had recently moved and the records were in storage (the Solicitor had moved offices in September, 1994).

85. The Solicitor provided copies of the trust reconciliations within four working days, but without supporting documentation (i.e. cancelled cheques). The Solicitor was then given eight working days to bring the reconciliations up to date before co-signing would be required. The reconciliations were made available as requested with supporting documentation.

86. On January 13, 1995, the Solicitor brought his books into compliance with section 15 of Regulation 708 under the Law Society Act.

87. No fee book or file of billings of the Solicitor as required by Section 15(l)(g) of Regulation 709 could be found during the investigation.

Other Relevant Facts

88. Due to the initial findings of the Law Society's investigation (i.e. misappropriation), co-signing was placed on the Solicitor's current mixed trust account. Arrangements were made with the bank and the Solicitor to cease all activity in regards to his trust accounts, as the Law Society could no longer place any certainty on the integrity of any of his trust accounts. The Solicitor was denied further co-signing thereby effectively freezing his trust account.

89. On February 9, 1995 (after the date the accounts were frozen), the Solicitor made an assignment into bankruptcy. The Solicitor was discharged from bankruptcy on November 9, 1995, on schedule.

90. A new trust account was opened on February 24, 1996, with a co-signing restriction which was performed by Mr. Bruce Daley, solicitor.

VI. PRIOR DISCIPLINE

91. The Solicitor does not have a discipline record.

DATED at Toronto this 16th day of December, 1996."

As mentioned above, the Committee found complaint D118/96 established.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Peter Frederick Piroth be granted permission to resign should he request such permission before this report is considered in Convocation, failing which the Committee recommends that Mr. Piroth be disbarred.

EVIDENCE AS TO PENALTY

Mr. Black called nine witnesses, including Mr. Piroth, in mitigation.

By way of overview, the evidence called in mitigation of penalty established that Mr. Piroth was called to the bar in 1975. He practised for about three years as an assistant city solicitor employed by the Town of Mississauga. Thereafter, he was employed by a firm in Brampton. He then accepted a position as an Assistant Secretary employed in the Complaints Department of the Law Society. He then became the Law Society's Assistant Director of Continuing Legal Education, a position he held until 1981.

In 1981, Mr. Piroth moved to Edmonton, where he was employed by the Madison Development Company. He also worked for a law firm in Edmonton briefly.

In 1983, he was employed by the Alberta Association of Architects as that organization's Director of Professional Service. He then moved back to the Toronto area, where he has been in private practice in several different offices and space-sharing arrangements. From 1989 to 1994, his office was in premises occupied by the Korean Exchange Bank. Mr. Piroth did considerable legal work for the bank, and the bank referred a number of customers who needed legal services to him.

Since August 1994, Mr. Piroth has been a subtenant in premises occupied by Daley, Byers, a Toronto law firm.

Mr. Piroth was 52 years old at the time of the hearing. He was married in 1968, but he and his wife separated in 1983 and divorced in 1985.

In June 1987, Mr. Piroth was re-married. His wife, Jenny Piroth, had a 14 year old son who suffered from schizophrenia. Mr. Piroth's stepson's condition was erratic and often violent. He was confined in hospitals and group homes from time to time. In August 1993, he attacked Mr. Piroth while Mr. Piroth was sleeping, and Mr. Piroth was seriously injured.

After this attack, Mr. Piroth's stepson was institutionalized for approximately two months. He then lived at a group home for approximately ten months, while visiting with his mother and Mr. Piroth on weekends and holidays. He then returned to live with his mother and Mr. Piroth, but eventually stopped taking his medication. On October 2, 1995, Mr. Piroth's stepson committed suicide by jumping from the roof of the apartment building in which they resided.

Most of the evidence that was introduced in mitigation of penalty concerned Mr. Piroth's own mental health, and the effect on him of the extraordinarily stressful events involving his stepson.

Thomas Thibault, who worked as a superintendent in the apartment building in which Mr. and Mrs. Piroth and Mr. Piroth's stepson resided at the relevant time, testified that Mr. Piroth's stepson on numerous occasions caused damage by smashing walls and doors. The police were called on a number of occasions. Mr. Thibault testified that after he was attacked by his stepson, Mr. Piroth hated to go into the apartment because he was afraid of what may happen. He testified that Mr. Piroth himself "was a mess". "He didn't know whether he was coming or going." He testified that from approximately Christmas 1991, Mr. Piroth wasn't himself, but rather seemed to become more and more depressed and worried.

Dilva Breda, who was employed as an Office Manager at Daley Byers, testified that she has known Mr. Piroth since September or October 1994, when he began to share space in the premises occupied by Daley Byers. She testified that Mr. Piroth was operating in a normal manner when she first met him, but that there was a dramatic change in him in the summer and fall of 1995, when "it got to the point he was catatonic". She testified that Mr. Piroth would sit in his office and stare into space. Ms. Breda testified that she learned from Bruce Olmstead, another lawyer in the premises of Mr. Piroth's stepson's suicide. She further testified that she saw improvement in his condition in 1996, and that Mr. Piroth seemed normal again by the time of the hearing.

Bruce Olmstead testified that he met Mr. Piroth several years ago when their offices were next door to each other. Mr. Olmstead testified that Mr. Piroth made friends with him. Mr. Olmstead learned that Mr. Piroth's practice consisted primarily of real estate work that he did for the Korean Exchange Bank and members of the Korean community. He also learned that Mrs. Piroth had immigrated to Canada from Korea, and that since Mr. Piroth did not speak Korean, his communications with clients had to be translated by his wife or members of his staff. Mr. Olmstead said Mr. Piroth was "totally into the Korean community", and that Mr. Piroth seemed like a "lost soul".

Mr. Olmstead testified that when Mr. Olmstead moved to his current office in the premises occupied by Daley Byers, Mr. Piroth followed him, and moved into his current offices a few months after Mr. Olmstead, in September 1994.

Mr. Olmstead testified that "it was pretty clear to me that he was on the ropes then". Mr. Olmstead concluded that Mr. Piroth was not competent to practise at that point, "even to do small claims court agency work an articling student could handle easily."

At this time, Mr. Olmstead added, Mr. Piroth had good days and bad days, and had terrible mood swings. His condition went markedly downhill after he was assaulted by his stepson, Mr. Olmstead testified. Mr. Olmstead also testified that he has doubts about Mr. Piroth's competence to practise even now, though he added that because he and Mr. Piroth had had a falling out, his opportunity to form such a judgment is limited. They have limited contact now, though Mr. Olmstead of course still sees Mr. Piroth regularly around the office.

Mr. Olmstead testified that he thinks that Mr. Piroth is a man of integrity with many good qualities who was pushed beyond the limit by personal agony.

Richard Hutchings testified that he first met Mr. Piroth in late 1994 or early 1995 when Mr. Hutchings led a bible study group at the Korean Apostolic Church. The bible study group was intended for English speaking young adults, and consisted largely of second generation Korean immigrants. Mr. Piroth's stepson started attending the group, and Mr. Piroth himself expressed an interest in attending, and was welcomed into the group. Mr. Hutchings testified that when he met Mr. Piroth he seemed "down" and lethargic. Although he attempted to interact with the bible study group, Mr. Hutchings testified, Mr. Piroth seemed preoccupied, and his thinking process seemed to be slow.

Mr. Hutchings testified that he stopped leading the group in December 1995, about two months after Mr. Piroth's stepson's suicide. After Mr. Hutchings left the church, Mr. Piroth expressed an interest in continuing bible study. Mr. Hutchings was leading a bible study group at that point in downtown Toronto. His new group met on Saturday mornings, after Mr. Hutchings was involved in providing breakfasts for homeless people. Beginning in January 1996, Mr. Piroth assisted at the breakfasts, and stayed for the bible study group.

Mr. Hutchings testified that today Mr. Piroth seems much more clear thinking and normal and seems on top of things. He described the difference between Mr. Piroth's condition in 1995 and today as being like the difference between night and day.

Mr. Hutchings also testified that Mr. Piroth has expressed sorrow, regret and remorse for his conduct, and has testified that he seems very repentant.

Jenny Piroth testified that the year 1994 was horrible for her, and that she could not discuss with Mr. Piroth the burdens placed on her because of her son's illness.

Bruce Daley, a senior partner in the Daley Byers firm, testified that he first met Mr. Piroth in 1994, when he was introduced to him by Mr. Olmstead. He testified that Mr. Piroth has maintained space in the Daley Byers firm's office since September 1994.

Mr. Daley testified that it was clear to him when he met Mr. Piroth that Mr. Piroth "had some major issues", and that he was not normal at that time, in that he would display noticeable and sharp mood swings that ranged from exuberance and over-friendliness to depression and silence. Mr. Daley testified that he learned both from Mr. Piroth and from Mr. Olmstead of Mr. Piroth's problems with his stepson.

Mr. Daley testified that Mr. Piroth has not been able to pay rent for all or almost all of the time that he has shared space with Mr. Daley's firm.

Mr. Daley also testified that, in his view, Mr. Piroth has a good character and that he agreed to supervise Mr. Piroth's practice when Mr. Piroth signed an undertaking to the Law Society for that reason.

Mr. Daley testified that Mr. Piroth has been perfectly co-operative as far as his undertaking is concerned, and that in his view there would be no problem with his honouring the terms of any order that Convocation may make if Mr. Piroth were permitted to continue to practise.

However, Mr. Daley testified that he does not review Mr. Piroth's files. When he was shown Mr. Piroth's undertaking (dated August 6, 1996) to the Law Society, Mr. Daley testified that he had not seen it before. He added that though part of the undertaking reflects what Mr. Daley does in supervising Mr. Piroth's practice, Mr. Piroth has not ensured that his active files are reviewed on a weekly basis by Mr. Daley or ensured that Mr. Daley is provided with and reviews all incoming correspondence pertaining to Mr. Piroth's files in a timely manner, as required by paragraphs 2 and 3 of the undertaking.

Finally Mr. Daley testified that though Mr. Piroth still has good days and bad, he now seems to have more good than bad days, and that he is fine on his good days.

Mr. Piroth testified that he was treated for depression between July and October 1978, and that he was treated by a psychiatrist again between March and September 1982. He was hospitalized in the psychiatric wing of a hospital in Edmonton in August and September 1983, and underwent psychological testing between 1983 and March 1984. He was not under any psychiatric care thereafter until 1995.

Mr. Piroth also testified that he feels "awful, just terrible" about having misappropriated money from clients in 1994, and added that he wishes that he had never done it. He testified that he was in a depression at that time and was "out of it". He acknowledged that he knew that what he was doing was wrong.

Mr. Piroth testified that his depression really set in in January 1995, when the Law Society's auditor attended at his office, and that it got much worse thereafter.

He testified that he started taking paxil, an antidepressant medication, in December 1995. He had not been taking any medication in 1993, or 1994 or earlier in 1995.

Mr. Piroth testified that he now knows that he has had a lifetime mental illness, but that he did not know that until early in 1996.

Mr. Piroth testified that all of the money that he misappropriated has been repaid, though he acknowledged in cross-examination that he used money borrowed from clients to replace the money that he misappropriated. He also testified that he has done legal work without a fee for the client from whom he borrowed the money, Mr. Shin.

The Committee also heard evidence from two psychiatrists, Dr. Robert Wood Hill and Dr. Robert Weinstein.

Dr. Hill interviewed Mr. Piroth for two hours on December 4, 1996, and for one hour on December 7, 1996 at Mr. Black's request.

Dr. Hill testified that Mr. Piroth suffers from a mood disorder. He also testified that Mr. Piroth had an erratic academic performance and has had an erratic work record, both of which coincide with the ebb and flow of his mood disorder.

Dr. Hill testified that Mr. Piroth would appear to be functioning adequately at present, and that this is directly due in his opinion to Mr. Piroth's ingestion of anti-depressant medication. He considers the likelihood of future professional improprieties to be radically reduced as a result of Mr. Piroth's therapy and medication.

Dr. Weinstein is Mr. Piroth's treating psychiatrist. He testified that he met Mr. Piroth in the summer of 1993, when Dr. Weinstein assessed Mr. Piroth's stepson in the emergency department of North York General Hospital where Dr. Weinstein has privileges. Dr. Weinstein then became Mr. Piroth's stepson's treating psychiatrist.

Dr. Weinstein did not treat Mr. Piroth until after the stepson's suicide in October 1995. Weinstein testified that Mr. Piroth's stepson was one of the most difficult schizophrenic patients he has had to treat.

Dr. Weinstein also testified that because he did not see Mr. Piroth professionally until October 1995, he cannot comment on his state of mind from the period of February through December 1994, during which time Mr. Piroth misappropriated funds from clients. He did testify, however, that Mr. Piroth had told him that he was quite depressed at this time, and that he simply took the money from his trust account without thinking about the consequences.

Dr. Weinstein also testified that one's judgment and reasoning are commonly impaired in states of clinical depression. In a report that was introduced into evidence at the hearing, Dr. Weinstein wrote that "in Mr. Piroth's case, while he was clinically depressed, he was still functional to some degree, and therefore it is quite possible that he would have been able to execute the functions of his job, but to do so with impaired judgment leading to actions that he likely knew were wrong, but did anyway."

Dr. Weinstein testified that Mr. Piroth has been function well on his present medication. He added that Mr. Piroth is compliant with his anti-depressant medication and is in a state of remission at present.

REASONS FOR RECOMMENDATION AS TO PENALTY

We have found Mr. Piroth guilty of misappropriating a total of approximately \$110,000 from five clients. These misappropriations took place over a fairly extended period of time, approximately eleven months. During this period of time, Mr. Piroth was using his trust account as if it were his personal bank account.

We have found that Mr. Piroth failed to serve a client in a conscientious, diligent and efficient manner in that he failed to follow his client's instructions and misled his client as to the fulfilment of her instructions.

We have found that Mr. Piroth misled the Law Society in respect of the amount of funds held in his trust account as at August 30, 1994 and November 2, 1994.

We have found that he failed to respond with reasonable promptness to communications from another solicitor.

We have also found that Mr. Piroth misapplied from client trust funds a sum in excess of \$20,000, and that he failed to answer communications from another solicitor. We have found that Mr. Piroth failed to maintain his books, records and accounts on a current basis and failed to maintain records required by the Law Society.

Finally, we have found that Mr. Piroth improperly borrowed money from a client.

If it were not for the mitigating circumstances disclosed in the evidence summarized above, there can be doubt that the Committee would be recommending that Mr. Piroth be disbarred for this misconduct. Convocation has frequently affirmed that, in the absence of strong extenuating circumstances, lawyers who misappropriate client trust funds should be disbarred. While the mitigating circumstances here are compelling, aggravating circumstances are present as well. The misappropriations were not isolated, but took place over a period of almost a year. Mr. Piroth was found guilty of a wide range of professional misconduct. The misappropriated funds were replaced only because Mr. Piroth exacerbated his professional misconduct by borrowing money from a client, in contravention of Rule 7, to replace the misappropriated funds.

At the time he misappropriated the money, Mr. Piroth understood that what he was doing was both in breach of his professional responsibilities and morally wrong. While urging the Committee to impose a penalty short of termination of membership and urging the Committee that he would abide by the terms of any order that Convocation may impose, Mr. Piroth must acknowledge that he has not complied completely with the undertaking that he provided to the Law Society in August 1996, in that he has not ensured that his active files are reviewed weekly by Bruce Daley (who undertook to supervise Mr. Piroth's practice), and by not ensuring that Mr. Daley was provided with all incoming correspondence pertaining to Mr. Piroth's files in a timely manner. Mr. Piroth's failure to comply with his undertaking occurred at a time when both he and the psychiatrists, as well as certain of the lay witnesses, testified that Mr. Piroth was fully functional.

Moreover, it was only after the Committee heard two days of evidence that Mr. Piroth acknowledged that he misappropriated the funds particularized in the complaint.

Nevertheless, we accept the evidence that Mr. Piroth suffers from a mood disorder, and we conclude that he was clinically depressed in 1994 at the time the funds were misappropriated. We also conclude that Mr. Piroth's condition was aggravated significantly by the agonies that he suffered as a result of his stepson's schizophrenia, and particularly the violent attack on him on August 1993, a few months before he began misappropriating funds. The stress that Mr. Piroth was under in 1994 as a result of the extraordinary circumstances with which he was faced in his family, was extreme.

