

MINUTES OF SPECIAL CONVOCATION

Thursday, 24th January, 1991.  
9:30 a.m.

PRESENT:

Acting Treasurer (John D. Ground, Q.C.), Bragagnolo, Campbell,  
Carey, Carter, Chapnik, Copeland, Ferguson, Graham, Guthrie, Hall,  
Hickey, Kiteley, Lamont, Lawrence, Lerner, Levy, Manes, Peters,  
Somerville, Strosberg, Thom, Thoman, Wardlaw and Weaver.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: GREGORY PETER LINTON VANULAR, Pickering

The matter was stood down.

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RE: VICTOR LEO MALONEY, Thunder Bay

Mr. Campbell placed the matter before Convocation.

The reporter was sworn.

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

Mr. MacKenzie requested an adjournment on consent as the solicitor's counsel, Mr. L. Shore had to be in another court.

The adjournment was granted and the matter was put over to the March Special Convocation.

Counsel retired.

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RE: WILLIAM ALEXANDER KING, Toronto

Mr. Campbell placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society and Mr. Grant Doak appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 14th January, 1991 together with the Affidavit of Service sworn 23rd January, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor 24th January 1991 (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

John D. Ground, Chair  
Donald H. L. Lamont  
Thomas J. P. Carey

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

Gavin MacKenzie  
for the Society

WILLIAM ALEXANDER KING  
of the City  
of Toronto  
a barrister and solicitor

Grant H. Doak  
for the solicitor

Heard: November 13, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On March 8, 1990 Complaint D38/90 was issued against William Alexander King alleging that he was guilty of professional misconduct.

An amended Complaint D38a/90 was served on the Solicitor on November 12, 1990, replacing D38/90 and the Committee proceeded on the basis of the amended complaint.

The matter was heard in public on November 13, 1990, before this Committee composed of John D. Ground, Chair, Donald H.L. Lamont and Thomas J.P. Carey. Mr. King attended the hearing and was represented by Grant H. Doak. Gavin MacKenzie appeared as counsel for the Law Society.

DECISION

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

Complaint D38a/90

2(a) While acting as solicitor for his client, Ruby Clarissa Whiston, and thereafter as the solicitor and executor of the Estate of Ruby Clarissa Whiston, he acted or continued to act in matters in which there was or was likely to be a conflict of interest in that:

(i) he drew a will for his client, Ruby Clarissa Whiston, in which he was named as the principal beneficiary, without advising his client to obtain independent legal advice;

(ii) he placed a mortgage in favour of his Registered Retirement Savings Plan on a property owned by his client, Ruby Clarissa Whiston, by use of a Power of Attorney he prepared without advising his client to obtain independent legal advice;

(iii) he entered into an agreement with his client, Ruby Clarissa Whiston, whereby he resided in a property owned by the client without making any rental, tax or utility payments and without advising his client to obtain independent legal advice;

(iv) he failed to provide an accurate, inventory or evaluation of the Estate of his client, Ruby Clarissa Whiston, in an Application filed with the Surrogate Court.

#### Evidence

The total evidence submitted consisted of an Agreed Statement of Facts together with responses to certain questions arising out of the Agreed Statement of Facts. On the basis of the evidence presented, the Committee found each of the particulars of the Complaint to be established.

#### "AGREED STATEMENT OF FACTS"

##### I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D38a/90 and is prepared to proceed with a hearing of this matter on November 13, 1990.

##### 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 D38a/90, has consulted with his counsel with respect to it, and admits the particulars set forth in the Complaint.

##### IV. BACKGROUND FACTS

4. The Solicitor is currently 44 years old. He was called to the Ontario Bar in 1973. After practising as an associate lawyer with Edison, Aird & Berlis for approximately two years, the Solicitor became a sole practitioner. He has practised as a sole practitioner in Toronto continuously since June, 1975. Since 1978, he has shared space with two other lawyers.

5. The Solicitor's practice has at all material times consisted primarily of commercial work for owner-operated incorporated businesses. He practises in all fields except litigation. A small percentage of his practice is the fields of real estate and estates, in which fields his work is primarily for clients for whom he does commercial work.

##### V. RELATIONSHIP WITH RUBY WHISTON

6. The Solicitor met Ruby Clarissa Whiston for the first time in September, 1978, when he visited her at her home at the request of friends of Mrs. Whiston. On that occasion Mrs. Whiston asked the Solicitor to draw a will for her. At that time Mrs. Whiston was 80 years old and was a widow, her husband having died in 1974. Mrs. Whiston has suffered from osteoarthritis for many years, and her physical incapacity became progressively worse after she first met the Solicitor. She was physically unable to write letters for a year or two prior to her death in 1985. She also suffered from depression after her husband died, but was mentally competent at all material times.

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7. The Solicitor was named as Mrs. Whiston's executor in her September, 1978 will, which was amended by a codicil which the Solicitor also prepared, and which was executed in October, 1978. Both the September, 1978, will and the October, 1978, codicil were destroyed when new wills were prepared for Mrs. Whiston by the Solicitor over the following few years. The Solicitor was not named as a beneficiary in either the September, 1978, will, or the October, 1978, codicil. The September, 1978, will replaced a will drawn by another lawyer on Mrs. Whiston's behalf dated October 7, 1976, which was amended by a codicil dated October 4, 1977, which was also drawn by a lawyer other than the Solicitor. The October, 1976, will and the October, 1977, codicil, are attached as Exhibits "A" and "B" respectively to this Agreed Statement of Facts.

8. After preparing a will and codicil for Mrs. Whiston in September and October, 1978, as referred to above, the Solicitor prepared two powers of attorney dated March 1 and March 12, 1979, whereby Mrs. Whiston appointed the Solicitor as her attorney. Mrs. Whiston granted these powers of attorney to the Solicitor to enable him to conduct business on her behalf, as she found it difficult to do her own banking and other business because of her increasingly painful arthritic condition. The powers of attorney dated March 1, 1979 and March 12, 1979, are attached as Exhibits "C" and "D" to this Agreed Statement of Facts respectively.

9. At the time she met the Solicitor. Mrs. Whiston resided alone at 218 Broadway Avenue in Toronto, where she had lived with her husband until his death in 1974. Mrs. Whiston and her husband had no surviving children.

10. After Mrs. Whiston signed the power of attorney referred to in paragraph 8 above, the Solicitor gradually became more involved in managing Mrs. Whiston's affairs. By 1982, he was preparing her income tax returns and paying all her household bills. The Solicitor kept dockets of the time he devoted to Mrs. Whiston's business affairs, including, for example, the substantial time he devoted to paying her bills. The Solicitor's dockets have not been made exhibits to this Agreed Statement of Facts because of their bulk, but are available for the Committee's inspection should the Committee wish to review them. The Solicitor did not send any accounts to Mrs. Whiston for the time he devoted to such non-legal work as paying household bills. He did send her accounts for such work as drafting wills and codicils and preparing her income tax returns. These accounts were reasonable and have been paid.

11. By 1982, the Solicitor had developed a close personal relationship with Mrs. Whiston. He visited her at her home at least once a week and often more frequently. When Mrs. Whiston was in Sunnybrook Hospital for medical treatment, on two occasions, he visited her in the hospital every day. In addition to his work on her business affairs, he performed numerous personal services for her including arranging for a housekeeper to come to her home regularly, the installation of phones in every room in her house, and arrangements with Medic Alert.

12. In October, 1983, because her physical health continued to deteriorate and because she did not feel she could live alone safely, Mrs. Whiston moved out of her house into a retirement home, the Castlevue-Wychwood Towers in Toronto. She decided not to sell her home at 218 Broadway Avenue because she was sentimentally attached to it. She recognized that it was unlikely that she would ever return to live there. The Solicitor continued to visit Mrs. Whiston at least once a week, often with his family, after she moved to the Castlevue-Wychwood Towers. The Solicitor was named in documents filed with Castlevue-Wychwood Towers both as a guarantor of her accounts with the home and as the person to call in an emergency.

13. On shortly before March 1, 1984, the Solicitor prepared a third power of attorney for Mrs. Whiston. Again, Mrs. Whiston appointed the Solicitor as her attorney. The new power of attorney was prepared due to a change in the Power of Attorneys Act. The new power of attorney, unlike those prepared in March, 1979, provided that it could be exercised during any subsequent legal incapacity on Mrs. Whiston's part. It was Mrs. Whiston's expressed wish that the Solicitor should have that power, rather than the Public Trustee. The power of attorney dated March 1, 1984, is attached as Exhibit "E" to this Agreed Statement of Facts.

14. In addition to the will and codicil which he prepared for Mrs. Whiston in September and October, 1978, respectively (as referred to in paragraphs 7 and 8 above), the Solicitor prepared at least two other wills for Mrs. Whiston. In 1981 or early 1982, the Solicitor prepared a will for Mrs. Whiston in which he (the Solicitor) was named as a beneficiary as well as the executor of her estate. This will was destroyed when a new will was prepared for her subsequently. The amount of the bequest to the Solicitor was approximately \$25,000. The Solicitor did advise Mrs. Whiston to obtain independent legal advice before the will was drafted.

15. After he drafted the will, the Solicitor asked a lawyer with whom he shared space, Barry Smith, to attend with him at Mrs. Whiston's residence for the signing of the will. The Solicitor's reason for asking Mr. Smith to attend was that he wanted a level of comfort because he did not want anyone to challenge what Mrs. Whiston was doing. He explained Mr. Smith's presence to Mrs. Whiston by saying that he (the Solicitor) could not witness the will because he was a beneficiary and that he wanted Mr. Smith to talk to her so that it would be difficult for anyone to challenge what she was doing. The Solicitor did not explain Mr. Smith's presence on the basis that because the Solicitor was Mrs. Whiston's lawyer someone might challenge a bequest to him.

16. When the Solicitor and Mr. Smith attended at Mrs. Whiston's house for the signing of the will they were accompanied by Mr. Smith's secretary, Sandra Bell. After introducing Mr. Smith and Ms. Bell to Mrs. Whiston, the Solicitor waited outside while Mr. Smith spoke to Mrs. Whiston about the terms of her will. Mr. Smith had no doubt about Mrs. Whiston's capacity to make a will, and Mrs. Whiston signed the will, which was witnessed by Mr. Smith and Ms. Bell. Mr. Smith explained the terms of the will carefully to her and satisfied himself that she understood the will and intended to make the bequests set out therein. The bequest to Mr. King was specifically discussed and there was no doubt that Mrs. Whiston wanted the Solicitor to be a beneficiary of the will. Mrs. Whiston did not believe that Mr. Smith's presence was necessary because she was very definite about what she wanted to achieve with the bequests in the will, but Mr. Smith considers that his meeting with Mrs. Whiston constituted independent legal advice to her on the terms and conditions of the will.

#### VI. MRS. WHISTON'S 1984 WILL - PARTICULAR 2(a)(i)

17. Mrs. Whiston discussed her will with the Solicitor from time to time, but did not give him any instructions to change it until February 1984. At that time, Mrs. Whiston told the Solicitor that she felt that certain bequests in her existing will should be reduced because the intended beneficiaries were no longer taking any active interest in her, and that the bequest to the Solicitor should be increased significantly. She asked the Solicitor to draft a new will for her.

18. The new will drafted by the Solicitor had the following features:

- (a) The Solicitor was again named as the sole executor and trustee of Mrs. Whiston's will.
- (b) All of Mrs. Whiston's household and personal effects were to be delivered to the Solicitor for his own use absolutely.

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- (c) Whereas in the will referred to in paragraphs 13 to 15 above, Mrs. Whiston had left a bequest of approximately \$25,000 to Muriel and Timothy Lee, in the new will only \$500 was left to Mr. and Mrs. Lee.
- (d) Whereas in the will referred to in paragraphs 13 to 15 above, Mrs. Whiston had left the residue of her estate to her niece, Dorothy Spearman and her nephews, Ronald Whiston and Jack Irons, in the new will only \$10,000 was left to these beneficiaries, while the residue was left to the Solicitor or his estate if he should predecease Mrs. Whiston.

19. On April 2, 1984, the Solicitor met with Mrs. Whiston in her room at the Castlevue-Wychwood Towers for the purpose of reviewing with her the new will which he had prepared on her behalf. He asked her to read the will, and she did. He asked her whether she was sure that the will reflected what she wished to do and she confirmed that it did.