In these circumstances, we have concluded that Mr. Piroth's membership in the Law Society should be terminated. However, we recommend that Mr. Piroth should be permitted to resign if he wishes to do so rather than being disbarred.

DATED at Toronto this 18th day of August, 1997

Gavin MacKenzie
(on behalf of the Committee)

2. A letter from the solicitor's sister Ms. Marilyn Harris to Mr. John Rosen dated April 16th, 1998 was filed as Exhibit

A letter from Dr. Lydon dated April 17th, 1998 was filed as Exhibit 3.

23 April, 1998

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be permitted to resign should he request such permission before the Report is considered in Convocation, failing which the Committee recommends that the solicitor be disbarred.

It was moved by Mr. Wright, seconded by Mr. Carter that the solicitor be granted permission to resign.

Carried

The solicitor's letter requesting permission to resign dated January 30th, 1998 was filed as Exhibit 4.

Re: Paul William HUDSON - Mississauga

The Secretary placed the matter before Convocation.

Mr. Scott withdrew for this matter.

Ms. Amanda Worley 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 30th October, 1997, together with an Affidavit of Service sworn 15th December, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 19th November, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 5th January, 1998 (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

Gerald A. Swaye, Q.C., Chair
Heather J. Ross
Jane Harvey

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

Audrey Cado
for the Society

PAUL WILLIAM HUDSON
of the City
of Mississauga
a barrister and solicitor

John Zuber
for the solicitor

Heard: April 16, 1996 and July 8, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

The following Complaints were issued against Paul William Hudson alleging that he was guilty of professional misconduct: on December 20, 1995 Complaint D387/95, on November 12, 1996 Complaint D258/96 and on February 3, 1997 Complaint D10/97.

The matter was heard in public on April 16, 1996 and July 8, 1997 before this Committee composed of Gerald A. Swaye, Q.C. Chair, Heather J. Ross and Jane Harvey. The Solicitor attended the hearing and was represented by John Zuber. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D387/95

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending February 28, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Complaint D258/96

2. a) He failed to co-operate with the Law Society by failing to produce books and records for examination by a representative of the Law Society's audit department despite visits on April 2, 1996 and April 16, 1996, letters dated June 25, 1996, July 17, 1996 and August 23, 1996 and telephone requests on May 7, 1996, May 9, 1996, June 4, 1996 and June 12, 1996.

Complaint D10/97

2. a) He failed to file with the Society within six months of the termination of his fiscal year ended February 28, 1996, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Evidence

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

Re: Complaint D387/95

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D387/95 and is prepared to proceed with a hearing of this matter on April 16 and 17, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D387/95 with his counsel, John Zuber, 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 February 9, 1993. He practised as a sole practitioner until his suspension on December 31, 1995 as a result of his failure to pay his Errors and Omissions levy.

5. The Solicitor's fiscal year end is February 28th. The Solicitor did not file his Form 2 and Form 3 within six months of the fiscal year ending February 28, 1995, as required by S. 16(2) of Regulation 708 under the Law Society Act.

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

7. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated October 6, 1995. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice and Acknowledgement of receipt of a registered item is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

8. The late filing began to accrue on October 24, 1995.

9. A Law Society staff employee spoke with the Solicitor by telephone on October 30, 1995. The Solicitor advised that he had recently changed bookkeepers and as a result of this change, his monthly bank statements were not up-to-date. The Solicitor was granted a four week extension to provide his filing. A copy of the Law Society's handwritten telephone transaction form is attached as Exhibit "C" to this Agreed Statement of Facts.

10. A Law Society staff employee spoke with the Solicitor by telephone on November 27, 1995. The Solicitor advised that he had retained an accountant and had provided his books and records to her. The Solicitor was advised that should the outstanding filing not be made by December 7, 1995, the matter would be referred to the Chair of the Discipline Committee for further instructions. A copy of the Law Society's handwritten telephone transaction form, dated November 27, 1995 is marked as Exhibit "D" to this Agreed Statement of Facts.

11. The Solicitor has not provided the outstanding filing.

V. DISCIPLINE HISTORY

12. The Solicitor does not have a discipline history.

DATED at Toronto this 2nd day of April, 1996.”

Re: Complaint D258/96

“AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D258/96 and is prepared to proceed with a hearing of this matter on July 8, 1997.

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 D258/96 with his counsel, John Zuber, 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 February 9, 1993. He practised as a sole practitioner until his suspension on December 31, 1995 as a result of his failure to pay his Errors and Omissions levy.

5. A Law Society Examiner attended at the Solicitor’s office, at the address contained in the records of the Law Society, on April 2, 1996 (Document Book, Tab 1). The Examiner was advised the Solicitor had moved over a month ago.

6. The Examiner attended at an address for the Solicitor provided by the Ontario Legal Aid Plan, as indicated on its letter to the Solicitor, dated February 23, 1996 (Document Book, Tab 2). The Examiner was advised the Solicitor did not have an office there.

7. The Examiner met with the Solicitor at the offices of the Law Society on April 16, 1996 (Document Book, Tab 3). The Examiner advised the Solicitor an audit had been instructed however, she had been unable to conduct the same, as the Law Society did not have a current address for the Solicitor. The Solicitor provided his home address. The Examiner provided the Solicitor with a letter of introduction, dated March 20, 1996 and advised she would need to review his books and records. The Solicitor advised he would contact the Examiner to arrange an appointment to have the same reviewed. The Examiner advised the Solicitor he could deliver the books and records to the Law Society or the Examiner could attend at his home. The Solicitor did not contact the Examiner.

23 April, 1998

8. The Examiner spoke with the Solicitor by telephone on May 7, 1996 (Document Book, Tab 4). The Solicitor advised he had not contacted the Examiner as he was waiting for his accountant to complete his filing. The Examiner advised she was required to review all his books and records, not just those for the fiscal year ended February 28, 1995. The Solicitor advised his books and records were not up-to-date however his bookkeeper was working on the same. The Solicitor advised he expected the books and records to be up-dated by the end of May, 1996 and that he would contact the Examiner again.

9. The examiner left telephone messages for the Solicitor on May 7, 1996 and May 9, 1996 (Document Book, Tab 4) requesting he advise of the status of his trust account.

10. The Solicitor advised the Examiner on May 9, 1996 (Document Book, Tab 4) he stopped practising on December 31, 1995 and had began a new career in real estate. The Solicitor advised he entered his books into the PC Law program. The Solicitor advised his entries were up-to-date, however his monthly reconciliations were not. The Solicitor advised his bookkeeper was working on up-dating the trust reconciliations. The Solicitor advised he had \$3,000 in trust which funds were primarily comprised of \$25. LPIC levies and fees owed to conveyancers. The Solicitor advised the Law Society in January of 1996 he disbursed funds from the trust account to pay some conveyancers' accounts. The Examiner reminded the Solicitor that as a suspended member he could not operate a trust account. The Examiner requested the Solicitor submit his latest trust listing and bank statement. The Solicitor was advised co-signing controls were required on the accounts of all members who are suspended and the controls could be arranged by mail. The Solicitor advised he was working towards getting his filing completed and changing his status to that of a "not working" member. The Solicitor did not forward the requested trust account documentation.

11. The Examiner left telephone messages for the Solicitor on June 4, 1996 (Document Book, Tab 5) and June 12, 1996 (Document Book, Tab 6) advising the trust documentation requested on May 9, 1996 had not been received. The Solicitor was requested to return the calls. The calls were not returned.

12. On or about June 18, 1996 (Document Book, Tab 7), the Examiner discovered the Solicitor's home address was no longer current.

13. On June 21, 1996 (Document Book, Tab 7), the Solicitor's counsel's secretary, Allison, provided an address, telephone number and facsimile transmission number for the Solicitor's place of business.

14. By letter dated June 25, 1996 (Document Book, Tab 8), forwarded to the Solicitor by facsimile transmission and registered mail, the Examiner reminded the Solicitor she had been instructed to conduct an examination of his books and records. The Examiner reminded the Solicitor on May 9, 1996, he had agreed to forward a copy of the latest trust comparison. The Examiner further reminded the Solicitor co-signing controls were required on the trust account. The Solicitor was requested to contact the Examiner prior to June 28, 1996 to arrange an appointment for the examination to be conducted. The Examiner's June 25, 1996 letter was signed for and delivered on June 27, 1996. No reply was received.

15. By letter dated July 17, 1996 (Document Book, Tab 9), sent to the Solicitor by facsimile transmission and registered mail, the Examiner forwarded to the Solicitor a copy of her June 25, 1996 letter. The Solicitor was requested to contact the Examiner's office on or before July 31, 1996 to arrange a date for the examination to be conducted. The Examiner's July 17, 1996 letter was signed for and delivered on July 19, 1996. No reply was received.

16. By letter dated August 23, 1996 (Document Book, Tab 10), sent to the Solicitor by facsimile transmission, registered mail and regular mail, the Examiner forwarded to the Solicitor a copy of her June 25, 1996 and July 17, 1996 letters. The Solicitor was advised should this matter not be resolved within two weeks of the date of this letter, the matter would be referred to the Discipline Committee. The Examiner's August 23, 1996 letter was signed for and delivered on August 28, 1996. No reply was received.

17. To date, the Solicitor has not produced his books and records to the Law Society for examination.

V. DISCIPLINE HISTORY

18. The Solicitor does not have a discipline history.

DATED at Toronto this 1st day of July 1997."

Re: Complaint D10/97

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D10/97 and is prepared to proceed with a hearing of this matter on

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 D10/97 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 February 9, 1993. He practised as a sole practitioner until his suspension on December 31, 1995 as a result of his failure to pay his errors and omission levy.

5. The Solicitor's fiscal year end is February 28th. The Solicitor did not file his Form 2 and Form 3 within six months of the fiscal year ending February 28, 1996, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. By letter dated September 14, 1996 the Law Society advised the Solicitor he had not complied with the annual filing requirements of section 16 of Regulation 708 of the Law Society Act. The Solicitor was advised the last filing received from him was for the period ended February 28, 1994. The Solicitor was requested to contact the Law Society should he believe his filing had already been made. A copy of the Law Society's September 14, 1996 is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered mail, dated October 22, 1996, the Law Society advised the Solicitor he had not taken the necessary steps to bring his filings up-to-date. The Solicitor was advised failure to comply with section 16 of Regulation 708 of the Law Society Act may result in disciplinary action being taken against him. The Solicitor was requested to give this matter his immediate attention. The Law Society's October 22, 1996 letter was returned by the post office marked "refused by addressee". A copy of the Law Society's October 22, 1996 letter and returned envelope are attached as Exhibit "B" to this Agreed Statement of Facts.

8 To date, the Solicitor has not provided the outstanding filing.

V. DISCIPLINE HISTORY

9. The Solicitor does not have a discipline history.

DATED at Toronto this 1st day of July, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that if the books and records of Paul William Hudson are produced to the satisfaction of the Law Society by July 31, 1997, and all filings are up-to-date to the satisfaction of the Law Society by the time this matter comes to Convocation, then he will be reprimanded in Convocation.

In the event he does not file and produce all his records to the satisfaction of the Law Society, then he be suspended for a period of three months, to follow any administrative suspension, and month to month thereafter until he complies.

The Committee further recommends that the Solicitor pay the Law Society costs in the sum of \$1,437.00, and he be allowed twelve months to pay the same from the date of Convocation approving the same.

REASONS FOR RECOMMENDATION

Complaint D387/95 originally came before the Committee on April 16, 1996. The finding of professional misconduct was made out, namely that he did not file with the Society his forms for the fiscal year ending February 28, 1995. This matter was then adjourned to give the Solicitor an opportunity to make the necessary filings.

The matter finally came on for hearing on July 8, 1997. At this hearing there were two further complaints, namely D258/96, failure to co-operate with the Law Society as set out, as well as complaint D10/97, failure to file the necessary forms with the Law Society for his fiscal year ended February 28, 1996.

The Committee was advised that he therefore did not make his filings for the 1995, nor the 1996 years, and also failed to co-operate with the Law Society by failing to produce his various books and records.

The Committee was satisfied that professional misconduct was made out on all charges, and in fact the Solicitor did not object to the findings of professional misconduct in regard to the above charges.

The counsel for the Law Society advised as follows:

1. The Solicitor has not filed for the 1995, nor the 1996 years.
2. The Solicitor has been suspended since December 31, 1995, for non-payment of his Errors and Omissions levy, and he remains suspended.
3. He has no discipline history.
4. There has been little or no attempt made to complete his filings.
5. He presently is a real estate agent, but has not wound up his law practice, and his books and records have not been produced.
6. The Law Society has no co-signing controls over his trust account.
7. He borders on ungovernability but for the fact that he has signed the Statement of Fact, and has attended his hearings.

Counsel for the Solicitor indicated the following:

1. Not only was the Solicitor a client, but also a long time friend.
2. The Solicitor has achieved a lot through his lifetime.
3. The Solicitor was called to the Bar on February 9, 1993, and has practised on his own through difficult times.
4. The Solicitor's pressures grew and became overwhelming for him.
5. He was unable to pay his Errors and Omissions premiums and he was suspended on December 31, 1995.
6. The last time he practised was December 31, 1995, and he pursued a new career, and joined the Sutton Real Estate Group in Mississauga commencing there in April of 1996 after completing various courses in the two or three months from the time he stopped practising.

7. He was questioned by friends and family why he changed careers, and they felt it was a "step down" to go from a solicitor to a real estate agent.
8. He has had a difficult time financially, including credit card debts, and a car lease he had to deal with.
9. He had social problems that led to further problems that ended several months ago.
10. He is now comfortable with his career choice as a real estate agent.
11. He lives with his parents and is settling his problems with his creditors.
12. He intends to settle his differences with the Law Society and showed remorse by not offering any justification for what he has done, but rather gave an explanation as to why he did not comply with the regulations.

The Committee was concerned about not only the two complaints that he failed to file for his 1995 and 1996 fiscal years, but particularly his failure to co-operate with the Law Society. The Committee was satisfied that no reasonable explanation was given, particularly in regard to his failure to co-operate. Co-operation with the Law Society is critical for the operation of the Society, particularly in regard to production of the trust account records to ensure the protection of the public interest.

It is therefore the recommendation of the Committee that if the books and records are produced by July 31, 1997, and all filings are up-to-date to the satisfaction of the Society by the time the matter comes to Convocation, that he be reprimanded in Convocation.

However, in the event he does not file, and produce all of the records, then he be suspended for a period of three months, to follow any administrative suspension, and month to month thereafter until he complies.

The recommendation also is that he pay costs in the sum of \$1,437.00, and be allowed time to pay. Considering that this matter first arose before the Committee on April 16, 1996, the Committee is of the view that had he been serious in complying with the rules and regulations, he would have at the very least made his 1995 filing by the time this matter was ultimately dealt with on the 8th of July, 1997.

Paul William Hudson was called to the Bar on February 3, 1993.

ALL OF WHICH is respectfully submitted

DATED this 30th day of October, 1997

Gerald A. Swaye, Q.C., Chair

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded if his books and records are produced and his filings up-to-date failing which the solicitor was to be suspended for a period of 3 months, to follow any administrative suspension, and month to month thereafter until he complies. The Committee further recommended that costs in the sum of \$1,437.00 be paid and that the solicitor be allowed 12 months to pay from the date of Convocation approving the same.

Ms. Worley advised that the solicitor had not completed his filings.

Counsel, the reporter and the public withdrew.

23 April, 1998

It was moved by Mr. Carter, seconded by Mr. Wright that the solicitor be suspended for 3 months, to follow any administrative suspension, and month to month thereafter until he complied with the requirements to produce his books and records and made his filings and further to pay costs in the amount of \$1,437.00 within twelve months.

Carried

It was moved by Ms. Puccini, seconded by Ms. Backhouse that the solicitor be suspended for 1 month.

Not Put

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 3 months, to follow any administrative suspension, and month to month thereafter until he complied with the requirements to produce his books and records and made his filings. In addition the solicitor was to pay costs in the amount of \$1,437.00 to be paid within 12 months.

Re: Irving KIRSHENBLAT - North York

Mr. Jonathan Batty advised that the solicitor would be attending Convocation and that the filings had been received and were being reviewed.

The matter was stood down.

Re: Richard Gillespie MATTHEWS - Whitby

The Secretary placed the matter before Convocation.

Mr. Adams and Ms. Carpenter-Gunn withdrew for this matter.

Mr. Batty appeared for the Society and the solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 12th March, 1998, together with an Affidavit of Service sworn 24th March, 1998 by Pal Singh that he had effected service on the solicitor by registered mail on 16th March, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd April, 1998 (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

Thomas J. P. Carey, Chair
W. Michael Adams
Kim Carpenter-Gunn

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

Rhonda Cohen
for the Society

23 April, 1998

RICHARD GILLESPIE MATTHEWS
of the Town
of Whitby
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 2, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 16, 1997 Complaint D248/97 was issued against Richard Gillespie Matthews alleging that he was guilty of professional misconduct.

The matter was heard in public on December 2, 1997 before this Committee composed of Thomas J.P. Carey, Chair, W. Michael Adams and Kim Carpenter-Gunn. The Solicitor attended the hearing and represented himself. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D248/97

2. a) He breached an Order of Convocation dated December 31, 1995, which suspended his rights and privileges as a member of the Law Society, by practising law during each of the periods December 31, 1995 to February 1, 1996 and February 23, 1996 to March 13, 1996; and
- b) He failed to produce the books and records of his practice despite numerous requests that he do so, contrary to section 18 of Regulation 708 under the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D248/97 and is prepared to proceed with a hearing of this matter on December 2 and 3, 1997.

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 D248/97 and this agreed statement of facts and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the Complaint supported by the facts set out below constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1975. He is a sole practitioner.

Particular 2(b) He breached an Order of Convocation dated December 31, 1995, which suspended his rights and privileges as a member of the Law Society, by practising law during each of the periods December 31, 1995 to February 1, 1996 and February 23, 1996 to March 13, 1996.

First Suspension

5. By first notice dated July 1, 1996, the Solicitor was notified by the Law Society that his errors and omissions insurance levy for the six month period July 1, 1995 to December 31, 1995 was due and payable as at July 1, 1995. The Solicitor was further advised that, pursuant to Section 36 of the *Law Society Act*, if he failed to pay the levy within four months after the day on which payment is due, Convocation may, by order, suspend his rights and privileges as a member for such time and on such terms as considered proper in the circumstances (Document Book, Tab 1).

6. By second and final notice dated October 26, 1996, the Solicitor was reminded that the said insurance levy was overdue. The Solicitor was further reminded that, pursuant to Section 36 of the *Law Society Act*, failure to pay could result in his suspension (Document Book, Tab 2).

7. By registered letter dated January 5, 1996, the Solicitor was notified by the Law Society that, by Order of Convocation, his rights and privileges as a member of the Law Society had been suspended effective December 31, 1995, for failure to satisfy his Errors and Omissions Insurance levy. The Law Society's registered letter was signed for on January 10, 1996 (Document Book, Tab 3).

8. The Solicitor satisfied his outstanding Errors and Omissions Insurance levy and his membership was reinstated effective February 1, 1996 (Document Book, Tab 4).

Second Suspension

9. By letter dated February 26, 1996, the Law Society advised the Solicitor that, by Order of Convocation, he had been suspended effective February 23, 1996 for failure to satisfy his Errors and Omissions Insurance levy (Document Book, Tab 5).

10. The Solicitor was reinstated effective March 13, 1996 (Document Book, Tab 6).

11. Throughout each of the periods December 31, 1995 to February 1, 1996 and February 23, 1996 to March 13, 1996, the Solicitor practised law while under suspension. The following chart describes the Solicitor's practice during the respective periods of suspension:

<u>Client</u>	<u>Date</u>	<u>Activity</u>
Mr. and Mrs. Charles Ting, sale	January 23, 1996 (fax cover sheet, dated January 26, 1996)	Letter to Brian Im, Barrister and Solicitor responding to requisition letter (Document Book, Tab 11).
	January 30, 1996	Direction (Document Book, Tab 13).
	January 30, 1996	Executed Transfer of Land; Commissioned Statutory Declarations (Document Book, Tab 14).
	January 31, 1996	Statement of Account to clients (Document Book, Tab 26).
	January 31, 1996	Reporting letter to Canada Trustco (Document Book, Tab 24).
	February 1, 1996	Reporting letters to clients and Re/Max Reflection Realty Inc. (Document Book, Tabs 27 and 28).
	January 5, 1996 to April 30, 1996	Trust Ledger (Document Book, Tab 15).
Mr. and Mrs. Charles Ting, purchase	January 4, 1996	Letters to the City of Oshawa Tax Office and Zoning and Planning Departments (Document Book, Tabs 8 and 9).
	January 9, 1996	Requisition letter to Lindsay Bell of Reid, Brown & Bell (Document Book, Tab 10).
	January 30, 1996	Commissioned Land Transfer Tax Affidavit (Document Book, Tab 12).
	January 31, 1996	Statement of Account to clients (Document Book, Tab 25).
	January 31, 1996	Solicitor's cheque (Document Book, Tabs 17 and 22).
	January 31, 1996	Deposit slip to Solicitor's trust account (Document Book, Tab 16)
	January 31, 1996	Trust cheque from the Solicitor to the Ministry of Finance in amount of \$1,020.00 (Document Book, Tab 18)

	January 31, 1996	Trust cheque from the Solicitor to the Ministry of Revenue in the amount of \$22.00 (Document Book, Tab 19)
	January 31, 1996	Trust cheque from the Solicitor to the Solicitor in the amount of \$1,165.00. (Document Book, Tab 20)
	January 31, 1996	Trust cheque from the Solicitor to RE/MAX Reflection Realty in the amount of \$7,239.90 (Document Book, Tab 21)
Mr. and Mrs. Rod Lamb, sale	September 14, 1995 to April 30, 1996	Trust Ledger (Document Book, Tab 30).
	February 29, 1996	Executed Transfer of Land (Document Book, Tab 31).
	February 29, 1996	Executed Direction (Document Book, Tab 29)
	March 1, 1996	Commissioned Statutory Declarations (Document Book, Tab 33).
	March 1, 1996	Statements of Account (Document Book, Tab 34).
	March 1, 1996	Trust cheque from the Solicitor to the Solicitor in the amount of \$1,814.13 (Document Book, Tab 32)
Miller, Janice (Provincial Division - Family)	February 23, 1997	Telephone conversations with client (Document Book, Tab 35).
	February 27, 1996	Correspondence with client (Document Book, Tab 35).
	March 5, 1996	Reviewed correspondence from solicitor (Document Book, Tab 35).
	March 7, 1996	Prepare for motion review (Document Book, Tab 35).
	March 8, 1996	Attend on motion (Document Book, Tab 35).
	March 11, 1996	Arrange for settlement conference (Document Book, Tab 35).
Primo, Debby (Provincial Division - Family)	January 11, 1996	Attend at court re: support (Document Book, Tab 36).

	January 11, 1996	Correspondence with client (Document Book, Tab 36).
Ross, Janet (Provincial Division - Family)	February 23, 1996	Attend at court for adjournment (Document Book, Tab 37).
	February 27, 1996	Correspondence with client (Document Book, Tab 37).
	March 4, 1996	Prepare financial statements (Document Book, Tab 37).
	March 4, 1996	Receive and review copy of T.P. affidavit (Document Book, Tab 37).
	March 8, 1996	Attend court (Document Book, Tab 37).
Brooks, Douglas (Provincial Division - Family)	January 8, 1996	Letter to Area Director (Document Book, Tab 38).
Graham, Kevin (Provincial Division - Family)	January 2, 1996	Review pre-trial and receive further instructions (Document Book, Tab 39).
	January 3, 1996	Attend pre-trial (Document Book, Tab 39).
	January 3, 1996	Correspondence with client (Document Book, Tab 39).
	January 17, 1996	Receive further instructions (Document Book, Tab 39).
	January 18, 1996	Attend court for guilty plea (Document Book, Tab 39).
	January 19, 1996	Correspondence with client; advise of results (Document Book, Tab 39).
Mann, Shanda (Provincial Division - Family)	January 10, 1996	Attendance (Document Book, Tab 40).
	January 11, 1996	Attendance at Family Court (Document Book, Tab 40).
	January 12, 1996	Correspondence with client (Document Book, Tab 40).
	January 17, 1996	Correspondence received from court re: hearing date (Document Book, Tab 40).

	March 6, 1996	Hearing adjourned (Document Book, Tab 40).
McMaster, Jacqueline (General Division - Family)	January 3, 1996	Final report to client (Document Book, Tab 41).
Homer, Brian (Provincial Division - Family)	January 18, 1996	Correspondence with the 3rd parties (Document Book, Tab 42).
	January 18, 1996	Telephone call to and from client (Document Book, Tab 42).
	February 27, 1996	Prepare correspondence to 3rd party (Document Book, Tab 42).
	March 5, 1996	Received reply, reviewed with client (Document Book, Tab 42).
MacMillian, Cheryl (Provincial Division - Family)	January 3, 1996	Phone call to and from client (Document Book, Tab 43).
	January 10, 1996	Phone call to and from client (Document Book, Tab 43).
	January 12, 1996	Drawing up release and correspondence to former solicitor (Document Book, Tab 43).
	January 12, 1996	Attendance at court (Document Book, Tab 43).
	January 12, 1996	Correspondence with client (Document Book, Tab 43).
	January 15, 1996	Receive and review correspondence from solicitor (Document Book, Tab 43).
	January 19, 1996	Further review with client; letter to opposing counsel (Document Book, Tab 43).
	January 25, 1996	Review correspondence with solicitor (Document Book, Tab 43).
	January 25, 1996	Correspondence with client (Document Book, Tab 43).
	January 31, 1996	Correspondence from solicitor (Document Book, Tab 43).
	February 1, 1996	Arrange adjournment (Document Book, Tab 43).

	March 4, 1996	Phone calls to and from client Document Book, Tab 43).
Miscellaneous	Various dates	Solicitor's Trust Receipt Journal (Document Book, Tab 7)
	Various dates	Solicitor's bank statements for February, 1996 and March, 1996 (Document Book, Tab 23).

Solicitor's Explanation

12. By way of explanation, not excuse, the Solicitor advises that the two periods during which he practised law while under suspension for failure to satisfy his errors and omissions levy, arose as a result of two cheques to the Lawyers' Professional Indemnity Company ("LPIC") having been returned marked "NSF." The Solicitor advises that he replaced the said cheques as soon as possible, but acknowledges that he did continue to practise law during those periods when he was without errors and omissions insurance coverage, and that this latter conduct exposed the public to potential risk. The Solicitor further advises that he "assumed" that he could continue to practise law while making arrangements to satisfy the subject levy, but acknowledges that the "assumption" was his alone, not encouraged or supported by any representation, direct or indirect, by LPIC or the Law Society.

Particular 2(a) He failed to produce to the Law Society, the books and records of his practice despite requests that he do so, contrary to section 18 of Regulation 708 under the *Law Society Act*.

13. In 1995, an audit of the Solicitor's books and records was authorized and conducted pursuant to Regulation 708 under the *Law Society Act*. Thereafter, Ms. Margot Devlin, Manager - Examiner Programs/Forms Services, wrote to the Solicitor to request that he produce certain documentation arising out of the audit. Ms. Devlin identified the following deficiencies which required a response from the Solicitor:

- a) money had been transferred from the Solicitor's trust account to his general account for which billings or other written notifications were not sent to clients;
- b) blank trust cheques;
- c) trust cash receipts record did not always show full particulars of money received as required;
- d) trust cash disbursements record did not always show full particulars as required;
- e) a transfer journal had not been maintained;
- f) general cash receipts record did not show full particulars of money received;
- g) general cash disbursements record did not show full particulars as required;
- h) accounting records were in arrears in entering and posting;
- i) monthly trust comparisons were not being completed as required;
- j) unusual reconciliation items were permitted to exist uncorrected over a period in excess of one month and stale-dated trust cheques as reconciling items;
- k) deposit slips for trust and general bank accounts did not always show full particulars for money deposited;
- l) overdrawn trust ledger accounts were permitted to exist uncorrected over periods in excess of one month;
- m) there were a number of inactive trust ledger accounts whose balances had remained unchanged over long periods of time; and
- n) there remained money held in trust for a transaction which was completed in July, 1992. (Document Book, Tab 44). The Solicitor did not reply.

23 April, 1998

14. Throughout the period September, 1995 to May, 1997, Ms. Devlin, or members of her department, made several attempts to obtain from the Solicitor the required documentation. In particular, Ms. Devlin or members of her department made four telephone calls to the Solicitor and sent him twelve letters, including three registered letters. The following chart documents the above noted attempts to elicit the required documentation from the Solicitor:

Date	Action	Result
September 29, 1995	The Law Society sent the Solicitor a letter requesting additional documentation as a result of an audit of the Solicitor's books and records (Document Book, Tab 44).	No response.
November 1, 1995	The Law Society sent the Solicitor a letter asking him to respond to the letter of September 29, 1995 (Document Book, Tab 45).	No response.
December 13, 1995	The Law Society left a message with the Solicitor's receptionist to call regarding the letter of September 29, 1995 (Document Book, Tab 46).	No response.
January 25, 1996	The Law Society sent a <u>registered</u> letter to the Solicitor advising that he had not responded to the previous correspondence and that the matter would be referred to Discipline if a written response was not received within seven days. The registered letter was signed for on January 26, 1996 (Document Book, Tab 47).	On February 5, 1996, the Solicitor called and advised that he had received the Law Society's letter and had forwarded it to his accountant who would be responding shortly (Document Book, Tab 48). On February 8, 1996, the Solicitor confirmed this in writing (Document Book, Tab 49). No further response was received.
March 13, 1996	The Law Society sent the Solicitor a letter requesting a response to the letter of September 29, 1995 (Document Book, Tab 50).	No response.
April 17, 1996	The Law Society sent the Solicitor a letter advising that they had not received a response to the letter of March 13, 1996 (Document Book, Tab 51).	No response.

May 21, 1996	The Law Society contacted the Solicitor who advised that he would speak to his accountant and respond (Document Book, Tab 52).	No response.
July 12, 1996	The Law Society sent the Solicitor a <u>registered</u> letter advising that it had not yet received a response and that the matter would be referred to Discipline if a written response was not received within seven days (Document Book, Tab 53).	By letter dated July 17, 1996, the Solicitor confirmed receipt of the registered letter and advised that he was attempting to comply with the request (Document Book, Tab 54).
August 22, 1996	The Law Society sent a letter to the Solicitor requesting a response to the letter of September 29, 1995 (Document Book, Tab 55).	No response.
September 24, 1996	The Law Society sent the Solicitor a letter confirming that it had not received a response to the letter of August 22, 1996 (Document Book, Tab 56).	No response.
October 29, 1996	The Law Society left a phone message for the Solicitor to return the call (Document Book, Tab 57).	The Solicitor called and advised that he would respond by the second week in November. No further response was received.
December 4, 1996	The Law Society sent the Solicitor a <u>registered</u> letter confirming that it had not yet received a response and that the matter would be referred to Discipline if a written response was not received within seven days (Document Book, Tab 58).	On December 18, 1996, the Solicitor advised that he was under the impression that the outstanding matters were being dealt within the context of a subsequent audit commenced that month (Document Book, Tabs 59 and 60).
February 19, 1997	The Law Society wrote to the Solicitor to explain that the audits were separate and discrete and that failure to respond appropriately to the initial audit may result in discipline proceedings (Document Book, Tab 61).	No response.

April 8, 1997	Conversation with Solicitor confirmed in writing wherein a number of client files were requested for review (Document Book, Tab 62).	No response.
May 13, 1997	The Law Society wrote to the Solicitor by <u>registered</u> mail to reiterate the outstanding materials and to confirm that if the Solicitor did not respond to the matters outstanding from the letter of September 29, 1995, by May 27, 1997, the matter would be referred to Discipline. The registered letter was signed for on May 26, 1997 (Document Book, Tab 63).	On May 15, 1997, the Solicitor left a phone message that he wished to discuss some of the Law Society requests (Document Book, Tab 64).
May 16, 1997	The Law Society left a message for the Solicitor inviting him to call if he wanted to discuss matters (Document Book, Tab 64)	On May 26, 1997, the Law Society received some, but not all, of the outstanding material (Document Book, Tab 65).
May 29, 1997	The Law Society sent, by courier, a follow-up letter to the Solicitor outlining three remaining outstanding matters and requesting the Solicitor to respond (Document Book, Tab 66).	On June 4, 1997, the Law Society received some further documentation from the Solicitor (Document Book, Tab 67).