20. The Solicitor and Mrs. Whiston then went downstairs to the administration office, where the Solicitor introduced himself to two employees of the Castlevue-Wychwood Towers, Theodore Terry Galatowski and Karl Born, as Mrs. Whiston's lawyer. Mr. Galatowski and Mr. Born were employed as personnel clerk and a trust clerk respectively, although the Solicitor did not know their precise positions at the time. He understood that they were responsible people involved in the administration of the home. The Solicitor asked them to witness Mrs. Whiston's will, and they did so. Neither Mr. Galatowski or Mr. Born recall the Solicitor mentioning to them that he was also a beneficiary of Mrs. Whiston's estate, although it is the Solicitor's position that he did so. The April 2, 1984, will is attached as Exhibit "F" to this Agreed Statement of Facts.

21. The Solicitor stood to benefit significantly from reductions in the amounts of the bequests to Mr. and Mrs. Lees, Ms. Spearman, Mr. Iron and Mr. Whiston. The Solicitor says that when Mrs. Whiston asked him to make these changes to her will they had a brief discussion about her obtaining independent legal advice, that she did not wish to do so, and that the Solicitor did not pursue the matter. They had no discussion about the possibility of her obtaining independent legal advice on the day the will was signed, and nothing in the Solicitor's file records the earlier discussion.

#### VIII. 218 BROADWAY AVENUE - PARTICULAR 2(a)(iii)

22. After Mrs. Whiston moved to the Castlevue-Wychwood Towers in October, 1983, her home at 218 Broadway Avenue remained vacant for several months. Mrs. Whiston was aware at this time that the Solicitor was having marital problems and that he was going to be separating from his wife. Mrs. Whiston told the Solicitor that he should feel free to stay in her house at 218 Broadway. The Solicitor accepted her offer and moved into 218 Broadway in May, 1984. He has lived there continuously since then.

23. The Solicitor paid no rent to Mrs. Whiston at any time. He offered to pay rent when she proposed that he live in the house, but she said she felt that it was not right that he pay rent and she refused to consider it because she did not believe it was consistent with their relationship. Originally, Mrs. Whiston made all tax, utility, and insurance payments on the house as well, although the Solicitor began making utility and insurance payments in January, 1985, and tax payments in January, 1986, shortly after Mrs. Whiston's death. The Solicitor did not inform Mrs. Whiston that he had started to pay the operating costs related to the house. He acknowledges that he could have afforded to pay rent of between \$500 and \$1000 a month to Mrs. Whiston and that she would not have had to know about that either. One of the reasons he started to pay the operating costs was that he recognized that if Mrs. Whiston had kept paying them it would have become necessary to sell the house.

24. The Solicitor did not at any time advise Mrs. Whiston to obtain independent legal advice or independent legal representation in relation to the arrangement made by the two of them whereby he resided at 218 Broadway Avenue without paying rent, taxes, or (for a period in excess of six months) the operating costs of the property.

VIII. THE RRSP MORTGAGE - PARTICULAR 2(a)(ii)

25. Shortly after he moved into 218 Broadway, the Solicitor, acting pursuant to the power of attorney mentioned in paragraph 12 above (a copy of which is attached hereto as Exhibit "E"), signed a mortgage in the amount of \$30,000 on Mrs. Whiston's behalf whereby a first mortgage on 218 Broadway was provided to the Solicitor's Registered Retirement Savings Plan. The mortgage was dated June 25, 1984, and was registered (along with the power of attorney) on July 4, 1984. The mortgage is attached as Exhibit "G" to this Agreed Statement of Facts. The mortgage was discharged by discharge dated January 13, 1986, and registered on March 13, 1986. The discharge is attached as Exhibit "H" to this Agreed Statement of Facts. The mortgage transaction came about in the following way.

26. Prior to 1984, the Solicitor and another lawyer, Barry Smith, entered into an arrangement whereby the Solicitor borrowed money, put it into his RRSP, then loaned it to Smith on security of a mortgage granted by Smith to the trust company which administered the Solicitor's RRSP, to which Smith made monthly payments. Similarly, Smith borrowed money, put it into his RRSP, then loaned it to the Solicitor on the security of a mortgage granted by the Solicitor to the trust company which administered Smith's RRSP, to which the Solicitor made monthly payments. The arrangement in effect enabled the Solicitor and Smith to use the money in their RRSP's.

27. Because in June, 1984, the property against which the mortgage to the Solicitor's RRSP was registered was being sold, in order for the Solicitor and Smith to continue to use the money in his RRSP, it was necessary for a new property to be substituted. It was for this reason that the mortgage dated June 25, 1984, to the Solicitor's RRSP was registered against title to Mrs. Whiston's home at 218 Broadway.

28. The Solicitor had no discussion with Mrs. Whiston about the prospect of her giving a mortgage to his RRSP until after he moved into 218 Broadway, and he had no discussion with her at any time about either the term of the mortgage or its due date. The Solicitor did not give a copy of the mortgage to Mrs. Whiston. The Solicitor, did, however, discuss the mortgage with Mrs. Whiston before it was registered on title, and it was registered against the title to Mrs. Whiston's home with her knowledge and consent.

29. The principal amount of the mortgage was \$30,000, with interest at 10% a year calculated semi-annually. The term of the mortgage was two years, from July 1, 1984, to July 1, 1986. The mortgage was open. No other mortgages were registered against 218 Broadway. Interest was payable in instalments of \$1,610.10 on the first day of January and the first day of July beginning on January 1, 1985, and ending on the maturity date, July 1, 1986. The Solicitor made each of the interest payments due on January 1, 1985, and July 1, 1985, and the principal was repaid together with the remaining interest owing in January, 1986, shortly before the date of the discharge which is marked as Exhibit "H", and shortly after Mrs. Whiston's death on November 4, 1985.

30. The Solicitor explains the fact that he used the power of attorney to sign the mortgage on Mrs. Whiston's behalf rather than asking her to sign it personally on the basis of convenience. He acknowledges that he was seeing her regularly at the relevant time and that because he signed the mortgage as her attorney he had to register the power of attorney as well as the mortgage. The Solicitor notes that when he visited Mrs. Whiston he did not as a rule bring with him a briefcase with documents in it.

31. The Solicitor says that he had a brief discussion with Mrs. Whiston about the possibility of her obtaining independent legal advice in relation to the mortgage transaction, and that she did not wish to do so, and that he did not pursue the matter further. Nothing in the Solicitor's file records this discussion.

IX. THE PROBATE APPLICATION - PARTICULAR 2(a)(iv)

32. Mrs. Whiston was taken from the Castlevue-Wychwood Towers to Toronto Western Hospital on September 3, 1985, for an operation for a perforated bowel. She remained in the hospital until she died on November 4, 1985.

33. On January 15, 1986, the Solicitor swore an affidavit of verification in support of an application for probate of Mrs. Whiston's will dated April 2, 1984, which will is attached as Exhibit "F" to this Agreed Statement of Facts. In the application for probate the Solicitor stated that the value of the estate was \$51,900, and comprised personalty worth \$1900 and real estate worth \$50,000. In the affidavit of verification which he swore in connection with the application for probate, the Solicitor certified that "the information contained in the Application and in any attached schedules and sheets is true to the best of my knowledge and belief". The application for probate including the affidavit of verification sworn by the Solicitor is attached as Exhibit "I" to this Agreed Statement of Facts.

34. As a result of the Solicitor's application, letters probate were granted on January 23, 1986. The letters probate are attached as Exhibit "J" to this Agreed Statement of Facts.

35. The real property which the Solicitor valued at \$50,000 in the application for probate is the house at 218 Broadway Avenue, where he had been living for over 18 months. The house is a detached two-bedroom brick bungalow with 856 square feet of floor space excluding the basement, and with hardwood floors, a partially finished basement, and a garage. It is located approximately two blocks north and one block east of the intersection of Mount Pleasant Boulevard and Eglinton Avenue in Toronto. As of the date on which the Solicitor swore the affidavit of verification the driveway to the house needed redecorating but not structural repair. Also as of the date, the roof was in poor repair and was leaking. The roof was completely replaced in 1988.

36. At the time he swore the affidavit of verification the Solicitor was unaware of a valuation of 218 Broadway which had been obtained ten years earlier which appraised the property's value to be \$69,000 at that time. As part of its investigation of this matter the Society obtained an appraisal from Barry A. Lebow of Lebow Appraisal Services Ltd., who concluded that as of January 15, 1986, the market value of the property was between \$110,000 and \$125,000. Mr. Lebow's appraisal report is attached as Exhibit "K" to this Agreed Statement of Facts. A second appraisal was obtained by the Solicitor's counsel for the purpose of litigation in which the estate was involved (which litigation is referred to in more detail below). This appraisal was performed by J. Feilders of Royal LePage, who concluded that as of September 28, 1988, the market value of the property was between \$215,000 and \$220,000. Mr. Feilder's appraisal report is attached as Exhibit "L" to this Agreed Statement of Facts. The Solicitor acknowledges that he did not take the necessary time to care before swearing the affidavit of verification, but says that he did not intend to mislead the Court.

37. In addition to failing to provide an accurate evaluation of the real property of Mrs. Whiston's estate, the Solicitor also failed to provide an accurate evaluation of the personalty of the estate. The statement in the application for probate that the personalty was worth \$1900 was inaccurate in that in addition to cash, furniture, and personal belongings Mrs. Whiston owned two Canada Savings Bonds worth \$5000 each. The Solicitor had known of the existence of the bonds, but had forgotten them at the time he swore the affidavit.



38. Two of Mrs. Whiston's next of kin, namely her niece, Doris Spearman and her nephew, Jack Irons, consented the April 2, 1984 will and sought revocation of the grant of probate which was based on the Solicitor's application. On May 16, 1986, Doris Spearman swore an affidavit in support of the application for revocation of probate. Mrs. Spearman's affidavit is attached as Exhibit "M" to this Agreed Statement of Facts.

39. On January 13, 1987, the Honourable Judge Heather Smith gave directions for a trial of the issues to be determined in the proceedings to revoke the grant of probate. The issues to be tried were, first, whether the will was duly executed; second, whether Mrs. Whiston was possessed of testamentary capacity at the time she signed the will; and third, whether the will was procured by fraud or undue influence. Judge Smith's order is attached as Exhibit "N" to this Agreed Statement of Facts.

40. The Solicitor was examined for discovery on June 4 and July 8, 1987. The Society has been provided with copies of the transcripts of the Solicitor's examination, and many of the statements made in this Agreed Statement of Facts are based on his testimony in that proceeding.

41. The litigation was settled by minutes of settlement dated January 5, 1989, which are attached to this Agreed Statement of Facts as Exhibit "O". In the minutes of settlement the parties to the litigation agreed upon the following terms:

- (a) Doris Spearman and Jack Irons would consent to an order dismissing their application contesting the April 2, 1984, will and seeking revocation of the grant of probate to the Solicitor;
- (b) The Solicitor would agree to pay \$104,575.45 to Doris Spearman and Jack Irons.
- (c) Doris Spearman and Jack Irons would accept the payment of \$104,575.45 in full settlement of all claims they may have against the Solicitor arising out of the will; and
- (d) Doris Spearman and Jack Irons would direct their Solicitors to deliver a letter to the Law Society informing the Society of the settlement and of their "instructions ... to withdraw their complaint" against the Solicitor.

42. On November 25, 1988, the Solicitor's counsel wrote to the Society to inform it of the settlement of the litigation and to ask the Society to take no further steps pending completion of the settlement. The Solicitor's counsel's letter to the Society dated November 25, 1988, is attached as Exhibit "P" to this Agreed Statement of Facts.

43. In implementation of the settlement, the Solicitor paid \$104,574.45 to Doris Spearman and Jack Irons, and on January 19, 1989, the Honourable Judge Wren ordered that the application commenced by Mrs. Spearman and Mr. Irons be dismissed on consent without costs. Judge Wren's order dated January 19, 1989, is attached as Exhibit "Q" to this Agreed Statement of Facts.