1. As at today's date, the following item remains outstanding:

- a) Billings to the Dyer Estate for transfers from the trust account to the general account between August 25, 1987, and June 15, 1990 in the amount of \$13,017.87 as well as copy of the report to the Executrix of the Estate including the trust statement detailing trust funds received and disbursed on behalf of the Estate. The Solicitor advises that, "because of a number of moves, portions of the file have been inadvertently lost and/or destroyed and the records requested are not available."

V. DISCIPLINE HISTORY

16. None

DATED at Toronto this 2nd day of December, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Richard Gillespie Matthews be suspended for a period of one month commencing at the end of January 1998.

REASONS FOR RECOMMENDATION

There was a joint submission that the Solicitor be suspended for a period of one month, and a recommendation that the one month begin in January 1998 after Discipline Convocation, if the matter could be heard then.

In accepting the joint submission the Committee notes that there were two different periods of practising under suspension, one of twenty days with actual notice, and one of eighteen days with actual notice, a total of thirty-eight days. The period is longer, fifty days, when the period is calculated without the actual notice.

The Committee also notes that the Solicitor has complied with the production of books and records to the best of his ability, and any outstanding matters are, in the opinion of the Law Society counsel, not matters that he can now produce.

We take notice of, and put a lot of weight on, the fact that this is a joint submission, and we are mindful that such submissions should not generally be interfered with unless they are clearly out of line.

It is also important to note that the Solicitor is 52 years of age. He is a recovering alcoholic who has been sober for 3 years. He is active in his local Calvary Baptist Church, and has done and will continue to do work in mission countries. He has gone from a period of time when his practice was quite marginal, which was a period concurrent with the practising under suspension, to the present situation which seems much more healthy. He has a well appointed office in his own home. His marriage, which went through a period of instability while he was dealing with some personal problems, is apparently a supportive and happy one. He has two children in university. We heard that they lost their oldest child some years ago, and that tragedy may have contributed to his substance abuse.

The Solicitor has indicated his regret and remorse for these actions, and has put into place a plan that should ensure that he has a healthy practice and that he will not owe money to either LPIC or to the Society for membership fees.

He has repaid the Ontario Legal Aid Plan some \$2,500 for work which was performed while he was suspended. We take that into account as part of the penalty.

In terms of his reason for practising while his rights and privileges as a member were suspended, he wrongly thought that he could practise although suspended, while he was making arrangements to pay his insurance premiums to LPIC. He accepts that he did that in error and the Law Society accepts that this was an honest but mistaken belief.

The Law Society's position, which is very fair in the circumstances, is that this case can be distinguished from MacGregor, on the basis that the Solicitor was not deliberately flouting the Society's rules by practising under suspension but was rather operating mistakenly with an honest belief that he could.

For all of these reasons we recommend that the Solicitor be suspended for a period of one month, and that following the January Convocation. Our view is that the recommendation reflects the spirit of Convocation's decision in Laan, which decision was made in 1994, and was a suspension decision that reflected mitigating circumstances some of which are present in this case.

Richard Gillespie Matthews was called to the Bar on March 21, 1975.

ALL OF WHICH is respectfully submitted

DATED this 12th day of March, 1998

Thomas J. P. Carey, Chair

The Acknowledgement, Declaration and Consent wherein the solicitor waived his right to appeal if reprimanded in Convocation was filed as Exhibit 3.

There were no submissions.

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month commencing at the end of January 1998.

Mr. Batty made submissions in support of the joint submissions made at the hearing before the Discipline Committee for the recommended penalty.

The solicitor requested the suspension commence in mid July to mid August 1998.

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

It was moved by Mr. DelZotto, seconded by Mr. Wright that the solicitor be reprimanded in Convocation.

Carried

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

The solicitor waived his right of appeal and the Treasurer administered the reprimand.

Re: James Allan MILLARD - Etobicoke

The Secretary placed the matter before Convocation.

Mr. DelZotto and Ms. Carpenter-Gunn withdrew for this matter.

Ms. Janet Brooks 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 23rd February, 1998, together with an Affidavit of Service sworn 3rd March, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 27th February, 1998 (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

Robert C. Topp

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

Audrey Cado
for the Society

JAMES ALLAN MILLARD
of the City
of Etobicoke
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 10, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 8, 1997 Complaint D301/97 was issued against James Allan Millard alleging that he was guilty of professional misconduct.

The matter was heard in public on December 10, 1997 before Robert C. Topp sitting as a single bencher. The Solicitor attended at the hearing and requested the matter be adjourned. The request was denied and the Solicitor left. The hearing proceeded in his absence. The Solicitor was not represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D301/97

2. a) He failed to file with the Society within six months of the termination of his fiscal year ended May 31, 1996, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Reasons for Finding

In this matter, the Solicitor initially appeared before your Committee and entered into a dissertation regarding his various complaints about the Law Society of Upper Canada and took the position that the Society has lost the moral authority to govern the Solicitor. He also indicated that he was considering civil litigation against the Law Society and appeared to be requesting an adjournment to January of 1998 to file the litigation against the Law Society and appeared to ask for this matter to be adjourned, not only today but pending the outcome of his potential civil litigation.

23 April, 1998

The application by the Solicitor was dismissed. The Solicitor chose to leave the hearing and the hearing was thus conducted in his absence.

I heard the evidence of Nadine Freed of the Law Society and am satisfied beyond any doubt that the Solicitor has failed to file a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules as required.

It is equally clear to me that this Solicitor has no intention of now or ever filing the forms and it is a sad fact that he appears to be overwhelmed by his distaste for the Law Society. Prior to the hearing beginning, I offered the Solicitor a solution to his problem being some time to file the forms. He categorically declined that opportunity and therefore, the hearing proceeded.

On the facts of this case, notwithstanding the grievances that the Solicitor has against the Law Society, he still has the obligation to comply with the statutory requirements so that the public can be protected. He appears, by choice to have refused in every sense to comply with his obligations. Therefore I make a finding of professional misconduct.

RECOMMENDATION AS TO PENALTY

The Committee recommends that James Allan Millard be suspended for a definite period of three months and thereafter from month to month until such time as he has completed his filings to the satisfaction of the Law Society.

REASONS FOR RECOMMENDATION

This is not a case of impecuniosity. It is not a case of illness or other mitigating circumstances, but rather is one of a clear pattern by the Solicitor in his ongoing dispute with the Law Society, that pattern being not to co-operate with the Society or to follow his professional obligations.

The Solicitor is suspended administratively and has been since 1995. It is a tragedy that this Solicitor has adopted the position that he has, but given his expressed conviction that he will not co-operate with the Society, he appears to be ungovernable.

It is not appropriate in my view, on these facts, to recommend a reprimand either in Committee or in Convocation because the conduct is clearly willful.

At the same time the Solicitor does not have a discipline record and did partially co-operate by briefly attending at the hearing and stating his position. Albeit, he did not inform Ms. Cado of the position that he was going to take, or the remedy he was seeking.

Therefore, it is your Committee's view that misconduct of this nature calls for a suspension in the first instance and I recommend a suspension of three months.

This matter proceeded by way of a hearing. There was no co-operation regarding an agreed statement of facts, and it appears there has been no co-operation throughout the sorry history of this matter. Therefore, I recommend to Convocation that costs be payable in the sum of fifteen hundred dollars, payable prior to his reinstatement as a solicitor.

23 April, 1998

James Allan Millard was called to the Bar on April 7, 1982.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1998

Robert C. Topp

There were no submissions.

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a definite period of 3 months and thereafter from month to month until such time as he has completed his filings to the satisfaction of the Law Society. In addition the Committee recommended that costs be paid in the amount of \$1,500 prior to reinstatement.

Ms. Brooks advised Convocation that the solicitor had been notified as to the new self-reporting procedure. She advised that the filings were still outstanding.

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

An excerpt of the transcript of the hearing was read by Ms. Brooks and filed as Exhibit 2.

Counsel, the reporter and the public withdrew.

It was moved by Mr. MacKenzie, seconded by Ms. Puccini that the solicitor be suspended for a period of 1 month to continue until the filings were made and further that the solicitor pay costs in the amount of \$1,500 prior to reinstatement.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that there had been an error in principle on the facts outlined in the Report and that the solicitor was to be suspended for a period of 1 month, the suspension to continue until the filings were made and further that the solicitor pay costs in the amount of \$1,500 prior to reinstatement.

Re: Kent Richard Christopher PEEL - Toronto

The Secretary placed the matter before Convocation.

Mr. Hugh Corbett appeared for the Law Society and Mr. Rosen, Duty Counsel appeared for the solicitor who was present.

23 April, 1998

Convocation had before it the Report of the Discipline Committee dated 23rd February, 1998, together with an Affidavit of Service addressed to the solicitor at 67 Lahaye Drive, Whitby and sworn 17th April, 1998 by Pal Singh that he had effected service on the solicitor by registered mail on 6th April, 1998 (marked Exhibit 1), together with the Report and Affidavit of Service addressed to the solicitor at 347 Bay Street, Toronto and sworn 3rd March, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 27th February, 1998 (marked Exhibit 2), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 10th April, 1998 (marked Exhibit 3). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert C. Topp

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

Audrey Cado
for the Society

KENT RICHARD CHRISTOPHER PEEL
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 12, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 17, 1997 Complaint D265/97 was issued against Kent Richard Christopher Peel alleging that he was guilty of professional misconduct.

The matter was heard in public on November 12, 1997 before Robert C. Topp sitting as a single bench. The Solicitor did not attend the hearing nor was he represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D265/97

2. a) He failed to co-operate with the Law Society by failing to produce his books and records to a Law Society Examiner despite letters dated January 7, 1997, January 20, 1997, February 6, 1997 and February 20, 1997 and a telephone request on January 20, 1997.

- b) He failed to file with the Law Society a certificate in the form prescribed by the Rules and report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16 of Regulation 708 made pursuant to the Law Society Act, since his call to the Bar on February 16, 1995.

RECOMMENDATION AS TO PENALTY

The Committee recommends that in regard to the failure to file since 1995 Kent Richard Christopher Peel be suspended for a period of twelve months definite and month to month thereafter until he files the necessary forms. In regard to his failure to produce books and records that he be suspended for twelve months concurrent and month to month thereafter until such time as he produces the books and records to the satisfaction of the Law Society.

The Committee further recommends that the Solicitor pay Law Society costs in the amount of \$850 payable within 90 days of resuming practice.

REASONS FOR RECOMMENDATION

The Society takes the position that Mr. Peel, if he produces his necessary financial reporting documents and his books and records for inspection, should be reprimanded in Convocation, and if he fails to do so then he should be suspended.

It is my view that the conduct of Mr. Peel simply cannot be treated in such a fashion in that he has had every opportunity to meet with the Society and to produce what he has and to explain why he hasn't filed since 1995.

As a result, the recommendation of the Committee is to reject the submission of the Law Society and to recommend the above penalty.

The Law Society requested costs of \$850, which is entirely reasonable, and it is recommended that Mr. Peel pay the Society's costs in the sum of \$850 within ninety days of resuming a practice.

This is a case of total and deliberate failure to co-operate. Mr. Peel and other members of the Society must be clearly informed that such conduct will not be tolerated either now or in the future.

Kent Richard Christopher Peel was called to the Bar on February 16, 1995.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1998

Robert C. Topp

There were no submissions.

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

Carried

23 April, 1998

The recommended penalty of the Discipline Committee with regard to a failure to file since 1995 the solicitor was to be suspended for a period of 12 months definite and month to month thereafter until he files the necessary forms. It was further recommended that in regard to his failure to produce books and records that the solicitor be suspended for 12 months concurrent and month to month thereafter until such time as he produces the books and records to the satisfaction of the Society. In addition the solicitor is to pay costs in the amount of \$850 payable within 90 days of resuming practice.

Mr. Corbett advised Convocation that the solicitor had produced his books and records and had completed his filings.

Both Counsel made brief submissions in support of a lesser penalty of a reprimand in Convocation.

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

It was moved by Ms. Backhouse, seconded by Ms. Puccini that the solicitor be reprimanded in Convocation and that costs be deleted.

Carried

It was moved by Mr. Wright, seconded by Mr. Chahbar that the solicitor be reprimanded in Convocation and pay costs in the amount of \$500.

Lost

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be reprimanded in Convocation and that no costs be imposed.

The Treasurer administered the reprimand.

The Treasurer withdrew from Convocation and Mr. MacKenzie took the Chair as Acting Treasurer.

Re: Helen Bernice SHAW - Fergus

The Secretary placed the matter before Convocation.

Mr. Batty appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 5th March, 1998, together with an Affidavit of Service sworn 24th March, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 11th March, 1998 (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

Harriet E. Sachs

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

Audrey Cado
for the Society

HELEN BERNICE SHAW
of the Town
of Fergus
a barrister and solicitor

Not Represented
for the solicitor

Heard: September 10, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 21, 1997 Complaint D115/97 was issued against Helen Bernice Shaw alleging that she was guilty of professional misconduct.

The matter was heard in public on September 10, 1997 before Harriet Sachs sitting as a single bencher. The Solicitor attended the hearing and represented herself. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D115/97

2. a) She failed to file with the Society within six months of the termination of her fiscal year ended November 30, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D115/97 and is prepared to proceed with a hearing of this matter on September 10, 1997.

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 D115/97 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 February 1, 1994. She practises as a sole practitioner.

5. The Solicitor's fiscal year end is November 30th. The Solicitor did not file her Form 2 and Form 3 within six months of the fiscal year ending November 30, 1995, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. By letter dated June 10, 1996 the Law Society advised the Solicitor she had not complied with the annual filing requirements of section 16 of Regulation 708 of the Law Society Act. The Solicitor was advised the last filing received from her was for the period ended November 30, 1994. The Solicitor was requested to contact the Law Society should she believe her filing had already been made. A copy of the Law Society's June 10, 1996 is attached as Exhibit "A" to this Agreed Statement of Facts. The Solicitor did not contact the Law Society.

7. By registered mail, dated July 12, 1996, the Law Society advised the Solicitor she had not taken the necessary steps to bring her filings up-to-date. The Solicitor was advised failure to comply with section 16 of Regulation 708 of the Law Society Act may result in disciplinary action being taken against her. The Solicitor was requested to give this matter her immediate attention. The Law Society's July 12, 1996 letter was signed for and delivered on July 30, 1996. A copy of the Law Society's July 12, 1996 letter and Acknowledgement of receipt of a registered item card is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

8. The Solicitor advised the Law Society by letter dated August 6, 1996 she was having difficulty with her trust audit due to problems with her accounting software. The Solicitor requested an extension to September 2, 1996 to file. The Solicitor advised the Law Society she did not receive the Society's June 10, 1996 notice as referenced in its July 12, 1996 notice. The Solicitor requested the Law Society forward her a copy of the June 10, 1996 notice by facsimile transmission. A copy of the Solicitor's August 6, 1996 letter is attached as Exhibit "C" to this Agreed Statement of Facts.

9. A Law Society staff employee left a telephone message for the Solicitor at her office on October 11, 1996 requesting she return the call.

10. The Solicitor advised the Law Society by letter dated October 22, 1996 her office had been closed last week. The Solicitor advised she forwarded to the Law Society a letter dated September 3, 1996 which apparently was not received. The Solicitor advised her accounting records were more difficult to reconstruct than she had originally anticipated. The Solicitor requested an extension until December 15, 1996 to provide the outstanding filing. A copy of the Solicitor's October 22, 1996 letter is attached as Exhibit "D" to this Agreed Statement of Facts.

11. A Law Society staff employee advised the Solicitor by telephone on October 23, 1996 she could have an extension until the November, 1996 authorization meeting to provide her outstanding filing. A copy of the Law Society's handwritten note, dated October 23, 1996 is attached as Exhibit "D" to this Agreed Statement of Facts.

12. A Law Society staff employee left a telephone message for the Solicitor on November 11, 1996 requesting she return the call. A copy of the Law Society's handwritten note dated November 11, 1996 is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not return the call.

23 April, 1998

13. A Law Society staff employee left a telephone message for the Solicitor at her office on January 6, 1997 requesting she return the call. A copy of the Law Society's handwritten Telephone Transaction form, dated January 6, 1997 is attached as Exhibit "E" to this Agreed Statement of Facts. The Solicitor did not return the call.

14. To date, the Solicitor has not provided the outstanding filing.

V. DISCIPLINE HISTORY

15. The Solicitor does not have a discipline history.

DATED at Toronto this 13th day of August, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Helen Bernice Shaw be reprimanded in Convocation if she has made the requisite filing by the date the matter is heard in Convocation, failing which, that she be suspended for a period of one month and indefinitely thereafter until she has made the filing.

REASONS FOR RECOMMENDATION

The Society relies on its filing requirements to fulfil its obligations to govern the profession in the public interest. Solicitors who fail to comply with these requirements leave the Society no choice but to suspend their right to practise until the requirements are complied with.

Helen Bernice Shaw was called to the Bar on February 1, 1994.

ALL OF WHICH is respectfully submitted

DATED this 5th day of March, 1998

Harriet E. Sachs

Mr. Batty advised that he expected to hear from the solicitor today.

The matter was stood down.

Re: Kimberley Anne SMITH - Newmarket

The Secretary placed the matter before Convocation.

Mr. Scott and Ms. Backhouse withdrew for this matter.

Ms. Katherine Seymour 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 21st January, 1998, together with an Affidavit of Service sworn 11th February, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 2nd February, 1998 (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

Nancy L. Backhouse, Chair
Robert B. Aaron
Hope Sealy

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

Rhonda Cohen
for the Society

KIMBERLEY ANNE SMITH
of the Town
of Newmarket
a barrister and solicitor

Not Represented
for the solicitor

Heard: October 14, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

The following Complaints were issued against Kimberley Anne Smith alleging that she was guilty of professional misconduct: Complaints D3/97 and D14/97 issued on June 11, 1997 and Complaint D214/97 issued on June 12, 1997.

The matter was heard in public on October 14, 1997 before this Committee composed of Nancy L. Backhouse, Chair, Robert B. Aaron and Hope Sealy. The Solicitor attended the hearing and represented herself. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D3/97

2. a) She failed to reply promptly to communications from a fellow solicitor, Alan Direnfeld:
- b) She failed to honour an undertaking dated December 16, 1994, given to a fellow solicitor, Alan Direnfeld, to obtain and register a discharge of a mortgage, to advise of the registration particulars, and to hold the sum of \$500.00 in trust for the payment of final utility accounts;

- c) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by a fellow solicitor, Alan Direnfeld;
- d) She failed to serve her client, Scotia Bank, in a conscientious, diligent and efficient manner in connection with a mortgage on 7 Daisy Ave., Pefferlaw, Ontario by:
 - i) failing to report promptly at the conclusion of the transaction; and
 - ii) failing to answer written requests for information;
- e) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, J.G. Wasyliv (Scotia Bank);
- f) She failed to serve her client, Scotia Bank, in a conscientious, diligent and efficient manner in connection with a mortgage on 112 Olive St., Holland Landing, Ontario by:
 - i) failing to report promptly at the conclusion of the transaction; and
 - ii) failing to answer written requests for information;
- g) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, D.L. Henderson (Scotia Bank);
- i) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Teresa Crollas (Canada Trust);
- j) She failed to serve her client, Scotia Bank, in a conscientious, diligent and efficient manner in connection with a mortgage on 610 Pointing Place, Newmarket, Ontario by:
 - i) failing to report promptly at the conclusion of the transaction; and
 - ii) failing to answer written requests for information;
- k) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Jeff Madigan (Scotia Bank);
- l) She failed to serve her client, Scotia Bank, in a conscientious, diligent and efficient manner in connection with a mortgage on 58 Jackson's Point, Newmarket, Ontario by:
 - i) failing to report promptly at the conclusion of the transaction; and
 - ii) failing to answer written requests for information;
- m) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, B.S. Marshall (Scotia Bank);
- n) She failed to serve her client, Bank of Montreal, in a conscientious, diligent and efficient manner in connection with a mortgage on 916 Janette Street, Newmarket, Ontario, by:
 - i) failing to report promptly at the conclusion of the transaction; and
 - ii) failing to answer written requests for information;
- o) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Cheryl Fortune (Bank of Montreal);
- p) She failed to serve her client, Bank of Montreal, in a conscientious, diligent and efficient manner in connection with a mortgage to Dave and Brenda Jarvis on 52 Debra Crescent, Barrie, Ontario, by:
 - i) failing to report promptly at the conclusion of the transaction; and
 - ii) failing to answer written requests for information;
- q) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Cheryl Fortune (Bank of Montreal);

- r) She failed to reply promptly to communications from a fellow solicitor, Peter S. Oliver;
- s) She failed to serve her clients, Philip and Candace Woodard, in a conscientious, diligent and efficient manner in connection with the purchase of 12 Mulock Drive, Bond Head, Ontario, by:
 - i) failing to report promptly at the conclusion of the transaction; and
 - ii) failing to answer reasonable requests for information; and
- t) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by a fellow solicitor, Peter S. Oliver;
- u) She failed to serve her clients, Richard Gingras and Claire Quenneville, in a conscientious, diligent and efficient manner in connection with the sale of 197 Hampton Court, Newmarket, Ontario, by:
 - i) failing to report at the conclusion of the transaction;
 - ii) failing to return promptly a \$500 holdback owing to her clients; and
 - iii) failing to answer written requests for information;
- v) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Richard Gingras;
- w) She failed to honour an undertaking dated February 20, 1995, given to a fellow solicitor, Mary Galbraith, to obtain and register the discharge of a mortgage and to advise of the registration details;
- x) She failed to reply promptly to communications from a fellow solicitor, Mary Galbraith;
- y) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by a fellow solicitor, Mary Galbraith;
- z) She failed to serve her client, Harry Rollo, in a conscientious, diligent and efficient manner in connection with the purchase of 510 Slingerland Circle, Newmarket, Ontario, by:
 - i) failing to report promptly at the conclusion of the transaction and
 - ii) failing to answer numerous verbal requests for information;
- aa) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Harry Rollo;
- bb) She failed to serve her clients, Sylvain and Liz Demers, in a conscientious, diligent and efficient manner in connection with the sale of 739 Beman Drive, and the purchase of 980 Krista Court, Newmarket, Ontario, by:
 - i) failing to report at the conclusion of the transactions;
 - ii) failing to return promptly a \$500 holdback owing to her clients; and
 - iii) failing to answer verbal and written requests for information;
- cc) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her clients, Sylvain and Liz Demers;
- dd) She failed to serve her clients, Karen and Stephen Handley, in a conscientious, diligent and efficient manner by failing to prepare their Wills and Powers of Attorney despite having undertaken to do so;
- ff) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Stephen Handley;

- gg) She failed to serve her client, Kenneth Peterson, in a conscientious, diligent and efficient manner by:
 - i) failing to answer numerous requests for information; and
 - ii) failing to promptly pay certain tax arrears out of mortgage proceeds which she retained in trust for that purpose;
- hh) she misled her client, Kenneth Peterson, by advising that she had paid tax arrears owing to the Township of Snowden when, in fact, payment had not been made;
- ii) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Kenneth Peterson;
- jj) She failed to reply promptly to communications from a fellow solicitor, Kenneth Tepper;
- kk) She failed to honour an undertaking dated July 15, 1994, given to a fellow solicitor, Kenneth Tepper, to obtain and register the discharge of a mortgage and to advise of the registration particulars;
- ll) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by a fellow solicitor, Kenneth Tepper;
- mm) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Lucianna Keogh;
- oo) She failed to serve her clients, Gary and Sarah Dollery, in a conscientious, diligent and efficient manner by:
 - i) failing to proceed with the preparation of their uncontested divorce despite numerous promises to do so;
 - ii) failing to answer their numerous enquiries for information about the status of the divorce; and
 - iii) failing to account for trust monies received;
- pp) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Sarah Dollery;
- qq) She failed to reply promptly to communications from a fellow solicitor, David Davies;
- rr) She failed to honour an undertaking dated October 27, 1994, given to a fellow solicitor, David Davies, to obtain and register the discharge of a mortgage and to advise of the registration particulars;
- ss) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by a fellow solicitor, David Davies;
- tt) She failed to serve her client, Steven Lyons, in a conscientious, diligent and efficient manner in connection with the purchase of 479 Maplegrove Ave., Bradford, Ontario, by:
 - i) failing to report at the conclusion of the transaction; and
 - ii) failing to answer written requests for information;
- uu) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Steven Lyons;
- vv) She failed to reply promptly to communications from a fellow solicitor, Lawrence Geffen;

- ww) She failed to honour an undertaking dated September 14, 1995, given to a fellow solicitor, Lawrence Geffen, to obtain and register the discharge of a mortgage and to advise of the registration particulars;
- xx) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by a fellow solicitor, Lawrence Geffen;
- yy) She failed to serve her client, Scotia Bank, in a conscientious, diligent and efficient manner in connection with a mortgage on 10 May Ave., Newmarket, Ontario, by:
 - i) failing to report at the conclusion of the transaction; and
 - ii) failing to answer written requests for information;
- zz) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Nancy Zimmerman (Scotia Bank);
- aaa) She failed to serve her clients, David and Linda Hirst, in a conscientious, diligent and efficient manner in connection with the purchase of 7434 15th Sideroad, RR#3, Milton, Ontario, by:
 - i) failing to report promptly at the conclusion of the transaction; and
 - ii) failing to answer written and verbal requests for information;
- bbb) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her clients, David and Linda Hirst;
- ddd) She failed to reply promptly to communications from the Law Society regarding the investigation of a complaint by her client, Zahaida Nouraei (Firstline Trust).

Particulars 2(h), 2(ee), 2(mm) and 2(ccc) were withdrawn at the hearing.

Complaint D14/97

- 2. a) She failed to complete production to the Law Society of the books and records of her practice contrary to Regulation 708 under the *Law Society Act*.

Complaint D214/97

- 2. a) She failed to file with the Society within six months of the termination of her fiscal year ended April 30, 1996, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the *Law Society Act*.

Evidence and Finding

On the date of the hearing, the Solicitor consented to the Law Society filing some thirty affidavits which clearly established the professional misconduct set out in the complaints. She did not oppose any of the evidence in the affidavits or a finding of professional misconduct. The Committee finds that the Solicitor is guilty of professional misconduct.

Discipline History

On March 7, 1996, the Solicitor was Reprimanded in Convocation for:

- 2(a) failing to serve her client, Walter Roethlisberger, in a conscientious, diligent and efficient manner, in that she failed to:

- (i) follow his instructions to register a business name, MECSMART, with the Ministry of Consumer and Commercial Relations;
 - (ii) respond to his inquiries for information about his legal matter; and
 - (iii) render an account and account for trust monies upon termination of her retainer;
- (b) misleading her client, Walter Roethlisberger, by falsely advising his wife that she had registered the business name, MECSMART, with the Ministry of Consumer and Commercial Relations; and
- (c) failing to reply to the Law Society regarding a complaint by Walter Roethlisberger.

Convocation also ordered the Solicitor to participate in the Practice Review Programme and to respond promptly to the Law Society in the future.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Kimberley Anne Smith be suspended for a period of six months provided she has satisfied all the outstanding matters which form the subject matter of these Complaints by the date this matter reaches Convocation, failing which, the Committee recommends that she be disbarred.

REASONS FOR RECOMMENDATION

The Solicitor has been found guilty of sixty-four counts of professional misconduct. Thirty-seven of the counts related to failure to serve her clients in a conscientious, diligent and efficient manner. Of these thirty-seven counts, fourteen incidents related to failure to report to her client either at all, or, in some cases, promptly; sixteen instances related to failure to respond to communications from clients. One incident related to a failure to account to her client for a retainer; two incidents related to a failure to return a holdback of funds; three counts related to a failure to complete matters or follow instructions.

Twenty-four of the counts related to failure to respond to communications from the Law Society in its investigation of complaints from clients. Five counts related to failure to fulfill undertakings given to fellow solicitors. Six counts related to failures to respond to communications from fellow solicitors. Two counts related to a failure to file forms and failure to produce books and records for the purpose of an audit. A number of complaints, including all of the Law Society's attempts to have the Solicitor respond to complaints, have gone unanswered. The Solicitor has reported to some clients. Some clients are still waiting.

The Solicitor was served with a draft Agreed Statement of Facts to which she did not respond. She was also served with approximately forty draft affidavits in an effort to avoid holding a lengthy hearing with numerous witnesses. She failed to respond. While the Solicitor attended at the hearing, and ultimately did not oppose the affidavits being filed, the Law Society had, by that time, been required to inconvenience at least ten witnesses by having them attend.

There is a clear pattern to the Solicitor's misconduct. She has a discipline history for similar misconduct in 1996 for which she was reprimanded in Convocation. She has continued to put the public at risk. The Committee had the benefit of having the Solicitor's testimony at the hearing. She has been a sole practitioner since her call to the Bar in 1985. She had a relatively busy real estate practice. She taught in the Bar Admission Real Estate Section for two years. In 1993 she had a child. Because she was a sole practitioner, she took no maternity leave. She began to fall behind in her practice. One year after the birth of her child, her marriage broke up and she became involved in an acrimonious custody dispute. Her parents, who look after her daughter while the Solicitor works, have had serious health problems. The Solicitor was the sole supporter for her parents and her daughter. The recession and the divorce negatively impacted her income. Her experienced secretary of seven years left and she could not afford to hire experienced support staff.

Although the Solicitor testified that she was dealing with her practice more effectively now, she acknowledged on cross-examination that there are three new complaints against her which are not part of these proceedings and in regard to which she has failed to respond to two separate letters from the Law Society. The Solicitor participated in practice review but failed to respond to requests to schedule follow-up meetings.

The Committee is very sympathetic to the personal and professional difficulties the Solicitor has encountered. However, our primary concern must be the protection of the public. The Solicitor's evidence is that for the most part she has put her problems behind her. However her failure to respond at all to three new complaints and her failure to fully participate in practice review does not support that evidence. Given the extent and seriousness of the misconduct when taken as a whole and the prior disciplinary history of similar misconduct, the Committee is of the view that the appropriate penalty is a six month suspension provided the Solicitor has satisfied all outstanding matters which form the subject matter of these complaints by the time the matter reaches Convocation. In the event that she fails to satisfy this requirement, the risk to the public of the Solicitor continuing in practice is too high and the Committee recommends disbarment.

Kimberley Anne Smith was called to the Bar on April 18, 1985.

ALL OF WHICH is respectfully submitted

DATED this 21st day of January, 1998

Nancy L. Backhouse, Chair

Ms. Seymour advised that the solicitor was winding up her practice.

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 6 months provided she has satisfied all the outstanding Complaint matters failing which, she be disbarred.

Ms. Seymour made submissions in support of the penalty of disbarment and advised that there was no response to the outstanding matters.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Ruby, seconded by Mr. Martin that the solicitor be permitted to resign within 30 days failing which, she be disbarred.

Carried

23 April, 1998

It was moved by Mr. DelZotto but failed for want of a seconder that the solicitor be suspended for a period of 1 month to continue thereafter until the Complaint matters are resolved.

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be permitted to resign within 30 days failing which, she be disbarred.

Re: David Gordon BRYCE - Toronto

The Secretary placed the matter before Convocation.

Mr. Corbett appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 23rd February, 1998, together with an Affidavit of Service sworn 3rd March, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 27th February, 1998 (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

Robert C. Topp

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

Audrey Cado
for the Society

DAVID GORDON BRYCE
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 10, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 6, 1997 Complaint D294/97 was issued against David Gordon Bryce alleging that he was guilty of professional misconduct.

The matter was heard in public on December 10, 1997 before Robert C. Topp sitting as a single bencher. The Solicitor did not attend the hearing, nor was he represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D294/97

2. a) He failed to file with the Society within six months of the termination of his fiscal year ended June 30, 1996, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

RECOMMENDATION AS TO PENALTY

The Committee recommends that if the Solicitor has filed by the time the matter reaches Convocation, that he be given a reprimand in Convocation. If the Solicitor fails to file by the time the matter is considered by Convocation, that he be suspended for a period of thirty days and month to month thereafter until the filings are completed to the satisfaction of the Law Society.

REASONS FOR RECOMMENDATION

The evidence of Nadine Freed clearly established that the Solicitor's year end was June 30, 1996 and that he failed to file the appropriate forms.

In his 1995 filing, the Solicitor disclosed trust holdings as follows: (a) \$45,800.88 in his mixed trust account; (b) \$25,000 in a GIC; and (c) \$5,580.06.