44. Also in implementation of the settlement, by a letter dated February 7, 1989, the solicitors for Doris Spearman and Jack Irons wrote to the Society to inform it that Mrs. Spearman and Mr. Irons wished to withdraw their complaint against the Solicitor. The letter dated February 7, 1989, is attached as Exhibit "R" to this Agreed Statement of Facts.

45. The purpose of the letter of February 7, 1989, was to ensure that the Society was informed that the specific complaint of Mrs. Spearman and Mr. Irons, which was the subject of the Surrogate Court action, had been satisfied. Counsel for the Solicitor was aware that it was open to the Society to proceed against the Solicitor independently of the complaint of Mrs. Spearman and Mr. Irons.

X. CHARACTERIZATION OF THE SOLICITOR'S MISCONDUCT

46. On his examination for discovery in the proceedings referred to in paragraphs 31 to 43 above, the Solicitor testified that Mrs. Whiston and he, by April 2, 1984, had become very good and close friends, and that their relationship resembled the type of relationship which one would expect as between a grandmother and grandson. The Society is aware of no evidence that Mrs. Whiston lacked testamentary capacity or that the Solicitor either defrauded her, or (except to the extent of the legal presumption arising from the facts set forth above) exercised undue influence over her. The professional misconduct described in this Agreed Statement of Facts was isolated in the sense that it involved only one client, although it involved a series of decisions on the Solicitor's part over a protracted period all of which were at least potentially to the Solicitor's personal financial advantage and none of which involved the Solicitor's having Mrs. Whiston obtain independent legal advice. The Solicitor acknowledges having breached Rule 5 of the Rules of Professional Conduct. The Solicitor believes that his judgment was influenced by his close personal relationship with Mrs. Whiston, whom he considered a close friend, and says that his actions were not motivated by the potential for personal financial gain.

47. The Solicitor acknowledges having thoroughly read this Agreed Statement of Facts and the exhibits attached to it, and having taken the advice of his counsel, Grant Doak, before signing it.

DATED at Toronto this 12th day of November, 1990."

RECOMMENDATION AS TO PENALTY

There was no joint submission as to penalty. Counsel for the Solicitor submitted that the penalty should be a reprimand in Convocation. Counsel for the Society submitted that the penalty should be a suspension of more than a few weeks but not more than six months.

Your Committee recommends that the penalty be a reprimand Convocation.

REASONS FOR RECOMMENDATION

In the view of the Committee, the evidence presented established that the Solicitor had acted or continued to act in matters in which there was or was likely to be a conflict of interest but that he did not do so with the intention of taking advantage of his client.

The Solicitor had a long and close association with his client, which went far beyond the usual solicitor/client relationship. The Solicitor performed many services for his client, including conducting correspondence, paying bills, looking after banking and other services for which he did not charge any fees. In addition, he visited his client regularly at her home and while she was in hospital and arranged for a housekeeper, the installation of telephones and arrangements for Medic Alert. The evidence also established that the Solicitor and his family had a social, and very close to a family, relationship with Mrs. Whiston. The relative who complained to the Law Society lived in England and was not particularly attentive to Mrs. Whiston or her needs.

The Agreed Statement of Facts also established that Mrs. Whiston was a very strong-willed and independent woman and at no time did Mrs. Whiston suffer from lack of capacity and that throughout the period of time involved, she was fully aware of her actions and was very definite

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as to her wishes and as to the legal result desired. It was equally clear that Mrs. Whiston did not wish to have independent legal advice and would have rejected any suggestion that she obtain independent legal advice and that she fully intended to benefit the client in the manner provided for in the Will referred to in the Particular 2(a)(i) of the Complaint and in the arrangements for the use of her house outlined in Particular 2(a)(iii) of the Complaint.

The Committee also took note of the brief of character evidence submitted by counsel for the Solicitor and of the fact that Mr. King had no prior Complaints against him or appearances before the Discipline Committee.

In spite of the mitigating circumstances outlined above, the Committee is of the view that the Complaints established are a serious matter and that the proper course of action for the Solicitor was to insist on the client obtaining independent legal advice or to withdraw from representing her as her lawyer. The Solicitor was clearly aware of the Rules of Professional Conduct dealing with conflict of interest situations and, in fact, had complied with such rules when preparing an earlier Will for Mrs. Whiston. In addition, it appears that, although the client did not suffer any loss, the Solicitor did not fully disclose to Mrs. Whiston the nature of the RRSP mortgage transaction referred to in Particular 2(a)(ii) of the Complaint and that he was negligent in preparing the inventory of the assets of the estate referred to in Particular 2(a)(iv) of the Complaint.

In summary, the Committee felt that, whereas the Solicitor did not take advantage of Mrs. Whiston and was complying with her wishes, he failed to comply in several respects with the Rules of Professional Conduct. We were, however, impressed with the care and attention the Solicitor showed for his client. We were unanimous that in the special circumstances of this case, a reprimand in Convocation is the appropriate penalty.

William Alexander King was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 23rd day of March, 1973.

ALL OF WHICH is respectfully submitted

DATED this 14th day of January, 1991

"J. Ground"  
John D. Ground, Chair

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

No representations by either counsel were made as to the Report.

The Report was adopted.

It was moved by Mr. Campbell, seconded by Mr. Lerner that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded be adopted.

Submissions by counsel were made in support of the Recommendation as to Penalty.

Counsel, solicitor, the reporter and public withdrew.

It was moved by Mr. Wardlaw, seconded by Strosberg that the solicitor be reprimanded in Committee.

Not Put

24th January, 1991

The Recommendation as to Penalty contained in the Report was adopted.

Counsel, solicitor, the reporter and public were recalled.

The solicitor and counsel were informed of Convocation's decision. The solicitor signed the waiver of appeal.

Counsel, reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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RE: ALBERT JOHN BICKERTON, Toronto

Mr. Campbell placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Law Society and Mr. Brian Greenspan appeared for the solicitor who was present.

The Report of the Discipline Committee had been adopted at the September Convocation. The matter was adjourned in September at the request of the solicitor when a higher penalty than that recommended by the Report was moved in Convocation. The solicitor, through his counsel, waived a quorum of the September Convocation.

#### THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

#### REPORT AND DECISION

D. Jane Harvey, Chair  
Gordon H.T. Farquharson  
Stuart Thom

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

Reginald Watson  
for the Society

ALBERT JOHN BICKERTON  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: June 5, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

#### REPORT

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On March 15, 1990, Complaint D33/90 was issued against Albert John Bickerton alleging that he was guilty of professional misconduct.

The matter was heard in public on June 5, 1990 before this Committee composed of D. Jane Harvey, Chair, Gordon H.T. Farquharson and Stuart Thom.

Mr. Bickerton attended the hearing and was not represented. Reginald Watson appeared on behalf of the Society.

DECISION

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

Para. 2: (Complaint D33/90)

- (a) He failed to comply with an order of the Discipline Committee dated April 28, 1989 requiring him to pay costs to the Society in the amount of \$2,000.00, despite written requests dated September 21, November 2 and November 21, 1989.
- (b) He failed to provide a reply to the Society regarding a complaint by Mr. Francisco Perez, despite letters dated September 8th and December 6, 1989 and a telephone message on January 29, 1990.
- (c) He failed to reply to communications from the Law Society regarding a complaint made by Jennifer Wren, Assistant Crown Attorney.

Evidence

The entirety of the evidence before the Committee on the issue of professional misconduct was in the form of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of the Complaint D33/90 and is prepared to proceed with a hearing of this matter on June 5, 1990.

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

The Solicitor has reviewed Complaint D33/90 and admits the particulars contained therein.

IV. BACKGROUND

4. The Solicitor was called to the Bar in 1978. He is a sole practitioner. His practice is primarily criminal.

V. FACTS

Francisco Perez

5. The Complainant, Francisco Perez, wrote to the Society on August 21, 1989 complaining about the Solicitor's failure to, inter alia, maintain contact with him, co-operate with his new counsel in the transfer of his file and account to him for fees and disbursements. The Society wrote to Mr. Bickerton on September 8, 1989 requesting a reply within two weeks. The Solicitor did not reply.

6. On November 21, 1989, a telephone call was placed to the Solicitor's office to inquire to why a reply had not been received. On November 22, 1989, the Solicitor advised that a reply would be mailed by November 27, 1989. The Solicitor did not reply. On December 6, 1989, the Society wrote to the Solicitor by registered mail. In that letter,

the Solicitor was advised that the matter would be referred to the Discipline Committee for further instructions if he did not reply within seven days of the date of the letter. A further telephone message was left for the Solicitor on January 10, 1990. The following day, the Solicitor explained that he had been on vacation but thought that a reply had been sent. He intended to try and locate the reply and would contact the Society. When the Solicitor failed to contact the Society, a further message was left for him on January 29, 1990. The Solicitor did not reply. Complaint D33/90 was issued on March 15, 1990.

#### Jennifer Wren

7. The Complainant, Jennifer Wren, in her capacity as an Assistant Crown Attorney in Brampton, complained to the Society in June of 1989 with respect to the Solicitor's failure to communicate with her regarding an undertaking to make restitution on behalf of a client, Lynda Paxton. Ms. Paxton pled guilty to charges of theft over \$1,000. The matter was set for March 16, 1989 for sentencing at which time the Solicitor advised the court that he had a money order in his file and undertook to forward it at once. As of June, 1989, restitution had not been made. Ms. Wren made calls to the Solicitor in May, 1989, many of which were not returned. The Solicitor subsequently advised Ms. Wren that the cheque had been sent in March, 1989.

8. In the fall of 1989, the Solicitor advised the Society that he had found a copy of the money order in his file. He agreed to provide a copy of the money order so that it could be traced through the bank. He further agreed to provide the Society with a current telephone number for his client. The Society sent a letter to the Solicitor on November 15, 1989 confirming the above and requesting further documentation. No reply was received from the Solicitor. The Solicitor did not reply to a telephone call made by the Society. By registered letter dated January 18, 1990, the Society advised the Solicitor that unless the documents were received within two weeks, a Section 42 Order would be sought which would freeze the Solicitor's accounts. Complaint D33/90 was issued on March 15, 1990.

#### Past Discipline

9. A previous Complaint was issued against the Solicitor on November 28, 1988. On April 28, 1989, the Solicitor was reprimanded in Committee. At that time, the Committee also ordered that the Solicitor pay costs to the Society in the amount of \$2,000.00. The Solicitor indicated at that time that he was willing and able to make the payment.

10. On September 21, 1989, the Society wrote to the Solicitor's counsel requesting that payment of the costs be made. A further letter was sent to the Solicitor's counsel on November 2, 1989 requesting an indication from the Solicitor within two weeks as to whether he intended to pay the costs, failing which instructions would be sought as to the appropriate course of action. No reply was received from the Solicitor. On November 21, 1989, a further letter was sent by the Society to the Solicitor's counsel indicating that the matter was going to be referred to the Discipline Committee for instructions on proceeding. The Solicitor's counsel, Brian Greenspan, assured that he had passed these communications on to his client. Complaint D33/90 was issued on March 15, 1990.

#### VI. EVENTS SUBSEQUENT TO ISSUANCE OF COMPLAINT

11. After receiving Complaint D33/90, the Solicitor provided the Society a written reply, dated March 26, 1990, with respect to the Francisco Perez complaint.

12. After receiving Complaint D33/90, the Solicitor provided to the Society a written reply, dated March 26, 1990, with respect to the Jennifer Wren complaint.

13. After receiving Complaint D33/90, the Solicitor attended upon the Society's offices to discuss the matters outlined in the Complaint. The Solicitor provided a cheque to the Society in the amount of \$1,500.00 in partial payment of the outstanding costs.

DATED at Toronto, this 5th day of June, 1990."

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that the said Albert John Bickerton be reprimanded in Convocation.

#### REASONS FOR RECOMMENDATION

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The Solicitor was reprimanded in Committee in April, 1989 for failure to account to a client on proceeds of a sale of property and failure to co-operate with the audit investigation.

The Solicitor is now before us again, on an admitted complaint of failure to comply with an order of the Discipline Committee, dated April 28, 1989, failure to provide a reply to the Society regarding a complaint by Mr. Francisco Perez and failure to reply to communications from the Law Society regarding a complaint made by Jennifer Wren, Assistant Crown Attorney.