As a result of his failure to file June 30, 1996, the Society took the appropriate steps to notify him and he was sent the appropriate notices and at no time did he contact the Society regarding the deficiencies in his filing requirements.

At the same time, the Solicitor via facsimile on September 17, 1997 informed the Society of the "clinical depression" that he had been suffering, and it is clear that in his letter he was going to attempt to get an accountant to certify his filings before the end of September, 1997. The Solicitor, after that date, had some telephone conversations with the Senior Counsel of Discipline, but as of the date of this hearing, had not filed the necessary documents, nor had there been any further response.

As a result, it is clear that the Solicitor has failed to comply with his obligation and there is a finding of professional misconduct.

The recommendation as to penalty is that the Solicitor be reprimanded in Convocation if he has filed by the time the matter reaches Convocation. If the Solicitor fails to file by the time the matter reaches Convocation, the Committee recommends that he be suspended for a period of thirty days and month to month thereafter until the filings are completed to the satisfaction of the Law Society.

Given the indication of illness set out in the Solicitor's letter to the Society, and given the total absence of any evidence of his ability to pay, costs are not awarded.

23 April, 1998

David Gordon Bryce was called to the Bar on April 10, 1980.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1998

Robert C. Topp

There were no submissions.

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if he made his filings failing which he be suspended for a period of 30 days and month to month thereafter until the filings are completed to the satisfaction of the Law Society.

Mr. Corbett made submissions in support of a 30 day suspension. He advised that the filings had not been made and that the solicitor was winding up his practice.

It was moved by Mr. Wright, seconded by Mr. Chahbar that the solicitor be suspended for a period of 30 days and month to month thereafter until the filings were made to the satisfaction of the Society.

Carried

Re: Alice Dianne CUSTANCE - Russell

The Secretary placed the matter before Convocation.

Ms. Backhouse withdrew for this matter.

Ms. Seymour 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 24th October, 1997, together with an Affidavit of Service sworn 19th November, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 11th November, 1997 (marked Exhibit I). 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

Nancy L. Backhouse

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

Audrey Cado
for the Society

ALICE DIANNE CUSTANCE
of the Township
of Russell
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 9, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 14, 1997 Complaint D48/97 was issued against Alice Dianne Custance alleging that she was guilty of professional misconduct.

The matter was heard in public on July 9, 1997 before Nancy L. Backhouse sitting as a single bencher. The Solicitor did not attend the hearing nor was she represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D48/97

2. a) She failed to file with the Society within six months of the termination of her fiscal year ended January 31, 1996, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the *Law Society Act*.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D48/97 and is prepared to proceed with a hearing of this matter on July 9, 1997.

23 April, 1998

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D48/97 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 26, 1971. She practised as a sole practitioner. The Solicitor was suspended from the practice of law on May 1, 1997 as a result of her failure to pay her annual fee.

5. The Solicitor's fiscal year end is January 31st. The Solicitor did not file her Form 2 and Form 3 within six months of the fiscal year ending January 31, 1996, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. By letter dated August 9, 1996 the Law Society advised the Solicitor she had not complied with the annual filing requirements of section 16 of Regulation 708 of the Law Society Act. The Solicitor was advised the last filing received from her was for the period ended January 31, 1995. The Solicitor was requested to contact the Law Society should she believe her filing had already been made. A copy of the Law Society's August 9, 1996 is attached as Exhibit "A" to this Agreed Statement of Facts. The Solicitor did not contact the Law Society.

7. By registered mail, dated September 9, 1996, the Law Society advised the Solicitor she had not taken the necessary steps to bring her filings up-to-date. The Solicitor was advised failure to comply with section 16 of Regulation 708 of the Law Society Act may result in disciplinary action being taken against her. The Solicitor was requested to give this matter her immediate attention. The Law Society's September 9, 1996 letter was signed for and delivered on September 13, 1996. A copy of the Law Society's September 9, 1996 letter and Acknowledgement of receipt of a registered item card is attached as Exhibit "B" to this Agreed Statement of Facts.

8. A Law Society staff employee spoke with the Solicitor by telephone on September 18, 1996. The Solicitor advised she would provide her outstanding filing soon. A copy of the Law Society's handwritten note dated September 18, 1996 is attached as Exhibit "B" to this Agreed Statement of Facts.

9. To date, the Solicitor has not provided the outstanding filing.

V. DISCIPLINE HISTORY

10. The Solicitor does not have a discipline history.

DATED at Toronto this 2nd day of July, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Alice Dianne Custance be reprimanded in Convocation if she has made her filings by the time this matter is considered by Convocation, failing which, that she be suspended for a period of one month and indefinitely thereafter until she has made the filings. Such suspension to commence at the conclusion of any administrative suspension.

REASONS FOR RECOMMENDATION

The Solicitor has had an unblemished legal career since she was called to the bar in March 1971. I am advised by the Law Society that there are presently no complaints outstanding against her. The Solicitor has advised in her letter dated July 2, 1997 that she is unable to hire an accountant because she has no possible way of paying him. It appears that the Solicitor has had a number of problems with her legal practice and problems in business.

However, the Solicitor is evincing an attitude bordering on ungovernability. Although entering into an Agreed Statement of Facts, she has submitted a letter wherein she states that the filings do not have a priority with her and advising that she has no respect for the Law Society.

Under the circumstances, the public can be adequately protected with a penalty of a reprimand in Convocation if the Solicitor makes her filings by that time, failing which, she should be suspended until such time as her filings have been made and in any event, for a one month definite suspension. In view of the Solicitor's financial difficulties, I am not prepared to recommend costs.

Alice Dianne Custance was called to the Bar on March 26, 1971.

ALL OF WHICH is respectfully submitted

DATED this 24th day of October, 1997

Nancy L. Backhouse

There were no submissions.

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if her filings were completed, failing which she be suspended for a period of 1 month and indefinitely thereafter until she had made her filings, such suspension to commence at the conclusion of any administrative suspension.

Ms. Seymour advised that the filings had not been made.

A letter from the solicitor dated April 20th, 1998 was filed as Exhibit 2.

It was moved by Mr. Wright, seconded by Mr. Carter that the solicitor be suspended for a period of 1 month and indefinitely thereafter until the filings were completed, such suspension to commence at the conclusion of any administrative suspension.

Counsel, the reporter and the public withdrew.

The Wright/Carter motion to adopt the recommended penalty was voted on and adopted.

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 1 month and indefinitely thereafter until the filings were completed, such suspension to commence at the conclusion of any administrative suspension.

Convocation took a recess at 10:35 a.m. and resumed at 10:50 a.m.

Re: Sarah Jean BAGNALL - Toronto

The Secretary placed the matter before Convocation.

Mr. Adams and Ms. Carpenter-Gunn withdrew for this matter.

Ms. Elizabeth Cowie appeared on behalf of the Society and Mr. Steven Clark appeared on behalf of the solicitor who was present.

Ms. Cowie requested an adjournment on consent to the next Discipline Convocation because an application for fresh evidence may be put before Convocation.

Mr. Clark made submissions for an adjournment and advised that the solicitor continued to practise under his supervision.

It was moved by Mr. Wright, seconded by Mr. Chahbar that the adjournment be granted to the next Discipline Convocation.

Carried

CONTINUATION OF KIRSHENBLAT MATTER

The Secretary placed the matter before Convocation.

Mr. Jonathan Batty appeared on behalf of the Society and Mr. Rosen appeared on behalf of the solicitor who was present.

The Report of the Discipline Committee dated February 23rd, 1998 together with the Affidavit of Service addressed to the solicitor at 100 Sheppard was filed as Exhibit 1. The Report and Affidavit of Service addressed to the solicitor at 1170 Sheppard was filed as Exhibit 2. The Acknowledgement, Declaration and Consent was filed as Exhibit 3.

Mr. Rosen, on behalf of the solicitor requested an adjournment to the next Discipline Convocation in order that the solicitor could complete his filings and deal with the issues arising from them.

Mr. Batty opposed the adjournment.

It was moved by Mr. Ruby, seconded by Ms. Backhouse that the matter be adjourned to the Discipline Convocation in May peremptory to the solicitor.

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

The Ruby/Backhouse motion to adjourn was voted on and adopted.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision to grant the adjournment peremptory to the solicitor to the Discipline Convocation in May.

Re: Mary Brenda Anne DAGENAIS - Ottawa

The Secretary placed the matter before Convocation.

Ms. Backhouse withdrew for this matter.

23 April, 1998

Ms. Worley 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 27th November, 1997, together with an Affidavit of Service sworn 15th December, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 10th December, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 2nd January, 1998 (marked Exhibit 2). A letter from the solicitor to Ms. Worley dated 23rd April, 1997 was marked Exhibit 3. 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

Nancy L. Backhouse

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

Audrey Cado
for the Society

MARY BRENDA ANNE DAGENAIS
of the City
of Ottawa
a barrister and solicitor

Not Represented
for the solicitor

Heard: April 2 and June 2, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

R E P O R T

On December 16, 1996 Complaint D349/96 was issued against Mary Brenda Anne Dagenais alleging that she was guilty of professional misconduct.

The matter was heard in public on April 2 and June 2, 1997 before Nancy L. Backhouse sitting as a single bencher. On both dates the hearing proceeded with the Solicitor participating by conference call. She was not represented by counsel. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D349/96

2. a) She failed to file with the Society within six months of the termination of her fiscal year ended September 30, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the *Law Society Act*.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D349/96 and is prepared to proceed with a hearing of this matter on April 2, 1997.

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 D349/96 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 14, 1986. She practised as a sole practitioner. The Solicitor was suspended on June 28, 1996 as a result of her failure to pay her annual fee.

5. Complaint D239/94 was issued against the Solicitor with respect to her failure to file for the fiscal year ended December 31, 1992.

6. On December 7, 1994, Complaint D239/94 was withdrawn and dealt with by way of an invitation to attend. Complaint D239/94 was converted to an invitation to attend based upon the Solicitor's written Acknowledgement, dated December 7, 1994 (Document Book, Tab 1), as follows:

To file with the Law Society within six months of the termination of any future fiscal year in which I practise, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by me in the form prescribed by the Rules pursuant to section 16(2) of the Regulation made pursuant to the Law Society Act, or any superseding Act or Regulation governing filings; and I ACKNOWLEDGE that any breach of this Acknowledgement may lead to further discipline proceedings, and I hereby consent to this document being introduced in evidence in those proceedings. I have retained an executed copy of this Acknowledgement.

7. The Solicitor's fiscal year end is September 30th. The Solicitor did not file her Form 2 and Form 3 within six months of the fiscal year ending September 30, 1995, as required by S.16(2) of Regulation 708 under the Law Society Act.

23 April, 1998

8. By letter dated April 10, 1996 (Document Book, Tab 2) the Law Society advised the Solicitor she had not complied with the annual filing requirements of section 16 of Regulation 708 of the Law Society Act. The Solicitor was advised the last filing received from her was for the period ended September 1, 1994. The Solicitor was requested to contact the Law Society should she believe her filing had already been made.

9. By registered mail, dated May 10, 1996 (Document Book, Tab 3), the Law Society advised the Solicitor she had not taken the necessary steps to bring her filings up-to-date. The Solicitor was advised failure to comply with section 16 of Regulation 708 of the Law Society Act may result in disciplinary action being taken against her. The Solicitor was requested to give this matter her immediate attention. The Law Society's May 10, 1996 letter was signed for and delivered on May 16, 1996.

10. The Solicitor advised the Law Society by telephone on July 8, 1996 (Document Book, Tab 4), she had resolved a few problems she was experiencing. The Solicitor advised she would provide her outstanding filing by the end of July, 1996.

11. By facsimile transmission, dated July 8, 1996 (Document Book, Tab 5), the Solicitor confirmed with the Law Society she had some difficulty in finalizing her annual filing in light of an outstanding account with her Bookkeeper/Accountant due to financial difficulties suffered as a result of her former partner's bankruptcy and her need to assume sole responsibility for any and all matters and expenditures related to their previous partnership. The Solicitor confirmed she had made appropriate arrangements with her Bookkeeper/Accountant to allow him to complete and verify her annual filing on an expeditious basis. The Solicitor anticipated being in a position to forward her filing by the end of July, 1996, failing which, she will advise the Law Society in advance.

12. A Law Society staff employee left a telephone message for the Solicitor at her office on September 11, 1996 and September 12, 1996 (Document Book, Tab 6) requesting she return the call.

13. The Solicitor advised the Law Society by telephone on September 12, 1996 (Document Book, Tab 7) she was having financial difficulties. The Solicitor advised she was required to pay her accountant in advance. She advised her usual accountant had recently retired. The Solicitor advised as a result of her suspension on June 26, 1996, she was in the process of transferring files to other lawyers. The Solicitor advised she hoped to be in a position to file by the end of September, 1996.

14. A Law Society staff employee spoke with the Solicitor by telephone on October 8, 1996 (Document Book, Tab 3). The Solicitor advised she was ill, however, she was in the office to tidy up. The Solicitor advised she would contact her accountant and call the Law Society back.

15. By letter dated October 22, 1996 (Document Book, Tab 8), the Solicitor advised the Law Society she had been unable to attend to the requisite administrative work in light of a recent injury sustained in an accidental fall down the stairs, resulting in various sprains and a neck injury. The Solicitor stated her bookkeeper had commenced the requisite review in order to finalize all the appropriate information for review and audit by her accountant however, her bookkeeper was awaiting extra information from her with respect to her records and files. The Solicitor advised her usual practice had been for her regular bookkeeper/financial adviser, Melnick Financial Services, to prepare a package of all pertinent information for review by an independent certified accountant, who in the past had been Norm Watson. The Solicitor advised Mr. Watson had undergone cataract surgery since he last performed services on her behalf and had been unable to secure

23 April, 1998

confirmation as to whether or not he would be available to compete the review this year. The Solicitor advised she was attempting to make other arrangements in order to finalize the filing. The Solicitor advised she had been experiencing severe financial difficulty in light of what she hoped would be a brief interruption to her practice and she was currently unable to pay her bookkeeper the outstanding fees owed to him. The Solicitor advised her bookkeeper had been very benevolent and helpful and had advised her he was willing to do whatever possible to assist her in this regard as best he was able, however, he was, shortly, leaving the city for a period of three months so there could be some delay experienced in retrieving any further information that may be required to finalize the filing after his departure. The Solicitor advised she would use her best efforts to have her Forms filed by the beginning of the week of November 18, 1996. The Solicitor advised should any further difficulty be experienced, she would contact the Law Society sufficiently in advance in order to ensure the Law Society is kept closely abreast of her progress in this matter.

16. To date, the Solicitor has not provided the outstanding filing.

V. DISCIPLINE HISTORY

17. The Solicitor was found guilty of professional misconduct and reprimanded in committee on January 15, 1991 with respect to her failure to reply to the Law Society.

18. The Solicitor was invited to attend, based upon her written Acknowledgement, on December 7, 1994 with respect to her failure to file for the fiscal year ended December 31, 1992.

19. The Solicitor was found guilty of professional misconduct, reprimanded in committee and ordered to pay costs of \$400.00 on or before March 18, 1996, with respect to her failure to reply to the Law Society. The Solicitor also provided her written Undertaking, dated March 18, 1996, to respond to communications from the Law Society within specific time periods. The Solicitor paid the Law Society's costs of \$400.00 on September 19, 1996.

DATED at Ottawa this 28th day of March, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Mary Brenda Anne Dagenais be reprimanded in Convocation if she has made her filings by the time this matter is considered by Convocation, failing which, that she be suspended for a period of one month, commencing at the conclusion of any administrative suspension, and continuing indefinitely thereafter until she has made the filings.

The Solicitor has requested that she be permitted to participate by teleconference if the penalty is a reprimand in Convocation as she cannot afford to attend personally from Ottawa or retain counsel, which permission I would recommend be given.

REASONS FOR RECOMMENDATION

This hearing was adjourned to provide the Solicitor one further opportunity to make her filings. The filings were not brought up to date on the second day of hearing this matter. The Solicitor has a discipline history. I note however, that the Agreed Statement of Facts refers to an Invitation to Attend as part of the Solicitor's Discipline History. This is not properly part of the Solicitor's discipline history and I have not taken it into account in my recommendation to Convocation. Under the circumstances, the recommendation as to penalty set out above is considered appropriate.

Mary Brenda Anne Dagenais was called to the Bar on April 14, 1997.