The recommendation of reprimand in Convocation has been made to impress upon the Solicitor the need to fulfill his obligations without requiring the Society to expend considerable time, energy and expense to require him to do so.

Albert John Bickerton was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 13th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED this 2nd day of August, 1990

"J. Harvey"  
D. Jane Harvey, Chair

It was moved by Mr. Campbell, seconded by Mr. Lerner that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded be adopted.

There were representations made by both counsel in support of a reprimand rather than the suspension of one month as moved in the September Convocation.

Questions from the Bench followed.

The solicitor, counsel, the reporter and public withdrew.

The motion put at the September Convocation, that the solicitor be suspended for one month, was voted on and lost.

The recommendation that the solicitor be reprimanded was adopted.

The solicitor, counsel, the reporter and public were recalled.

24th January, 1991

The solicitor and counsel were informed of Convocation's decision. The solicitor waived his right to appeal.

Counsel, the reporter and public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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Re: RICHARD SIU-DICK WONG, Toronto

Mr. Campbell placed the matter before Convocation.

The reporter was sworn.

Mr. Robert Conway appeared for the Society and Mr. T. Danson appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 13th September, 1990 together with the Affidavit of Service sworn 25th September, 1990 by Louis Katholos that he had effected service on the solicitor by registered mail on 18th September, 1990 (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor 24th January, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

#### THE LAW SOCIETY OF UPPER CANADA

##### The Discipline Committee

##### REPORT AND DECISION

Colin L. Campbell, Chair  
Maurice C. Cullity  
Sandra Chapnik

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

J. Robert Conway  
for the Society

RICHARD SIU-DICK WONG  
of the City  
of Toronto  
a barrister and solicitor

T. Danson  
for the solicitor

Heard: September 4, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

##### REPORT

On January 16, 1989, Complaint D124/88 was issued against Richard Siu-Dick Wong alleging that he was guilty of professional misconduct, on October 2, 1989, Complaint D79/89 was issued alleging that he was guilty of professional misconduct and on July 10, 1990, Complaint D112/90 was issued alleging that he was guilty of professional misconduct.

The matter was heard in public on September 4, 1990 before this Committee composed of Colin Campbell, Chair, Maurice Cullity and Sandra Chapnik. Mr. Wong was in attendance and was represented by T. Danson. J. Robert Conway appeared as counsel for the Law Society.



DECISION

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

Complaint D124/88

- 2(a) He acted as solicitor for Steven and Gail Noble and Equipmort Ltd. in a situation of apparent conflict of interest in a transaction in which Equipmort Ltd. advanced \$3,456.00 to Steven and Gail Noble by way of a mortgage loan on terms which were onerous to Steven and Gail Noble, and, in acting in that situation of conflict of interest, favoured the interests of Equipmort Ltd. over the interests of Steven and Gail Noble.
- (b) He acted for Equipmort Ltd. against Steven and Gail Noble with regard to enforcing the security provided for in a mortgage given by Steven and Gail Noble to Equipmort Ltd., when he had previously advised and acted for both Steven and Gail Noble and Equipmort Ltd. on the original placing of the mortgage.

Complaint D79/89

- 2(a) In a real estate transaction which closed on or about August 31, 1988, in which he represented the vendors, Mr. and Mrs. Vinko Jakovljevic ("the Jakovljevic's"), and the purchaser, Leo Dos Reis ("Dos Reis"), he breached his fiduciary duty to his clients, the Jakovljevic's, by:
  - i) failing to meet with the Jakovljevic's and obtain their instructions regarding payment and apportionment of the proceeds of the transaction;
  - ii) failing to disclose to the Jakovljevic's the existence of another sale of the subject property from Dos Reis to Claude Bitton, in which transaction Dos Reis profited in the amount of \$300,000.00, more or less, without the knowledge of the Jakovljevic's.

Complaint D112/90

- 2(a) He unreasonably delayed in fulfilling the undertaking which he gave his fellow solicitor, Victor Slater, in July, 1988 to pay off and to register two discharges of mortgage;
- (b) He unreasonably delayed in fulfilling the undertaking which he gave his fellow solicitor, William Fysh in August, 1988 to obtain discharges of certain mortgages and to provide Mr. Fysh with the registration particulars for such discharges;
- (c) He unreasonably delayed in providing a reporting letter to his client, Roger De Batisse, with respect to a real estate transaction which was completed in December, 1988;
- (d) He unreasonably delayed in registering a discharge of a second mortgage on behalf of his client, Janet Westwood.

Evidence

The entirety of the evidence before the Committee on the issue of professional misconduct was in the form of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D124/88, D79/89 and D112/90, and is prepared to proceed with a hearing of this matter on September 4, 1990.

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 admits the allegations of professional misconduct set out in Complaints D124/88, D79/89 and D112/90.

IV. FACTS

(a) NOBLE COMPLAINT -- D124/88

4. In September, 1984, Gail & Steven Noble purchased their home in Stouffville, in the Regional Municipality of York, for \$50,000.

5. In March, 1986, the Nobles were overindebted. They were tradespeople who were not sophisticated in business and legal matters. They applied for a mortgage loan at a Toronto area mortgage broker which advertised widely that it arranged mortgage loans for people who were overindebted or who were even facing Power of Sale proceedings.

6. The mortgage was a second mortgage and the principal amount was \$3,750.00. The mortgage broker appointed the Solicitor to act on the transaction, and the Solicitor represented the Nobles as well.

7. The Nobles never actually met the Solicitor during the second mortgage transaction. They dealt entirely with Carol Davidson, the Solicitor's secretary. Ms. Davidson is very knowledgeable and experienced in conveyancing matters.

8. The Nobles told Ms. Davidson that they intended to use the proceeds of the second mortgage loan to pay the arrears on their first mortgage. However, they ended up spending most or all of the proceeds of the second mortgage loan on other expenses, which left their first mortgage still in arrears.

9. Ms. Davidson obtained a verbal clearance from the first mortgagee prior to advancing funds on the second mortgage, but subsequently a written statement was received from the first mortgagee indicating arrears. The first mortgagee did not indicate that it had commenced Power of Sale proceedings, but in fact it had.

10. Ms. Davidson learned that the first mortgage was under Power of Sale proceedings. When she informed the Nobles of this, they asked Ms. Davidson if she knew where they might obtain a third mortgage to enable them to pay the arrears on their first mortgage.

11. Apart from whatever equity the Nobles had in their property, the Nobles clearly were credit risks who needed a lender of last resort. Ms. Davidson phoned several mortgage brokers on behalf of the Nobles, but all of the brokers declined because in their opinion there was no equity in the property and the Nobles were a poor credit risk.

12. Ms. Davidson then arranged for the Nobles to obtain a third mortgage from Equimort Ltd., which was in the business of supplying secretarial and other support services. Ms. Davidson was the president of Equimort, and Equimort conducted its business in the suite which also contained the Solicitor's law office.

13. At all material times the Solicitor himself was also a client of Equipmort. Equipmort supplied secretarial and other support services for the Solicitor's law practice. These services included providing the Solicitor with the services of Ms. Davidson as his secretary.

14. The Solicitor's office represented both the Nobles and Equipmort on the third mortgage loan transaction. The Nobles dealt exclusively with Ms. Davidson again.

15. The Solicitor now recognizes that he ought not have represented the Nobles on the Equipmort third mortgage loan transaction, because it was evident from the very nature of the transaction that the interests of his two clients conflicted. Following are examples why the conflict of interest was evident:

- (1) for the Nobles, Equipmort was a lender of last resort. Equipmort had funding which the Nobles desperately needed. In such a situation the interests of the lender and the borrower are, by necessary implication, in conflict;
- (2) the Solicitor had a close business relationship with one client, and further, that was the client which had the superior bargaining position in the transaction;
- (3) one client, the lender, was insisting that the other client, the borrower, forego the minimum protection afforded by statute for default under a mortgage.

16. The Equipmort third mortgage was in the amount of \$3,546.00. To this amount, the Nobles were to add \$1,600.00 of their own funds to take care of the arrears on the first mortgage.

17. The terms of the Equipmort mortgage were formulated by Ms. Davidson. The mortgage was to mature in five months, because the Nobles thought they could fully repay it by the end of Mr. Noble's employment during the current construction season. Interest was payable at the rate of one half of one percent per week (0.5%), compounded weekly. The Nobles agreed to pay \$400.00 per week on account of the mortgage, and from that amount Equipmort was to pay the regular monthly instalments on the first mortgage and the balance was to cover the payments due under the Equipmort mortgage; the Nobles were to continue making the payments on the second mortgage. The Nobles were required to provide a Quitclaim Deed in favour of Equipmort which Equipmort was entitled to register if default continued for seven days.

18. The Equipmort third mortgage brought the total of the mortgages against the Nobles' property to between 87% and 94% of the estimated range of value of the property. That estimated range was between \$60,000.00 and \$65,000.00, and the total outstanding on the three mortgages was approximately \$56,667.00, calculated as follows:

1st mortgage (Canada Trustco)	\$49,730
2nd mortgage (Atlas Invest.)	3,750
3rd mortgage (Equipmort)	3,546
	<u>\$56,667</u>

19. The Nobles executed the Equipmort mortgage on April 4, 1986. They paid the \$1,600.00 towards the arrears under the first mortgage almost immediately, but quickly fell behind in their payments of \$400/per week under the Equipmort mortgage -- they were unable to pay the first weekly instalment until April 25, 1986, when it was three weeks overdue. When he delivered the first instalment on April 25, Mr. Noble promised that he would deliver payment of the other overdue instalments, together with the payment due the following week, to the Equipmort office on the next payment date, May 2, 1986.

20. Mr. Noble failed to show at the Equipmort office on May 2, 1986. Ms. Davidson tried to contact him by phone but was unsuccessful. The Solicitor's office then sent the Nobles a letter on May 2, 1986 asking them to let the Solicitor's office know whether the weekly payment of \$400.00 was too onerous. The letter went on to state that in view of the non-payment and non-communication from the Nobles, the letter was final notice that Equipmort would register the Quitclaim Deed unless the matter was resolved.

21. The Solicitor registered the Equipmort mortgage and the Quitclaim Deed on May 12, 1986.

22. In September, 1986, however, the first mortgagee commenced an action against Equipmort for arrears under the first mortgage. Default judgment was obtained against Equipmort on October 15, 1986 in the amount of \$2,792.61.

23. Equipmort, through another solicitor, issued a Statement of Claim against the Nobles in September, 1986 for possession. Equipmort obtained default judgment soon thereafter.

24. The first mortgagee issued a Notice of Power of Sale on February 5, 1987. Shortly thereafter both the Nobles and Equipmort proceeded to obtain separate agreements of purchase and sale with respect to the property.

25. Equipmort entered into an agreement on February 16, 1987 to sell the property to one Kaczmarek for \$70,000. The Nobles entered into an agreement on February 24, 1987 to sell the property for \$87,000. The Nobles' agreement expired, however, because the Nobles were no longer the registered owners.

26. The Equipmort sale to Kaczmarek was completed on March 16, 1987.

27. When the Nobles' new solicitor requested an accounting of the proceeds of the sale, the Solicitor replied that he failed to understand why the Nobles were entitled to an accounting. The Solicitor then went on to state, however, that it was his

"information that after payment of all expenses incurred in the property, together with defending an action brought by the first mortgagee, an action for possession by Equipmort and the eventual sale of the property, there were no excess proceeds whatsoever."

28. Real estate prices increased significantly during the spring of 1987. Shortly after completion of the Kaczmarek purchase on March 16, 1987, Kaczmarek re-sold the property for \$100,000. That sale was completed on May 14, 1987, just two months after the completion of the Equipmort sale to Kaczmarek for \$70,000. The parties who purchased from Kaczmarek for \$100,000 were the same parties who had been willing to purchase the property from the Nobles a couple of months earlier for \$87,000.

(c) JAKOVLJEVIC COMPLAINT -- D79/89

29. The Solicitor was retained by Leo Dos Reis ("Dos Reis") in August, 1988 on the sale of 1885 Sismet Road in Mississauga. This was a commercial property.