ALL OF WHICH is respectfully submitted

DATED this 27th day of November, 1997

Nancy L. Backhouse

Ms. Worley requested that the following corrections be made to the Report:

- (1) page 7, last paragraph - date of Call to the Bar should be "1986" not "1997";
- (2) page 5, paragraph 18 - paragraph 18 be deleted as it refers to an Invitation to Attend; and
- (3) page 7, paragraph under heading Reasons for Recommendation - the 4th and 5th sentence be deleted as it refers to an Invitation to Attend.

It was moved by Ms. Puccini, seconded by Ms. Angeles that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if her filings were completed, failing which that the solicitor be suspended for a period of 1 month, commencing at the conclusion of any administrative suspension, and continuing indefinitely thereafter until the filings were made.

Ms. Worley referred to the solicitor's letter and advised that the filings had not been completed and made submissions in support of the 1 month suspension.

It was moved by Mr. DelZotto, seconded by Ms. Carpenter-Gunn that the solicitor be suspended for a period of 1 month, commencing at the conclusion of any administrative suspension, and continuing indefinitely thereafter until the filings are made.

Carried

Re: Michael Brian DELMAN - Ottawa

The Secretary placed the matter before Convocation.

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

The Report of the Discipline Committee dated November 25th, 1997 together with the Affidavit of Service was filed as Exhibit I.

Mr. Corbett advised that the solicitor had telephoned him this morning and sought an adjournment in order to complete his filings. The solicitor further advised that he would not oppose the Law Society proceeding.

The Society was opposed.

The matter was stood down to allow Duty Counsel to contact the solicitor and receive instructions.

23 April, 1998

Re: Laurie Ann DUPUIS - Napanee

The Secretary placed the matter before Convocation.

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

Convocation had before it the Report of the Discipline Committee dated 25th November, 1997, together with an Affidavit of Service sworn 15th December, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 10th December, 1997 (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

Robert C. Topp

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

Audrey Cado
for the Society

LAURIE ANN DUPUIS
of the Town
of Napanee
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 11, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 3, 1997 Complaint D12/97 was issued against Laurie Ann Dupuis alleging that she was guilty of professional misconduct. This Complaint was withdrawn and replaced by D12a/97 issued on April 17, 1997.

The matter was heard in public on June 11, 1997 before Robert C. Topp sitting as a single bencher. The Solicitor did not attend the hearing nor was she represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D12a/97

2. a) She failed to file with the Society within six months of the termination of her fiscal year ended December 31, 1994, a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the *Law Society Act*.
- b) She failed to file with the Society within six months of the termination of her fiscal year ended December 31, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the *Law Society Act*.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D12a/97 and is prepared to proceed with a hearing of this matter on May 6, 1997.

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 D12a/97 and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 28, 1990. She practises as a sole practitioner.
5. The Solicitor's fiscal year end is December 31st. The Solicitor did not file her Form 2 within six months of the fiscal year ended December 31, 1994 and she did not file her Form 2 and Form 3 within six months of the fiscal year ending December 31, 1995, as required by S.16(2) of Regulation 708 under the Law Society Act.
6. The Solicitor filed her Form 2 for the fiscal year ended December 31, 1994 (Document Book, Tab 1) on May 11, 1996. The Solicitor's Form 2 indicated she had retained a mixed trust account.
7. By letter dated June 10, 1996 (Document Book, Tab 2) the Law Society advised the Solicitor she had not complied with the annual filing requirements of section 16 of Regulation 708 of the Law Society Act. The Solicitor was advised the last filing received from her was for the period ended November 30, 1992. The Solicitor was requested to contact the Law Society should she believe her filing had already been made.
8. On October 4, 1996, by registered mail, dated July 12, 1996, (Document Book, Tab 3) the Law Society advised the Solicitor she had not taken the necessary steps to bring her filings up-to-date. The Solicitor was advised failure to comply with section 16 of Regulation 708 of the Law Society Act may result in disciplinary action being taken against her. The Solicitor was requested to give this matter her immediate attention. The Law Society's July 12, 1996 letter was signed for and delivered on October 9, 1996. The Solicitor did not reply to this correspondence.

9. A Law Society staff employee left a telephone message for the Solicitor at her home on October 23, 1996 (Document Book, Tab 3) requesting she return the call. The Solicitor did not return the call.

10. The Solicitor filed for the fiscal year ended November 30, 1993 on October 24, 1996 (Document Book, Tab 4). The Solicitor's trust bank statement attached her to her Form 3 indicated as at December 31, 1993 she retained \$2,323.85 in her trust account.

11. The Solicitor advised Convocation on October 24, 1996 she was aware her 1994 and 1995 filings were outstanding and that should she fail to bring those filings into good standing, they would form the subject of additional complaints. The Solicitor advised she expected to be dealt with more harshly if that became necessary. The Solicitor advised Convocation she thought she could complete her filings within the next couple of months. A partial copy of the transcript of the October 25, 1996 Convocation is contained in the Document Book, Tab 5.

12. By registered and ordinary mail, dated November 28, 1996 (Document Book, Tab 6), the Law Society advised the Solicitor on October 23, 1996 a formal complaint had been authorized against her with respect to her failure to file for the fiscal years ended December 31, 1994 and December 31, 1995. The Solicitor was advised that in accordance with Mr. Epstein's instructions of October 24, 1996, the Law Society was providing her with one further written notice of the outstanding filing. In light of the fact that the Solicitor had been suspended since September 27, 1996, the Law Society forwarded to the Solicitor a draft Undertaking in which she could undertake not to practise until all her outstanding filings were made. The Solicitor was advised should she fail to executed the Undertaking or fail to provide her filings for the fiscal years ended December 31, 1994 and December 31, 1995 by December 31, 1996, a formal complaint would be issued against her. The Law Society's registered mail, dated November 28, 1996, was returned by the post office marked "unclaimed". The Law Society's ordinary mail, dated November 28, 1996 was not returned by the post office. No response was received.

13. The Solicitor was reinstated to the practice of law on November 6, 1996, however, the Law Society records were not updated until November 28, 1996.

14. To date, the Solicitor has not provided her Form 3 for the fiscal year ended December 31, 1994 and her Forms 2/3 for the fiscal year ended December 31, 1995.

V. DISCIPLINE HISTORY

15. The Solicitor does not have a discipline history.

DATED at Toronto this 2nd day of May, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Laurie Ann Dupuis be reprimanded in Convocation if she has made her outstanding filings by the time the matter is considered by Convocation, failing which, that she be suspended for one month, and month to month thereafter until she has made the filings.

REASONS FOR RECOMMENDATION

The Committee recommends the above penalty as a means to obtain compliance with the financial reporting requirements which this Solicitor seems to have ignored. This Solicitor is at this time bordering on being ungovernable given the fact that she was before Convocation on October 24, 1996 and gave undertakings to comply with her obligations. In the Committee's view, a harsher penalty than the recommendation above is not required at this point in time.

23 April, 1998

Laurie Ann Dupuis was called to the Bar on March 28, 1990.

ALL OF WHICH is respectfully submitted

DATED this 25th day of November, 1997

Robert C. Topp

Ms. Worley dealt with a preliminary matter respecting the service of the Report. She advised that she had been unable to reach the solicitor but that the solicitor had been properly served in accordance with the Act.

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if her outstanding filings were completed failing which, she be suspended for a period of 1 month, and month to month thereafter until she has made the filings.

Ms. Worley advised that the filings had not been made and made submissions in support of the 1 month suspension.

Convocation was informed that the solicitor was under an administrative suspension.

It was moved by Mr. Wright, seconded by Ms. Carpenter-Gunn that the solicitor be suspended for a period of 1 month, commencing at the conclusion of her administrative suspension and month to month thereafter until the filings have been made.

Carried

Re: Robert Wesley KEW - Northumberland

The Secretary placed the matter before Convocation.

Ms. Seymour appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present.

The Report of the Discipline Committee dated November 25th, 1997 and Affidavit of Service addressed to the solicitor at 31 Main Street (Exhibit 1) and Percy Township, R. R. #1 (Exhibit 2) in Warkworth were filed at Convocation on January 22nd, 1998.

Convocation had before it the Report of the Discipline Committee dated 25th November, 1997, together with an Affidavit of Service sworn 15th December, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail to the 31 Main Street address on 10th December, 1997 (marked Exhibit 1 at Convocation on January 22nd, 1998), together with the Report and Affidavit of Service sworn 15th December, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail to the Percy Township address on 10th December, 1997 (marked Exhibit 2 at Convocation on January 22nd, 1998). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert C. Topp

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

Audrey Cado
for the Society

ROBERT WESLEY KEW
of the County
of Northumberland
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 11, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 5, 1997 Complaint D86/97 was issued against Robert Wesley Kew alleging that he was guilty of professional misconduct.

The matter was heard in public on June 11, 1997 before Robert C. Topp sitting as a single bencher. The Solicitor did not attend the hearing, nor was he represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D86/97

2. a) He failed to file with the Society since the commencement of his sole practice on January 12, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16 of Regulation 708 made pursuant to the *Law Society Act*.

Service

In the absence of the Solicitor attending the hearing, your Committee was presented with evidence of service of the Complaint at the last known address of the Solicitor and therefore the hearing was held in the absence of the Solicitor.

The Facts

The facts in this matter were established by the Affidavit of Irene Andrighetti and the Affidavit of Nadine Freed.

23 April, 1998

The Solicitor Robert Wesley Kew began to practise as a sole practitioner on January 12, 1995. Since that date, he has not filed the appropriate forms with the Forms Service Department.

The Solicitor was contacted by the Law Society of Upper Canada on June 10, 1996 by ordinary mail. No response was received from the Solicitor at that time.

On July 12, 1996 the Law Society again advised the Solicitor to take the necessary steps to bring his filings up to date and that failure to do so may result in disciplinary action being taken against him. The Solicitor failed to respond to that correspondence.

In fact, the Law Society also telephoned the Solicitor and left a message at his office on October 11, 1996 requesting he return the call. That call was not returned by the Solicitor.

The evidence clearly establishes that the Solicitor has failed to file a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16 of Regulation 708 made pursuant to the Law Society Act.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Robert Wesley Kew be suspended for a period of six months and continuing thereafter until he has made his filings to the satisfaction of the Law Society, and that he pay Law Society costs in the amount of \$800.

REASONS FOR RECOMMENDATION

The facts establish that the Solicitor while a sole practitioner has failed to comply with his financial reporting requirements.

This Solicitor has not co-operated at all with the Law Society nor did he attend for his hearing.

At the same time, it is clear that on October 11, 1996 the Solicitor was maintaining a practice and was engaged in the practice of law. The fact that the Solicitor has failed to file any financial information since the commencement of his sole practice on January 12, 1995 is worrisome in the extreme. Your Committee believes that the only appropriate remedy under these circumstances is a suspension for six months and continuing thereafter until he has made his filings to the satisfaction of the Law Society and that he pay the Law Society costs in the amount of \$800.

This does not appear to be a case of impecuniosity, rather, on its face, appears to be a clear flouting of the financial reporting requirements. In addition, if this conduct were to continue, it appears that the Solicitor is totally ungovernable.

Robert Wesley Kew was called to the Bar on March 23, 1973.

ALL OF WHICH is respectfully submitted

DATED this 25th day of November, 1997

Robert C. Topp

23 April, 1998

On January 22nd Convocation ordered that the solicitor be reprimanded in Convocation if he made his filings on the date fixed at the next Convocation Management Tribunal, failing which, he be suspended for a period of 1 month definite and indefinitely thereafter until his filings were made, such suspension to commence at the conclusion of any administrative suspension.

The filings were not made with respect to Complaint D86/97 and the recommendation that was made by Convocation on January 22nd, 1998 was now in effect.

Convocation had before it the Report of the Discipline Committee dated 23rd February, 1998, together with an Affidavit of Service sworn 3rd March, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 27th February, 1998 (marked Exhibit 3). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert C. Topp

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

Audrey Cado
for the Society

ROBERT WESLEY KEW
of the Village
of Warkworth
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 12, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 7, 1997 Complaint D298/97 was issued against Robert Wesley Kew alleging that he was guilty of professional misconduct.

The matter was heard in public on November 12, 1997 before Robert C. Topp sitting as a single bencher. The Solicitor did not attend the hearing, nor was he represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D298/97

2. a) He failed to produce the books and records of his practice pursuant to section 18 of Regulation 708, of the Law Society Act.

RECOMMENDATION AS TO PENALTY

The Committee recommends the following:

1. That if Mr. Kew has produced his books and records for examination by the Society prior to this matter being reached by Convocation that he be suspended for a period of six months concurrent with any other suspension which he may be under as a result of other matters which are before Convocation;
2. that if he fails to produce his books and records by the time this matter reaches Convocation that he be suspended for a period of six months definite consecutive to any other suspension which Convocation may impose and month to month thereafter until his books and records are produced to the satisfaction of the Society;
3. that he pay costs to the Society in the sum of \$600 payable within 90 days of Mr. Kew resuming his practice.

REASONS FOR RECOMMENDATION

It appears that Robert Wesley Kew has disappeared off the face of the earth and most likely has abandoned his practice in that the Law Society is unable to locate him, and he does not comply with his professional obligations.

This is not Mr. Kew's first involvement with the discipline process and the fact that he does not produce his books and records is worrisome in the extreme.

The Society asks that Mr. Kew be suspended for a period of six months and that he pay costs in the sum of \$600, which in my respectful view, is an appropriate and somewhat generous position for the Society to take.

The members of the profession must follow their obligations if we are to be able to fulfil our function of the protection of the public in the governance of the profession. Regrettably, Mr. Kew has made our job more difficult by his failure to co-operate. At the same time, we know that Mr. Kew was hospitalized for sometime and that he was in a diabetic coma. Since his release from hospital we do not know where he is or what he is doing.

As a result, the Committee makes the recommendation to Convocation that Mr. Kew be suspended and pay costs to the Society as set out above.

Robert Wesley Kew was called to the Bar on March 23, 1973.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1998

Robert C. Topp

23 April, 1998

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

Counsel, the reporter and the public withdrew.

It was moved by Mr. Wright, seconded by Mr. Crowe that the Report be referred back to the Discipline Committee for further reasons.

Counsel, the reporter and the public were recalled and received the Affidavit of Marie Morley which was filed as Exhibit 4.

Counsel, the reporter and the public withdrew.

The Wright/Crowe motion to refer the Report back to Committee was voted on and lost.

It was moved by Mr. Ruby, seconded by Mr. Scott that the Report be adopted.

Carried

Counsel, the reporter and the public were recalled and informed that the Report had been adopted.

The recommended penalty of the Discipline Committee on Complaint D298/98 was if the solicitor has produced his books and records for examination prior to the matter reaching Convocation that he was to be suspended for a period of 6 months concurrent with any other suspension which he may be under as a result of other matters before Convocation. If the solicitor failed to produce his books and records at the time of Convocation that he was to be suspended for a period of 6 months definite consecutive to any other suspension which Convocation imposed and month to month thereafter until the books and records were produced to the satisfaction of the Society. In addition the solicitor was to pay costs in the amount of \$600 payable within 90 days of resuming his practice.

Ms. Seymour advised that the books and records had not been produced and made submissions in support of the 6 month suspension.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Scott, seconded by Ms. Backhouse that the recommended penalty be adopted but that costs be deleted.

Withdrawn

It was moved by Mr. Wright, seconded by Ms. Puccini that the solicitor be suspended for a period of 1 month, such suspension to be served concurrently with the 1 month suspension imposed on the November 25th Discipline Report and continue indefinitely until the solicitor's books and records are produced.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 1 month, such suspension to be served concurrently with the 1 month suspension imposed in the November 25th Discipline Report and adopted by Convocation on January 22nd, 1998 and continue indefinitely until the solicitor's books and records are produced.

David Clyde Magambo KOMA - Kingston

The Secretary placed the matter before Convocation.

Mr. Scott withdrew for this matter.

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

23 April, 1998

Mr. Batty advised that the solicitor would not be attending and that he had no objection to the matter proceeding in his absence. He further advised that the solicitor had completed his filings under the new self-reporting procedure.

Convocation had before it the Report of the Discipline Committee dated 14th January, 1998, together with an Affidavit of Service sworn 19th February, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on the 12th February, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 2nd March, 1998. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Philip M. Epstein, Q.C.