30. Dos Reis made his living by investing in commercial and residential real estate.

31. The parties hereto agree for the purposes of these proceedings that 1885 Sismet Road was owned at all material times by Dos Reis (50%) and Vinko and Mary Jakovljevic (50%). Dos Reis and the Jakovljevics were related by marriage -- Mary Jakovljevic was Dos Reis' mother-in-law. Vinko Jakovljevic disputes Dos Reis' claim to a 50% interest in 1885 Sismet Road, but that dispute does not affect the matters in issue in these discipline proceedings.

32. In or about July, 1988, Dos Reis procured an offer to purchase 1885 Sismet Road for \$2.2 million. He concealed that offer from the Jakovljevics because he wanted to keep \$300,000 of the profit on the sale for himself.

33. To accomplish this, Dos Reis divided the \$2.2 million transaction into two transactions. Firstly, he told the Jakovljevics that he had obtained an offer for \$2.2 million, but then later told them that the purchaser would not pay more than \$1.9 million. He then presented the Jakovljevics with a fictitious offer for \$1.9 million. However, the party who was actually purchasing for \$2.2 million had already signed an offer for \$2.2 million, and Dos Reis had accepted that offer.

34. Dos Reis then brought the \$2.2 million and the \$1.9 million offers to the Solicitor's office. His intention was to make it appear that the Jakovljevics and Dos Reis were selling 1885 Sismet Road for \$1.9 million, and that the property was then being "flipped" to a new purchaser for \$2.2 million. Both transactions were scheduled to close on the same day, August 23, 1988.

35. The person at the Solicitor's office to whom Dos Reis brought the transactions was Carol Davidson, the Solicitor's secretary. At this time, however, Ms. Davidson's surname was "Milligan". Ms. Milligan was the only person Dos Reis dealt with at the Solicitor's office on previous occasions when the Solicitor's office did legal work for Dos Reis. That work consisted of acting on real estate transactions, and the attendant work of incorporating companies.

36. It was obvious from looking at the names of the parties in the two agreements that Dos Reis was trying to conceal the fact that he was the one who was "purchasing" 1885 Sismet Road from himself and the Jakovljevics and then "reselling" it for an extra \$300,000.00 profit. The Solicitor failed to detect Dos Reis' scheme because he did not meet with either Dos Reis nor the Jakovljevics concerning these transactions, nor do any of the work on them. This was because the Solicitor was recovering at the time from serious dental surgery, and consequently, was not at the office much during the time of the transactions. All of the work was performed by Ms. Milligan.

37. The Solicitor represented both the Jakovljevics and Dos Reis in this series of transactions.

38. Ms. Milligan has testified under oath that she did not know that the \$1.9 million agreement was phoney and that Dos Reis was trying to make a secret \$300,000 profit.

39. There is an ongoing dispute between the Jakovljevics and Dos Reis about the division of the proceeds of the above transactions. Also, there is ongoing litigation arising out of the \$2.2 million offer because the purchaser in that transaction alleges that he was misled about the rental income generated by 1885 Sismet Road.

40. The parties hereto wish to make it clear that the facts herein are agreed to purely for the purpose of the herein proceedings and without prejudice to any other proceedings. Each party acknowledges that in some cases it is agreeing to facts not within its personal knowledge.

(c) UNDERTAKINGS -- D112/90

(i) Slater

41. The Solicitor acted on a real estate transaction which closed in July, 1988. At that time he gave an undertaking to the opposing solicitor, Mr. Slater, to pay off two mortgages registered on title and to register discharges of those mortgages as soon as possible, and to provide particulars of the discharges within 90 days, or to apply to the Court at his own expense for an order discharging the mortgages.

42. The Solicitor forwarded sufficient discharge funds to one of the mortgagees on July 18, 1988, together with a Discharge of Mortgage ready for execution. He made a follow-up request to the mortgagee in question by letter dated October 4, 1988 for return of the executed Discharge of Mortgage form.

43. Having heard nothing from the Solicitor since the closing in July, 1988, Mr. Slater wrote the Solicitor on December 16, 1988 requesting both discharges and a statement for the second mortgage.

44. Mr. Slater then followed up with telephone calls to the Solicitor's office on January 10, 16 and 25, 1989. The Solicitor's Secretary, Carol Davidson, stated on January 25, 1989 that she would look into the matter immediately and call Mr. Slater back.

45. Having heard nothing from the Solicitor's office following the January 25, 1989 telephone conversation, Mr. Slater then wrote the Solicitor on February 16, 1989 stating that unless the matter was attended to within the next ten days, he would bring it to the attention of the Law Society.

46. In March, 1989 the Solicitor moved and reorganized his practice. That, together with concurrently laying off Ms. Davidson and some of his other staff, disrupted the Solicitor's practice and impeded his ability to follow up on Mr. Slater's request for a month or two thereafter.

47. Mr. Slater then complained to the Society by letter dated March 2, 1989. The Complaints Department notified the Solicitor of Mr. Slater's complaint by letter dated April 5, 1989, which the Solicitor received April 20, 1989.

48. In the meantime, the first mortgagee provided the Discharge of Mortgage by letter dated March 7, 1989.

49. The Solicitor responded to the letter from the Complaints Department by letter dated April 26, 1989.

50. The Solicitor completed the undertakings in August, 1989, just over one year after he had given them.

(ii) Fysh

51. The Solicitor gave an undertaking to Mr. Fysh on the closing of a real estate transaction in August, 1988 to obtain and register discharges of certain mortgages on title, and to provide registration particulars of the discharges as soon as possible.

52. By letter dated February 6, 1989 the Solicitor informed Mr. Fysh that he had mailed one of the Discharges to the appropriate Registry Office on September 13, 1988, but that Discharge had not yet been returned to the Solicitor. With respect to the other mortgages, the Solicitor stated that he had remitted the discharge funds to the mortgagee with a discharge for execution, but the discharge had not yet been returned. The Solicitor said he would pursue the matter with the mortgagee's management. In fact, the Discharge had just been received by the Solicitor's office a few days earlier, on February 2, 1989.

53. The Discharge which the Solicitor's office received on February 2, 1989 was mailed to the appropriate Registry Office for registration by letter dated March 20, 1989.

54. Not having heard anything further from the Solicitor, Mr. Fysh wrote him on April 24, 1989, June 24, 1989 and July 29, 1989 requesting that the undertakings be fulfilled.

55. By this time, the Solicitor had closed his law offices and had substantially withdrawn from practice. He had transferred most of his files to another firm, Chaiton & Chaiton. Consequently, he forwarded Mr. Fysh's letters to Chaiton & Chaiton for reply. He did not, however, inform Mr. Fysh of this.

56. Having received no reply to his three letters to the Solicitor, Mr. Fysh complained to the Society's Complaints Department by letter dated September 28, 1989 about the Solicitor's failure to comply with his undertaking.

57. The Complaints Department notified the Solicitor of Mr. Fysh's complaint by letter dated October 20, 1989.

58. As a result of the letter from the Society's Complaints Department, the Solicitor asked Chaiton & Chaiton to see whether the discharges which the Solicitor had mailed on March 20, 1989 for registration had in fact been registered. Chaiton & Chaiton discovered that they had not been registered, and concluded that they had apparently been lost in the mails.

59. Chaiton & Chaiton then had copies of the Discharges executed and registered.

60. Mr. Fysh notified the Complaints Department on January 3, 1990 that the undertakings had been completed. That was sixteen months after the transaction had closed.

(iii) De Batisse

61. The Solicitor represented Mr. DeBatisse as the mortgagee in a real estate transaction which closed in December, 1988. Mr. DeBatisse wrote the Solicitor regularly requesting his report and duplicate copies of the registered documents.

62. The Solicitor failed to reply to Mr. DeBatisse's requests, and accordingly, Mr. DeBatisse contacted the Society's Complaints Department in December, 1989.

63. The Solicitor fully complied with Mr. DeBatisse's requests in March, 1990, fourteen months after the transaction had been completed, and only after he had been contacted by the Society's Complaints Department.

(iv) Westwood

64. The Solicitor acted for Ms. Westwood on the re-financing of her home in March, 1989. At that time, he reported to Ms. Westwood that a new first mortgage had been placed on her property and that the previous first and second mortgages had been discharged.

65. Ms. Westwood discovered at the end of 1989 that the Solicitor had not, in fact, registered a discharge of her previous second mortgage. She then engaged other solicitors to have the mortgage discharged.

66. Ms. Westwood wrote the Society's Complaints Department in February, 1990. When the Complaints Department contacted the Solicitor, he reimbursed Ms. Westwood for the costs she had incurred to have the second mortgage discharged.

DATED at Toronto this 4th day of September, 1990."

RECOMMENDATION AS TO PENALTY

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With some hesitancy but after due deliberation, the Committee determined that it would recommend that the Solicitor be Reprimanded in Convocation notwithstanding a previous incidence of discipline which was satisfactorily explained.

# REASONS FOR RECOMMENDATION

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In this matter the Society was represented by Mr. R. Conway and the Solicitor by Mr. T. Danson. Pursuant to the Agreed Statement of Facts which is attached hereto the parties agreed that this matter should be heard in public and professional misconduct was admitted.

The misconduct relates to three separate complaints, the details of which are set forth in the Agreed Statement of Facts but may be summarized by stating that the first two namely the Noble Complaint and the Jakovljevic Complaint both relate to real estate transactions in which the majority if not all of their work was carried out by one Carol Davidson who at the time in question not only was the Solicitor's secretary but also was the President of Equimort Ltd. which was in the business of supplying secretarial and other support services which included the arranging of mortgages.

In the Noble matter, the Solicitor acted for his clients Mr. and Mrs. Noble as well as for Equimort in the arrangements for a third mortgage.

In the Jakovljevic Complaint, the Solicitor represented both the Jakovljevics and one Dos Reis in a series of transactions which is still the subject of some litigation.

The third complaint consists of four instances of failure on the part of the Solicitor to promptly arrange for discharges of mortgages and other title documents. Counsel for the Society joined by counsel for the Solicitor urged on the Committee that there be a Reprimand before Convocation as penalty in this matter. The errors referred to were stated to be matters of "in-attention" of which the Noble and Jakovljevic matters were more serious and the various undertakings less serious since they occurred at a time at which the files had been transferred to other lawyers.

Counsel for the Society indicated that while the normal range for this type of misconduct would range from a Reprimand in Convocation to a short suspension, he was prepared to recommend the lesser penalty here as a result of the cooperation of the Solicitor. It was indicated that the Solicitor had exhibited great remorse and has cooperated with the Society in its investigation particularly to make matters easier for clients to the extent possible. In addition, the Solicitor voluntarily undertook to wind down his practice and by July 1, 1990, he had substantially wound down his practice and has agreed to remain in that state until October 1, 1990.

The Solicitor does have a prior record of discipline in that in 1983 he was reprimanded in committee for abandoning his practice.

On behalf of the Solicitor it was indicated that Carol Davidson was essentially the source of his problems and that he has extricated himself from her presence and now lives in Dashwood, Ontario where he intends to go into business with a friend in a store that he purchased to operate a restaurant and clothing store. The Solicitor is 43 years of age, was called in 1975 and does not intend in large part to practice but wants to be able to carry on practice for his family and friends but not to engage in full-time practice. The Committee was concerned that the conduct in question could not easily be regarded as mere in-attention. While Equimort was not owned in any way by the Solicitor, he had been involved in on-going relationships such that he knew or should have known of the control over transactions exercised by Ms. Davidson. The Committee was satisfied that the transactions could not be characterized as merely in-attention but did arise as a result of a clear conflict on the part of the Solicitor with respect to two clients notwithstanding that those clients were not damaged by his actions alone. Indeed it was recognized that there was no misappropriation.



It appears that the relationship between the Solicitor and Ms. Davidson was one whereby the Solicitor was billed on a formula basis for services rendered. Also of concern to the Committee was the fact that Mr. Wong acted on a subsequent transfer in the Noble matter although he did not act on the exercise of the power of sale. In all it did appear to the Committee that the Solicitor was used by Ms. Davidson but his conduct went beyond mere inattention. It was recognized that in the Jakovljevic Complaint the Solicitor was a victim as was his client but nevertheless mere diligence on his part may have lessened the loss.

The Committee considered whether it might not be appropriate to accept the recommended disposition only on condition that the Solicitor submit to the professional standards programme.

The Committee however was satisfied based on the strong recommendations by counsel on behalf of the Society that in this instance such referral would not be necessary as it would place unwarranted constraints on the Solicitor since the conduct did not demonstrate any matter of deficiency in his knowledge or ability.

Richard Siu-Dick Wong was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on March 20th, 1975.

ALL OF WHICH is respectfully submitted

DATED this 13th day of September, 1990

"C. Campbell"  
Colin L. Campbell, Chair

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

There were no representations by either counsel.

The Report was adopted.

It was moved by Mr. Campbell, seconded by Mr. Lerner that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded be adopted.

Counsel for the Society asked that an amendment be made under the Recommendation as Penalty, page 16, third paragraph, that the word Convocation be changed to Committee so it should now read "...he was reprimanded in committee....".

No submissions were made by either counsel.

The solicitor, counsel, the reporter and public withdrew.

It was moved by Mr. Lamont, seconded by Mr. Ferguson that the solicitor be suspended for one month and that he be referred to the Professional Standards Committee.

The solicitor, counsel, the reporter and public were recalled. The solicitor and counsel were informed of the motion for a one month suspension.

Representations were made by both counsel in support of the Recommendation as to Penalty contained in the Report.

Mr. Danson consented to Convocation deciding the matter today.

The solicitor, counsel, the reporter and public withdrew.

A motion was made by Mr. Lerner that the solicitor be permitted to resign.

Withdrawn

The motion put by Mr. Lamont that the solicitor be suspended for one month was voted on and lost.

The Recommendation as to Penalty contained in the Report was adopted.

The solicitor, counsel, the reporter and public were recalled. The solicitor and counsel were informed of Convocation's decision. The solicitor waived his right of appeal.

Counsel, reporter and public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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Re: GREGORY PETER LINTON VANULAR, Pickering

Mr. Campbell placed the matter before Convocation.

The reporter was sworn.

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

Mr. Conway and the solicitor requested an adjournment. Mr. Conway advised Convocation that the Report was in error. He advised that transcripts should be obtained and that the matter be referred back to the Committee to prepare an amended Report.

Mr. Vanular agreed with Mr. Conway's position with some reservations.

The solicitor, counsel, the reporter and the public withdrew.

Messrs. Bragagnolo, Guthrie, Hickey and Ms. Peters entered Convocation but did not vote or participate in the debate.

It was moved by Mr. Strosberg, seconded by Mr. Somerville that the request for an adjournment be denied and that the matter be referred to a new committee for a re-hearing.

Carried

It was moved by Mr. Ferguson, seconded by Mr. Copeland that the recommendation of the solicitor and counsel be accepted.

Not Put

The solicitor, counsel, the reporter and public were recalled.

The solicitor and counsel were informed of Convocation's decision.

The solicitor and counsel retired.

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Re: MICHAEL BARRY BIDERMAN, London

Mr. Campbell placed the matter before Convocation.

The reporter was sworn.

Mr. Robert Conway, counsel for the Society requested an adjournment on consent.

The matter was stood down.

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Convocation took a short recess and reconvened at 11:50 a.m.

PRESENT:

Acting Treasurer (John D. Ground, Q.C.), Bragagnolo, Campbell, Carey, Carter, Chapnik, Copeland, Ferguson, Graham, Guthrie, Hall, Hickey, Kiteley, Lamont, Lawrence, Lerner, Levy, Manes, Peters, Somerville, Strosberg, Thom, Thoman, Wardlaw and Weaver.

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Re: ERNEST VALORIE SWAIN, Kingston

Mr. Campbell placed the matter before Convocation.

The reporter was sworn.

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

Mr. Conway requested an adjournment on consent to the next Discipline Convocation in March.

The adjournment was granted.

Counsel retired.

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Re: JAMES STEADMAN, Toronto

Mr. Campbell presented the matter to Convocation.

The reporter was sworn.

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

Representations were made by counsel and the solicitor. Mr. MacKenzie requested that the solicitor be relieved of his obligation to file Form 2/3 for the period set out in the Discipline Report of April 23rd, 1987.

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Michael G. Hickey, Q.C. (Chair)  
Kenneth E. Howie, Q.C.  
Robert S. Tebbutt

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

JAMES STEADMAN  
of the City  
of Toronto  
a barrister and solicitor

John P. Twohig  
H. Reginald Watson  
for the Society

Not Represented  
for the solicitor

Heard: June 17, 1986  
October 28, 1986  
April 6, 1987

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On October 25, 1985, Complaint D79/85 was issued against James Steadman, alleging that he was guilty of professional misconduct.

The matter was heard on June 17 and October 28, 1986 and on April 6, 1987 by this Committee, composed of Michael G. Hickey, Q.C. as Chair, Kenneth E. Howie, Q.C. and Robert S. Tebbutt. Mr. Steadman attended the hearing but was not represented by counsel. John P. Twohig appeared as counsel for the Society on June 17, 1986. H. Reginald Watson appeared as counsel on October 28, 1986 and on April 6, 1987.

DECISION

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The Complaint

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

(Para. 2 Complaint D79/85)

- (a) During the period of May 1982 to September 28, 1985 he failed to maintain the books and records required by the Regulation made pursuant to the Law Society.
- (b) He failed to file his Form 2/3 for the period ending June 30, 1983 and June 30, 1984.

Evidence

At the hearing on June 17, 1986, Mr. Steadman admitted the particulars and Mr. Twohig verbally related certain facts which Mr. Steadman agreed were correct.

Mr. Steadman was called to the Bar in 1973. He practised law on his own from 1973 until 1979, and from 1982 to the present. He did not practise law from 1979 to 1982.

Mr. Steadman's practice has been minimal. From 1982 through 1985, his gross earnings averaged \$6,000 per year. According to Mr. Steadman, 70% of his work consists of "straight house deals." He has no secretary, and does all of his own typing and title searching. He rents office space from a real estate broker on the Danforth area. He lives with his mother.

This matter was precipitated by an audit of Mr. Steadman's practice in June of 1985. Mr. Steadman admitted to the audit examiner that he had not filed his Form 2/3 for 1983 and 1984, and had not maintained his books and records as required by the Regulation. Because of the state of Mr. Steadman's books and records, the audit examiner asked that he consent to the imposition of co-signing controls on his trust account and he agreed.

Mr. Steadman had, as of the hearing on June 17, 1986, already paid the maximum fine of \$600.00 for failure to file his Forms 2/3, and had accrued a further fine of \$600.00.

24th January, 1991

The Committee was advised that Mr. Steadman had been unable to get around to reconstructing his books from his original records during the summer of 1985, because of an eye infection. The Committee also was advised that the Society's Shirley Dennison Fund had authorized a grant to enable him to pay his former accountant, and that he had retained a new accountant, one Jack Taylor.

Mr. Steadman advised that the necessary material was available, and he expected that his accountant would be able to complete the work within two or three weeks once he had all the material.

Mr. Steadman also advised that he had no Errors and Omissions claims against him, and there had been no client complaints. He offered his verbal undertaking to pay his outstanding \$600.00 late filing fee and the \$470.00 Errors and Omissions levy by July (1986).

Mr. Twohig advised the Committee that the Society would be content to have the matter adjourned for several months to permit Mr. Steadman to put his books and records in order. He said the Society would be seeking a Reprimand in Committee in the event that Mr. Steadman put his books and records in order and no further problems were disclosed. He pointed out that the Vice-Chair who authorized the Complaint had instructed him that nothing more than a Reprimand in Committee should be sought.

The hearing resumed on October 28, 1986. At that time, Mr. Steadman acknowledged that his books and records had not yet been brought up to date, and he had not yet filed complete and accurate Forms 2/3 for the periods ending June 30, 1983 and June 30, 1984. Forms had been filed, but were incomplete as many of the relevant records were unavailable.

Mr. Steadman advised the Committee that many of his books, records and files for a one-and-a-half year period in 1983 to 1985, were lost in July. He had left his books in a shopping bag in a boardroom, and a night cleaner may have thrown them out. He said he had gone to his bank to obtain copies of cheques and bank statements. He offered to review his files with the Society's examiner.

Mr. Watson said that in such circumstances the Society would normally seek a suspension, to run until the books and records were in order. He said there is little basis for concern that the public is at risk, given the small size of Mr. Steadman's practice and the absence of any complaints from clients. He also noted, however, that Mr. Steadman had been given the benefit of a four month adjournment and had failed to correct the problems.

The Committee granted a further adjournment, to a date to be set in late January, 1987, conditional upon Mr. Steadman's undertaking that he would cooperate fully with the Society in its investigation of his books and records, make available all files and documentation, bring his books and records up to date, and file complete and accurate Forms 2/3 for 1983 and 1984. Mr. Steadman gave the requested undertaking.

The matter resumed on Monday, April 6, 1987. Mr. Steadman had been unable to attend a scheduled hearing in January. He had filed a letter from his doctor indicating that he was suffering from gout.

A hearing set for March was cancelled because a member of the Committee was not able to attend.

At the April 6th hearing, Mr. Steadman advised the Committee that he had still not brought his books up to date and had not filed the Forms 2/3. He said that the Society's audit examiner, Ms. Ferguson, had attended at his office several days earlier and had instructed him on how to maintain his books. He also had seen his accountant, Jack Taylor, on Saturday, and his accountant had told him he would review the books once they were completed.

Mr. Watson pointed out that Mr. Steadman has been reprimanded in Committee on two previous occasions. In April of 1979 he was Reprimanded for failing during the months of April and May, 1978 to produce his accounting records forthwith to the Society's audit staff when requested to do so. In June of 1980, he was again Reprimanded in Committee, for failing to reply to correspondence from the Society, failing to reply to correspondence from a fellow solicitor and failing to keep a client reasonably advised of the progress of an action.

We recommend that James Steadman be suspended for a definite period of one month, and that his suspension should continue thereafter until he has filed complete and accurate Forms 2/3 for the periods ending June 30, 1983 and June 30, 1984 to the satisfaction of the Society's Audit Department.

Reasons for Recommendations

Mr. Steadman failed to maintain his books and records as required by the Regulation, and has failed to file his Forms 2/3 for the periods ending June 30, 1983 and June 30, 1984.

Despite the passage of a year from the date of the Society's first audit in June of 1985 to the date of the first hearing on June 17, 1986, and the passage of a further ten months since then, Mr. Steadman has failed to put his records in order and complete his filings.

Mr. Steadman apparently lost many of the original records and files which he requires to reconstruct his books and complete his filings. He has obtained some duplicate records from his bank. Given the limited extent of his practice over the past several years, the reconstruction of Mr. Steadman's books should not be particularly time consuming.

There is no indication of dishonesty on the part of Mr. Steadman. The Society has not suggested that he is dishonest or that the state of his records gives rise to concern that clients may be at risk through misappropriation of trust funds. There have been no complaints from clients.

The state of Mr. Steadman's books and records, and the apparent incompetence of his efforts over a period of many months to correct these problems and maintain his records in accordance with the Society's minimum requirements are matters of serious concern to the Society. In the circumstances, we believe that a suspension in the terms we have outlined is appropriate.

James Steadman was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 23rd day of March, 1973.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of April, 1987

"M. Hickey"  
Chair

The solicitor, counsel, the reporter and the public withdrew.

It was moved by Mr. Campbell, seconded by Mr. Somerville that the solicitor be reinstated to good standing.

Carried

The solicitor, counsel, reporter and the public were recalled.

The solicitor and counsel were informed of Convocation's decision.

The solicitor and counsel retired.

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RESUMPTION OF BIDERMAN DISCIPLINE REPORT

Mr. Robert Conway appeared for the Society and Mr. Robert Stevenson appeared for the solicitor who was not present.

Counsel requested an adjournment on consent to the next Discipline Convocation in March and advised that the solicitor would undertake to transfer his practice over to the Law Society's Staff Trustee by February 15th, 1991.

The adjournment was granted.

Counsel retired.

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Re: REWACHAND ARJANDAS SAINANEY, Toronto

Mr. Campbell placed the matter before Convocation.

Messrs. Hickey, Guthrie and Ms. Peters withdrew and did not participate.

The reporter was sworn.