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

Rhonda Cohen and Lisa Lam (Student-at-Law)
for the Society

DAVID CLYDE MAGAMBO KOMA
of the City
of Kingston
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 17, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 25, 1995 Complaint D106/95 was issued against David Clyde Magambo Koma alleging that he was guilty of professional misconduct.

The matter was heard in public on December 17, 1997 before Philip M. Epstein, Q.C. sitting as a single bencher. The Solicitor did not attend the hearing nor was he represented. Rhonda Cohen and Lisa Lam (Student-at-law) appeared on behalf of the Law Society.

DECISION

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

Complaint D106/95

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

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D106/95 and is prepared to proceed with a hearing of this matter on December 16 and 17, 1997.

II. IN PUBLIC/IN CAMERA

2. It is the Law Society's position 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 D106/95 and 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 June 22, 1984. At present, he is suspended from the practice of law for non-payment of his errors and omissions insurance levy.

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

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

6. By letter dated February 3, 1995, the Law Society advised the Solicitor that he had not complied with the annual filing requirements of section 16 of Regulation 708 of the Law Society Act. The Solicitor was advised that the last filing received from him was for the period ended July 31, 1992. The Solicitor was requested to contact the Law Society should he believe his filing had already been made. A copy of the Law Society's letter dated February 3, 1995, is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered mail, dated March 7, 1995, the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date. The Solicitor was advised that failure to comply with section 16 of Regulation 708 of the Law Society Act may result in disciplinary action being taken against him. The Solicitor was requested to give this matter immediate attention. The Law Society's registered letter, dated March 7, 1995, was returned marked "Moved N/C" on March 10, 1995. A copy of the Law Society's registered letter together with the envelope marked "Moved N/C" is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

9. The within Complaint was sworn on May 25, 1995.
10. To date, the Solicitor has not provided his outstanding filing.

V. DISCIPLINE HISTORY

11. On January 25, 1996, the Solicitor was charged with professional misconduct for practising law while his rights and privileges as a member were suspended during the following periods:

- i) September 28, 1990 to June 17, 1991;
- ii) November 29, 1991 to December 5, 1991;
- iii) June 5, 1992 to July 14, 1992; and
- iv) November 2, 1992 to date.

The Solicitor was also found guilty of professional misconduct in that he failed to maintain his books and records as set out in Section 14 and 15 of Regulation 708 made pursuant to the Law Society Act. Convocation ordered that the Solicitor be suspended for a period of two months following an administrative suspension and to continue indefinitely until his books and records and all filings are made

DATED at Toronto this 17th day of December, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that David Clyde Magambo Koma be suspended for a period of one month and indefinitely thereafter until his filings are made to the satisfaction of the Law Society. This suspension is consecutive to the two month suspension ordered by Convocation January 25, 1996.

REASONS FOR RECOMMENDATION

The hearing of this matter proceeded on December 17th, 1997 in the absence of the Solicitor. Filed and accepted as an exhibit was a service brief prepared by the Society. Tab 6 of the service brief is a letter from John Ecclestone dated October 30th, 1997 which indicates that Mr. Koma does not intend to be present on the hearing date and does not intend to participate in the proceedings.

On December 10th, 1997, via the offices of Mr. Ecclestone, Mr. Koma faxed to the Society a letter which was marked as an exhibit and which indicated that the Solicitor was unable to attend the hearing for financial reasons and did not wish to attend the hearing. The Solicitor indicated that there were no trust funds in his account at the time he ceased to practise but given his medical and other contributing problems, he has not been gainfully employed for more than four years and was still unable to meet and discharge his financial obligations, including paying for the services of an accountant who assists him with the annual filing and paper work to the Law Society.

The Law Society is therefore left in the uncomfortable position of not knowing what it ought to know about Mr. Koma's books and records and in particular his trust situation.

It is noteworthy that the Solicitor was suspended by Convocation in 1996 for similar conduct.

23 April, 1998

The Society's duty to the public requires that these forms be filed in a timely fashion and that when they are not filed, that the Society take reasonably diligent steps to ensure the filing is completed in accordance with the Regulation. Regardless of the difficult financial circumstances of the Solicitor, it is incumbent upon him, if he wishes to maintain his membership in the Society, to ensure that the records are filed.

The Society requests that the Solicitor be suspended for a period of one month and to continue indefinitely until all his filings are made, and that the suspension be consecutive to the two month suspension ordered by Convocation January 25, 1996. That seems to me to be the only reasonable disposition of the matter and it is so recommended to Convocation.

David Clyde Magambo Koma was called to the Bar on June 22, 1984.

ALL OF WHICH is respectfully submitted

DATED this 14th day of January, 1998

Philip M. Epstein, Q.C.

There were no submissions.

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month and indefinitely thereafter until his filings were completed to the satisfaction of the Society, this suspension to be consecutive to the 2 month suspension ordered by Convocation on January 25th, 1996.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Adams, seconded by Ms. Backhouse that the solicitor be suspended for a period of 1 month to be served concurrently with the 2 month suspension ordered by Convocation on January 25th, 1996.

Carried

CONTINUATION OF THE MICHAEL DELMAN MATTER

Duty Counsel reported on his telephone conversation with the solicitor who requested an adjournment to the May Discipline Convocation peremptory in order to complete his filings.

Mr. Corbett, Counsel for the Society opposed the adjournment.

It was moved by Ms. Puccini, seconded by Mr. DelZotto that the adjournment be granted to the Discipline Convocation in May peremptory to the solicitor.

Carried

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:30 P.M.

CONVOCATION RECONVENED AT 1:45 P.M.

PRESENT:

Treasurer (Harvey T. Strosberg, Q.C.), Adams, Angeles, Arnup, Carey, Carpenter-Gunn, Carter, Chahbar, Crowe, DelZotto, Eberts, MacKenzie, Manes, Martin, Puccini, Scott and Wright.

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IN PUBLIC

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Mr. MacKenzie took the Chair as Acting Treasurer.

Re: Bruce Allan CLARK

The following ineligible Benchers withdrew from Convocation: The Treasurer and Messrs. Carey, Scott, Martin and Arnup.

Ms. Cameron appeared on behalf of the Society and Mr. Clark was present by telephone.

Mr. Clark made submissions as to why he should be reprimanded by telephone.

Ms. Cameron made submissions opposing the reprimand by telephone.

There was a reply by Mr. Clark.

Counsel, the reporter and the public withdrew. Mr. Clark was advised that Convocation would call him back after deliberating.

It was moved by Ms. Puccini, seconded by Mr. Adams that Mr. Clark be reprimanded by telephone.

Carried

Counsel, the reporter and the public were recalled and Mr. Clark was present by telephone.

The Acting Treasurer informed Mr. Clark that it was the decision of Convocation that he was to be reprimanded by telephone the reason being that he was outside the jurisdiction. The Acting Treasurer specifically indicated that Convocation did not accept the reasons advanced by Mr. Clark.

The Treasurer returned to Convocation and administered the Reprimand.

CONTINUATION OF HELEN BERNICE SHAW MATTER

Mr. Batty advised that he could not reach the solicitor and made submissions on Convocation proceeding.

Mr. Batty asked that a correction be made to the Report as follows:

- page 5 under the heading of Recommendation as to Penalty, 2nd line - change the word "of" to "if".

It was moved by Mr. Carey, seconded by Mr. MacKenzie that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if she made the requisite filing failing which she was to be suspended for a period of 1 month and indefinitely thereafter until she made the filing.

Mr. Batty made submissions in support of the 1 month suspension. He advised that the solicitor had been notified of the new self-reporting procedure by registered mail but she had not made the filing .

It was moved by Mr. Carter, seconded by Mr. DelZotto that the solicitor be suspended for a period of 1 month commencing May 1st, 1998 and indefinitely thereafter until the filing was done.

Carried

Re: Andrew Guy Edward GODDARD - Toronto

The Secretary placed the matter before Convocation.

Messrs. Adams and Chahbar withdrew for this matter.

Ms. Cameron appeared for the Society and Mr. Rosen appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 13th February, 1998, together with an Affidavit of Service sworn 3rd March, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 19th February, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd April, 1998 (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

Frank N. Marrocco, Q.C., Chair
W. Michael Adams
Abdul A. Chahbar

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

Glenn Stuart
for the Society

ANDREW GUY EDWARD GODDARD
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: October 15 & November 24, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 12, 1996 Complaint D352/96 was issued; on March 21, 1997 Complaint D85/97 was issued; and, on March 20, 1997 Complaint D126/97 was issued against Andrew Guy Edward Goddard alleging that he was guilty of professional misconduct. Complaint D352/96 was withdrawn and replaced with Complaint D352a/96 issued on February 3, 1997.

The matter was heard on October 15 and November 24, 1997 before this Committee composed of Frank N. Marrocco, Q.C., Chair, W. Michael Adams and Abdul A. Chahbar. The Solicitor attended the hearing and represented himself. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D 352a/96

2. a) He has failed to file since the establishment of his sole practice on or about June 3, 1994, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16 of Regulation 708 made pursuant to the Law Society Act.

Complaint D85/97

2. a) He failed to provide a meaningful reply to the Law Society regarding a complaint by John Swaigen.

Particular 2(b) was withdrawn at the hearing.

Complaint D126/97

2. a) He failed to produce his books and records to a representative of the Law Society for the purposes of an examination of those books and records in accordance with Section 18 of Regulation 708 pursuant to the Law Society Act.

REASONS FOR DECISION

This matter did not proceed on the basis of an agreed statement of fact. Accordingly it was necessary for the Law Society to call evidence to prove the alleged misconduct. The Law Society's evidence consisted of documents, which were made exhibits during the hearing, affidavits and *viva voce* testimony. With respect to the affidavits, the Solicitor was given the opportunity to cross-examine the deponents if he wanted to. The Solicitor cross-examined the witnesses called on behalf of the Society. The Solicitor did not testify and did not call witnesses on his behalf.

At the conclusion of the hearing the Committee found the following particulars established Complaint D352a/96, paragraph 2(a), Complaint D85/97 paragraph 2(a), and Complaint D126/97 paragraph 2(a).

With respect to Complaint D85/97, the Law Society withdrew particular 2(b) and accordingly that particular was not considered by the Committee.

The Evidence

The Committee accepted the evidence offered by the Law Society without reservation. This evidence, as previously noted, consisted of documents, affidavits and *viva voce* testimony.

Complaint D352a/96

The Society tendered the affidavit of Heidi Buckley as well as the affidavit of Irene Andrighetti. In addition the Society tendered the evidence of Nadine Freed.

The evidence established that the Solicitor commenced his own private law practice on or about June 3, 1994. As a result, he was required by section 16 of Regulation 708 to file a form 2 and 3 for the period June 3, 1994 to November 30, 1994 within six months of the conclusion of that period, that is by May 31, 1995. The evidence established that the Solicitor did not make the required filing.

Similarly, the Solicitor was required by section 16 of Regulation 708 to file a Form 2 and 3 for the fiscal year ending November 30, 1995. This filing was required on or before May 31, 1996. The evidence established that the Solicitor did not make this filing.

The Solicitor was contacted by Ms. Irene Andrighetti, who was at the time the Supervisor of the Annual Filing Section of the Membership/Records Department. On or about October 8, 1996 the Solicitor informed Ms. Andrighetti that he obtained a new computer and would be meeting with his accountant regarding his filing. Ms. Andrighetti followed up with the Solicitor with respect to these filings to no avail. On the 3rd day of February, 1997 Complaint 325a/96 was sworn against the Solicitor.

When the Committee concluded this matter on November 24, 1997 the evidence established that the Solicitor had still not made the required filings.

Complaint D85/97

In addition to the documentary evidence filed with the Committee, the Society tendered the affidavit of Shelly Ilgner as well as the evidence of Kelly Tobin.

The evidence established that the Society received correspondence from a John Swaigen who complained about the Solicitor's conduct of a matter before the Environmental Appeal Board.

This complaint was forwarded to the Solicitor by a letter dated October 24, 1996. The evidence further established that no meaningful reply was received by the Law Society as at March 21, 1997 when Complaint D85/97 was sworn. During the course of the hearing of this matter, the Committee received and marked as Exhibit 7 an unsigned letter addressed to the Law Society by the Solicitor, which letter responded to the complaint of Mr. Swaigen.

Complaint D126/97

The Society tendered, in addition to the document book, the evidence of Janet Merkley. Ms. Merkley's evidence established that she was an examiner with the Audit Department and that an audit of the Solicitor's books and records was authorized in November 1996. Ms. Merkley indicated that on January 2, 1997 she attended at the Solicitor's office and left her card, as there was no one there. She called the Solicitor on January 6, 1997 and wrote to him on January 8 and January 30. All of these communications or attempted communications were directed towards requiring the Solicitor to produce his books and records for examination by Ms. Merkley. The evidence further established that Ms. Merkley met with the Solicitor in July of 1997, at which time the Solicitor was unable to produce the books and records required by the Society's regulations. The Solicitor did produce some bank statements for 1994, 1995, 1996 and 1997. The Solicitor did not produce any of the other records that were required so that a meaningful audit could be performed. Specifically there were no trust comparisons, no client ledger cards, no copies of fee billings, no receipts and disbursements journals and no cancelled cheques. This made it effectively impossible for Ms. Merkley to conduct her audit.

The evidence established that the Solicitor promised upon a number of occasions to produce the balance of his books and records but did not do so prior to the 20th of March, 1997 when this Complaint was sworn. Further, at the time of the hearing of this matter on November 24th, 1997, the Solicitor still had not produced his books and records so that Ms. Merkley could complete her audit.

Accordingly, as indicated earlier in these Reasons, the Committee finds the various particulars described above to be established.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Andrew Guy Edward Goddard be reprimanded in Convocation, provided he has: a) completed his filings to the satisfaction of the Law Society; b) written an apology to the Complainant, J. Swaigen; and c) produced his books and records to the Law Society's auditor, prior to the matter being considered by Convocation, failing which, that he be suspended indefinitely until he has complied with these conditions.

REASONS FOR RECOMMENDATION

This Solicitor appears to have stopped practising law. While the Solicitor did not testify, there was no evidence to suggest that he was continuing to practise while failing to respond to the Society's requests for information forms or his books and records. There was some suggestion in the questioning which implied that the Solicitor had indicated that his computer had been stolen and that he had difficulty getting financial information from his bank. While the Committee does not wish to appear unsympathetic, it is necessary to observe that there is in this matter a protracted period of non-compliance and non-co-operation which cannot be ignored on the question of penalty.

With respect to Complaint D352a/96, the Committee recommends that the Solicitor be reprimanded in Convocation if he files the required forms before this matter is heard by Convocation, failing which, it is recommended that the Solicitor be indefinitely suspended until he complies with the filing requirement.

23 April, 1998

With respect to Complaint D85/97, the Committee recommends that the Solicitor be reprimanded in Convocation. In making this recommendation the Committee accepted the Solicitor's promise to write a letter of apology to Mr. Swaigen prior to this matter being heard by Convocation.

With respect to Complaint D126/97, the Committee recommends that the Solicitor be reprimanded in Convocation provided the Solicitor produces his books and records to the Society's auditor, failing which, the Committee recommends that the Solicitor be indefinitely suspended until production is made.

Due to the Solicitor's obviously difficult financial circumstances, the Committee recommends that no costs be ordered.

Andrew Goddard was called to the Bar on February 9, 1993.

ALL OF WHICH is respectfully submitted

DATED this 13th day of February, 1998

Frank N. Marrocco, Q.C.

Mr. Rosen advised Convocation that the solicitor withdrew his Notice of Disagreement.

Both Counsel made joint submissions to the adoption of the Report.

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

- page 4, 2nd paragraph - that the words "prior to the 20th of March, 1997" be deleted so that the sentence then read: "The evidence established that the Solicitor promised upon a number of occasions to produce the balance of his books and records but did not do so when this Complaint was sworn."

It was moved by Mr. Carey, seconded by Mr. Carter that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if he completed his filings, written an apology to the Complainant and produced his books and records to the Society's auditor failing which, he was to be suspended indefinitely until he complied with these conditions.

Ms. Cameron advised that the solicitor had complied with the filing requirements and had written a letter of apology to the Complainant.

23 April, 1998

It was moved by Ms. Puccini, seconded by Mr. Carey that the solicitor be reprimanded in Convocation.

Carried

The Treasurer administered the reprimand.

CONVOCATION ROSE AT 3:00 P.M.

Confirmed in Convocation this 29 day of May, 1998

Harvey T. Sturber
Treasurer