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

Convocation had before it the Report of the Discipline Committee dated 14th November, 1990 together with the Affidavits of Service sworn 20th November, 1990, by Louis Katholos that he had effected service on the solicitor both by registered mail and by courier 16th November, 1990 (marked Exhibits 1 and 1A). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Michael G. Hickey, Q.C., Chair  
Hugh Guthrie, Q.C.  
Patricia J. Peters, Q.C.

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

Gavin MacKenzie  
for the Society

REWACHAND ARJANDAS SAINANEY  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: November 7, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On February 2, 1989, Complaint D8/89 was issued against Rewachand Arjandas Sainaney alleging that he was guilty of conduct unbecoming.

The matter was heard in public on November 7, 1990 before this Committee composed of Michael G. Hickey, Q.C., Chair, Hugh Guthrie, Q.C. and Patricia J. Peters, Q.C. Mr. Sainaney was in attendance but was not represented by counsel. Gavin MacKenzie appeared as counsel for the Law Society.

#### DECISION

The following particular of conduct unbecoming was admitted and found to have been established:

##### Complaint D8/89

- 3(a) On or about December 13th, 1988, he was convicted by The Honourable Judge D. Humphrey of the District Court of Ontario on nine counts of attempting to induce, aid or abet persons to breach Section 95(b) of the Immigration Act, to wit, to remain in Canada by means of any fraudulent or improper means, to wit, by making of a false claim to refugee status, which actions were contrary to Section 95(m) of the Immigration Act.

##### Evidence

The entirety of the evidence before the Committee on the issue of professional misconduct was in the form of the following Agreed Statement of Fact:

#### "AGREED STATEMENT OF FACTS"

##### I. JURISDICTION AND SERVICE

1. Rewachand Arjandas Sainaney (the "Solicitor") admits service of Complaint D8/89 and is prepared to proceed with a hearing of this matter on November 7, 1990.

##### 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 D8/89 and admits particular 3(a) thereof.

##### IV. FACTS

4. The Solicitor is 65 years old. He was called to the Ontario bar in 1969 after having practised law in India for 21 years. He has thus practised law for 42 years in total. Since his call to the Ontario bar, he has specialized in immigration law.

5. On December 13, 1988, after a four-day trial before the Honourable Judge David Humphrey at Toronto, the Solicitor was found guilty of nine counts of attempting to induce, aid or abet persons to breach section 95(b) of the Immigration Act by making false claims to refugee status, contrary to section 95(m) of the Immigration Act.

6. Attached as Exhibit "A" to this agreed statement of facts is a copy of the indictment upon which the Solicitor was tried; the Solicitor was convicted on all of the counts in the indictment with the exception of count 4.



7. Attached as Exhibit "B" to this agreed statement of facts is a copy of the reasons for judgment of the Honourable Judge Humphrey. Attached as Exhibit "C" is a copy of the Judge Humphrey's reasons for sentence dated December 16, 1988. The Court imposed on the Solicitor a \$10,000 fine or, in default of payment, six months in jail. The fine has been paid.

8. The Solicitor appealed his conviction to the Ontario Court of Appeal. The appeal was dismissed on October 23, 1989. Attached as Exhibit "D" to this agreed statement of facts is a copy of the Court of Appeal's reasons for dismissing the Solicitor's appeal.

9. Thereafter, the Solicitor applied for leave to appeal the Court of Appeal's order to the Supreme Court of Canada. His application was dismissed on May 17, 1990.

10. The Complaint herein was sworn on February 2, 1989, and came before the discipline committee on March 15, 1989. The Solicitor sought an adjournment pending the disposition of his appeal to the Court of Appeal. The Solicitor undertook to immediately cease the practice of immigration law and to refrain from practising immigration law until this discipline proceeding is completed.

11. The Complaint came before the committee again on May 1, 1990, at which time, the Solicitor sought a further adjournment pending the disposition of his application for leave to appeal to the Supreme Court of Canada. The committee granted his request on certain conditions which are set forth in the committee's order, a transcript which is attached hereto as Exhibit "E" to this agreed statement of facts.

12. Attached hereto as Exhibit "F" to this agreed statement of facts is a copy of the undertaking signed by the Solicitor on May 1, 1990, as a result of the committee's order.

13. Between May 23 and August 13, 1990, the Solicitor wrote to 447 clients to advise them pursuant to the committee's order of May 1, 1990, that he could no longer represent them. Attached hereto as Exhibit "G" is the form of letter which the Solicitor sent to his clients.

14. Attached hereto as Exhibit "H" is a copy of a letter from the Solicitor to the Society informing it of his compliance with the committee's order.

15. Attached hereto as Exhibit "I" is a copy of a letter dated September 10, 1990, from the Society to the Solicitor informing him that the Society considers the committee's order of May 1, 1990, to have been complied with.

16. The Solicitor's conviction, and the fact that he is a lawyer, was mentioned in media reports in December, 1988. Attached as Exhibit "J" to this agreed statement of facts is a copy of an article which appeared in the Toronto Sun on December 17, 1988.

17. The Solicitor was previously disciplined on January 13, 1981, in respect of an unrelated matter. He was at that time found guilty of acting on a real estate transaction in circumstances in which he had a conflict of interest, and of preparing a false document, namely, an agreement of purchase and sale. He was reprimanded in committee on that occasion.

DATED at Toronto this 6th day of November, 1990."

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that the said Rewachand Arjandas Sainaney be disbarred.

REASONS FOR RECOMMENDATION

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We have considered the penalty in this matter and it is the recommendation of the Committee that the Solicitor be disbarred.

In making this recommendation, we have considered carefully the submissions of counsel for the Society and the Solicitor that the Solicitor be permitted to resign. We are all of the view that permission to resign is inappropriate in all the circumstances and would not reflect the seriousness of the Solicitor's conduct. We have given consideration to his age, his declining health and his seniority at the bar, but are of the view that while permission to resign may protect the public interest, it would not be a sufficient message to the profession that this type of conduct cannot be tolerated.

We are mindful of Rule 10 and in particular commentaries 2(b) and (e) which have been clearly violated by the Solicitor's conduct and the Solicitor has shown no remorse for his actions. We are not satisfied that the other mitigating factors cited by counsel for the Society and the Solicitor himself justify the lesser penalty of permission to resign.

Rewachand Arjandas Sainaney was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on March 21st, 1969.

ALL OF WHICH is respectfully submitted

DATED this 14th day of November, 1990

"M. Hickey"  
Michael G. Hickey, Q.C.  
Chair

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

There were no submissions as to the Report.

The Report was adopted.

It was moved by Mr. Campbell, seconded by Mr. Lerner, that the Recommendation as to Penalty contained in the Report that is, that the solicitor be disbarred be adopted.

There were submissions by counsel and the solicitor on the issue of penalty. Mr. MacKenzie recommended that the solicitor be permitted to resign rather than be disbarred.

The solicitor filed with Convocation written submissions in the form of a letter dated January 22nd, 1991.

Counsel and the solicitor answered questions from the Bench.

The solicitor, counsel, the reporter and the public withdrew.

It was moved by Mr. Carey but failed for want of a seconder, that the solicitor be reprimanded in Convocation.

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

Not Put

The Recommendation as to Penalty contained in the Report was adopted.

The solicitor, counsel, the reporter and public were recalled.

The solicitor and counsel were informed of Convocation's decision.

The solicitor and counsel retired.

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CONVOCATION ADJOURNED FOR LUNCHEON AT 1:05 P.M.

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CONVOCATION RECONVENED AT 2:15 P.M.

.....

PRESENT:

Acting Treasurer (John D. Ground, Q.C.), Bragagnolo, Campbell, Carey, Carter, Chapnik, Copeland, Cullity, Epstein, Ferguson, Graham, Guthrie, Hall, Hickey, Kiteley, Lamont, Lawrence, Lerner, Levy, Manes, Noble, Peters, Strosberg, Thom, Wardlaw and Weaver.

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DISCIPLINE COMMITTEE

Re: ROBERT WALTER DVORAK, Toronto

Mr. Campbell presented the matter to Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society and Mr. Edward Greenspan appeared for Mr. Dvorak who was present.

Mr. Campbell filed as Exhibit 1 the Report of the Discipline Committee which was before Convocation on November 22nd, 1990 and marked Exhibit 1. Convocation in November adopted the Report and the Recommendation as to Penalty, that is, that the solicitor be disbarred.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Allan M. Rock, Chair  
Colin D. McKinnon  
Robert C. Topp

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

H. Reginald Watson  
for the Society

ROBERT WALTER DVORAK  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: May 29, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 15, 1990, Complaint D24/90 was issued against Robert W. Dvorak, alleging that he was guilty of professional misconduct in the particulars set out therein.

The matter was heard in public on May 29, 1990 before this Committee composed of Allan M. Rock, Q.C., Chair, Colin D. McKinnon, Q.C. and Robert C. Topp, Q.C.

Mr. Dvorak did not attend at the hearing, and was not represented. Neither evidence nor argument was submitted on his behalf.

H. Reginald Watson appeared as Counsel for the Society.

Service of Process and Proper Notice of the Hearing

In view of Mr. Dvorak's absence, the Committee heard evidence with respect to the service of the Complaint and notice of the hearing.

The Committee received in evidence the Affidavit of Service of the Complaint sworn February 15, 1990. We also received as an Exhibit a copy of a letter dated March 7, 1990 sent to Mr. Dvorak over the signature of Mr. Watson confirming their telephone conversation of March 6, 1990, during which Mr. Watson informed Mr. Dvorak that the Discipline Committee had scheduled a hearing in this matter for 9:30 o'clock in the morning of May 29, 1990 at Osgoode Hall in Toronto. We also received a copy of a subsequent letter dated May 16, 1990 from Mr. Watson to Mr. Dvorak confirming that the hearing would proceed on May 29th and inviting Mr. Dvorak to telephone Mr. Watson should he wish to discuss any of the outstanding issues.

The Committee heard the evidence of Howard Maker, a staff lawyer employed by the Law Society of Upper Canada. Mr. Maker testified that he attempted to telephone Mr. Dvorak in the latter part of February 1990, but was unable to reach him. Instead, he spoke with a woman who identified herself as Mr. Dvorak's wife. That woman acknowledged that the Complaint had been received at Mr. Dvorak's place of residence. She told Mr. Maker that she would have Mr. Dvorak call him back.

Mr. Dvorak telephoned Mr. Maker later the same day. They discussed some of the procedures involved in the discipline process.

Mr. Maker had no further communication with Mr. Dvorak until the morning of May 29, 1990, which was the day on which the hearing was scheduled to proceed. Mr. Maker reached Mr. Dvorak at Mr. Dvorak's office in Manhattan. Mr. Maker testified that he recognized Mr. Dvorak's voice from their telephone conversation in February and testified that during the course of the telephone conversation of May 29th, Mr. Dvorak:

- o asked "why are you phoning to bother me"?;
- o said that he had been intending to telephone and ask for an adjournment of the hearing because he was too busy to attend, but that he had forgotten; and
- o became abusive, and abruptly ended the conversation.

In view of the evidence as to service and notice, the Committee decided to proceed with the hearing as scheduled. We instructed Mr. Maker, however, to telephone Mr. Dvorak again and to tell him that the Committee proposed to proceed.

Late on the first day of evidence, Mr. Maker returned to the witness box to tell the Committee that he had spoken with Mr. Dvorak again at about 5 o'clock on the afternoon of May 29th. Once again, Mr. Maker recognized Mr. Dvorak's voice. Mr. Maker told Mr. Dvorak that the hearing was proceeding in his absence and asked whether Mr. Dvorak intended to attend. Mr. Maker gave evidence that Mr. Dvorak responded as follows:

"I've got better things to do than waste my time with you jerks up there".

#### DECISION

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

##### Complaint D24/90

##### Edward Coates

- 2 a) He breached his duty to his former client, Edward Coates, by failing to deliver Mr. Coates' file to his new solicitor, Faith Slater, in circumstances where there was potential prejudice to the client in not delivering the file.
- b) He breached his duty to his former client, Edward Coates, his fellow solicitor, Faith Slater, and the Law Society by failing to deliver Mr. Coates' file to Ms. Slater despite numerous attempts by Ms. Slater and the Law Society to obtain the file.

##### Martin Greenglass

- c) During an examination for discovery conducted on or about November 29, 1988 he verbally abused his fellow solicitor.

##### John Swaigen

- d) He breached his duty towards his fellow solicitor, John Swaigen, by arranging appointments to meet with Swaigen and then failing to attend these appointments without notice to his fellow solicitor.
- e) On or about October 17, 1989 in Provincial Court (Criminal Division) in Toronto he verbally abused his fellow solicitor, John Swaigen, both prior to and during court.

##### Law Society

- f) He failed to cooperate with the Society's Insurance Department by arranging appointments to meet with the Society's adjuster, Christopher Spencer, and failing to attend at those appointments without any notice to Mr. Spencer.
- g) He continued his pattern of failure to cooperate by failing to provide complete and adequate responses to questions from the Society's adjuster when he was finally able to meet with the Solicitor.
- h) He failed to reply to correspondence from the Society dated January 16, 1990 and February 7, 1990 requesting an immediate reply.

Provincial Court

- i) On or about October 17, 1989 while appearing in Provincial Court (Criminal Division) before His Honour Judge J.J. Belobradic he abused the court and his position as a barrister and solicitor by alleging fraud by public officials without any basis for the allegations.

The Committee will deal briefly with the evidence that it heard relating to each of the above particulars.

a) Edward Coates

Mr. Coates is a truck driver who was injured in two collisions that occurred on September 14, 1987 and June 24, 1988. He retained Mr. Dvorak in July of 1988 and instructed him to commence a proceeding seeking damages. Mr. Dvorak issued a statement of claim on Mr. Coates' behalf on September 12, 1989. In early October of 1989, Mr. Coates retained the firm of Abraham, Duggan, Hoppe, Niman and Stott to represent him in the litigation and to take the matter over from Mr. Dvorak. By letter dated October 18, 1989, Paul Stott of the Abraham, Duggan firm wrote to Mr. Dvorak, enclosing written authority from Mr. Coates directing Mr. Dvorak to release his file to Mr. Stott and asked that the file be delivered immediately.

Mr. Stott followed up his letter of October 18th with several telephone calls to Mr. Dvorak, but received no co-operation. Mr. Stott was particularly concerned because of Mr. Coates' financial position: to Mr. Dvorak's knowledge, the accidents had left Mr. Coates unemployed and he was on the verge of being evicted from his apartment for failure to pay rent.

Mr. Stott wrote again to Mr. Dvorak on November 15, 1989, referring to the several telephone calls that had been made to Mr. Dvorak's office and enclosing a copy of the judgment evicting Mr. Coates from his apartment. The letter also informed Mr. Dvorak that the matter was being referred by the Abraham, Duggan firm to the Law Society's Discipline Department.

It was not until November 22, 1989 that Mr. Dvorak spoke by telephone with a representative of the Abraham, Duggan firm. At that time, Mr. Dvorak agreed to provide her with a letter enclosing a direction in a form that he would require as authority to transfer the file. That arrangement was confirmed in a letter to Mr. Dvorak dated November 23, 1989.

Notwithstanding the agreement reached on the telephone, Mr. Dvorak did not write to Abraham, Duggan nor provide the direction as agreed.

On December 13, 1989, the Law Society's Howard Maker spoke with Mr. Dvorak by telephone. Mr. Dvorak told Mr. Maker that he was preparing a detailed fee billing in respect of the work he had done for Mr. Coates and said that he expected to finish it by the end of that week. He also promised to call Abraham, Duggan on December 13th to inform them of that fact.

Arrangements were made between Mr. Dvorak and Abraham, Duggan to have the file picked up at Mr. Dvorak's office on December 19, 1989. A representative of the Abraham, Duggan firm appeared at Mr. Dvorak's office on that day but Mr. Dvorak was not in attendance. A telephone call made to his office later that day elicited no response.

Once again, Mr. Maker telephoned Mr. Dvorak, who stated that the documents were being typed "as they spoke" and that the file could be picked up the next day (December 20th) at noon. That information was conveyed to Abraham, Duggan, who dispatched an employee to Mr. Dvorak's office on December 20th as agreed. Neither Mr. Dvorak nor anyone else was at the office, so that the file could not be picked up. When Mr. Maker learned of that development, he telephoned Mr. Dvorak and left a message for him to call immediately. The call was not returned.

Mr. Dvorak was not heard from again until his letter of January 4, 1990 was received by Abraham, Duggan. The letter enclosed an account for professional services in the total amount of \$10,390.00 and an "undertaking" that Mr. Dvorak insisted be signed before he would release the file. The "undertaking" required Mr. Coates to consent to a charging order against any proceeds of the action in favour of Mr. Dvorak to the extent of his account, and "irrevocably instructed" the Abraham, Duggan firm to "protect this Charging Order... require any other solicitors who may assume conduct of the action to execute a similar undertaking and Charging Order to protect the said account...". The "undertaking" also required the Abraham, Duggan firm to agree "to the implementation" of the arrangement and acknowledge that their failure to ensure that the undertaking as completed would result in them being personally responsible for the entire Dvorak account.

The day following receipt of that letter, the Abraham, Duggan firm provided a copy to Mr. Maker. Mr. Maker wrote to Mr. Dvorak and subsequently met him at his office on February 2, 1990. Mr. Dvorak told Mr. Maker that he was planning to leave Ontario and take up residence in New York within two weeks. He assured Mr. Maker that he would deliver the file to Mr. Coates on February 3, 1990. Mr. Coates picked up the file on that day and signed a modified form of "undertaking".

The Committee heard the evidence of two lawyers and a law clerk from the Abraham, Duggan firm. Each of them described conversations with Mr. Dvorak in which he was rude, abusive and abrupt. One of the lawyers described a telephone conversation with Mr. Dvorak as "an avalanche of invectives". The call, she said, was like no other that she had experienced in five years of practice. Mr. Dvorak's language and attitude were unprofessional, with frequent resort to profanity and expressions of hatred for his clients, his practice and the Law Society.

b) Martin Greenglass

Mr. Greenglass is a barrister and solicitor who practises in the City of Toronto. He acted in litigation in which Mr. Dvorak represented a party opposite. They attended an examination for discovery on November 29, 1989. During the examination, Mr. Dvorak addressed the following remarks to Mr. Greenglass:

"You're a disgrace to the damn legal profession and I'll state that for the record right now."

"I never in my life have had a solicitor stoop to such low, sleazy, slimeball tactics as you have engaged in."

Mr. Dvorak also uttered a variety of other abusive remarks. At the end of the examination, he apologized to Mr. Greenglass, who accepted the apology but asserted that he felt the matter must be reported to the Law Society.

c) John Swaigen

John Swaigen is a Barrister and Solicitor employed by the Municipality of Metropolitan Toronto. In that capacity, Mr. Swaigen appeared on behalf of the Metro Licensing Committee in a series of prosecutions against clients of Mr. Dvorak, alleging infractions of a licensing by-law.

Mr. Dvorak told Mr. Swaigen that he intended to bring a motion to quash the prosecutions under the Charter of Rights and Freedoms and Mr. Swaigen therefore arranged for three days to be set aside in the Provincial Court commencing on April 3, 1989 for the argument of the motion.

On March 14, 1989, Mr. Dvorak told Mr. Swaigen that he would be asking for an adjournment, and that he would attend for that purpose in Assignment Court on March 15, 1989. Mr. Swaigen attended at Assignment Court. Mr. Dvorak neither attended nor communicated with Mr. Swaigen to forewarn him or offer an explanation. Late on that afternoon, Mr. Dvorak told Mr. Swaigen by telephone that he had been tied up with other matters and unable to attend Court.

24th January, 1991

During the same telephone conversation, the solicitors agreed that they would prepare a draft agreed statement of facts and meet on Monday, March 20, 1989 to discuss it. The appointment was arranged for 10:30 o'clock on March 20th and was confirmed by letter sent by facsimile transmission from Mr. Swaigen to Mr. Dvorak on March 16th.

Mr. Swaigen attended at Mr. Dvorak's office at the appointed hour on March 20th. The receptionist told him that Mr. Dvorak was not in. Mr. Swaigen waited for 40 minutes but the solicitor did not appear.

Mr. Dvorak subsequently informed the Law Society that he could not attend on March 20th because he had several other matters on his agenda that day, including a motion in the Supreme Court of Ontario. He subsequently admitted to the Law Society that he had not actually attended on that motion in the Supreme Court because the client for whom he had been acting decided to appear on his own behalf.

The solicitors appeared in Provincial Court on April 3, 1989. In the result, the prosecutions were adjourned to October 17, 1989.

On October 17, and prior to the commencement of proceedings in Court, Mr. Dvorak addressed remarks to Mr. Swaigen in the courtroom that were sufficiently loud to be heard by persons sitting in attendance. Several witnesses appeared before the Discipline Committee to testify that they clearly heard Mr. Dvorak make a variety of disparaging and abusive remarks toward Mr. Swaigen. The evidence established that these statements were completely unprovoked and that they bore no rational connection to any course of dealings between the two men.

Among other things, the witnesses remembered that Mr. Dvorak said the following things to Mr. Swaigen:

- o "You're a slimeball".
- o "You're a jerk".
- o "You can go to hell. No, you're already in hell: you work for the City".
- o "Idiots like you waste taxpayer's money".
- o "You're trying to disrupt the administration of justice".
- o "You're a nobody, a nothing: Hitler is probably your idol".
- o "You're incompetent: beating these charges will be a breeze".

The witnesses described Mr. Dvorak on that occasion as appearing angry and agitated. He paced the front of the courtroom while speaking and gestured aggressively toward Mr. Swaigen. Those who were close enough to him to make the observation testified that there was no odor of alcohol, and he appeared steady on his feet.

Mr. Maker testified that during his investigation on behalf of the Law Society, Mr. Dvorak admitted to him that he verbally abused Mr. Swaigen in the courtroom. He quoted Mr. Dvorak as saying that he was "simply showboating for his client". Mr. Dvorak told Mr. Maker that he wanted to get his "last shot" at Mr. Swaigen and that he only did it because he knew he was leaving the country to live in the United States.

d) Provincial Court

When the Court actually convened on October 17, 1989, Mr. Dvorak asked for an adjournment even though he had given no warning of that request in advance to Mr. Swaigen and notwithstanding that the Court had specially reserved three days to hear the Charter challenge that Mr. Dvorak said he would bring. The solicitor also continued his abuse of Mr. Swaigen and was admonished by the presiding Judge on two occasions for doing so.



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The transcript of that day's proceeding also discloses Mr. Dvorak's unsubstantiated allegations that "multi-millionaire businessmen were putting \$100,000.00 in the pockets of politicians". Mr. Dvorak charged that politicians were being paid "under the table" so that they would pass the by-law restricting the issuance of licenses, thereby affecting Mr. Dvorak's clients.

Mr. Dvorak offered no evidence in support of those allegations. He had not raised them with Mr. Swaigen prior to the hearing. Mr. Swaigen was not only surprised at the allegations but also offended by Mr. Dvorak's suggestion that Mr. Swaigen was linked to the wrongdoing: Mr. Dvorak described Mr. Swaigen as "the agent of the politicians".

e) The Law Society

On October 14, 1988, the Law Society received a complaint from one Simon Marchong. Mr. Dvorak had acted for Mr. Marchong in a commercial transaction. Mr. Marchong alleged that Mr. Dvorak had been negligent in representing his interests as some of the assets that had been purchased were affected by previously undisclosed encumbrances.

The matter was referred to the Society's Errors and Omissions Department. Christopher Spencer was appointed to investigate the claim. Mr. Spencer arranged an appointment with Mr. Dvorak for 11 o'clock on the morning of March 7, 1989 at Mr. Dvorak's office.

Mr. Dvorak did not attend the meeting. Nor did he warn Mr. Spencer in advance that he would not be there. He also failed to provide an explanation or an apology afterwards.

A second meeting was scheduled for May 1, 1989. Again, Mr. Dvorak failed to attend, without any prior notice, without explanation and without apology.

A third meeting was scheduled for May 18, 1989 at Mr. Spencer's office. Yet again, Mr. Dvorak failed to attend.

Mr. Spencer asked the Society for help in dealing with Mr. Dvorak. In reporting to the Society, Mr. Spencer noted that in his 19 years in the claims industry, he had never seen a person act in such an unprofessional manner.

The Society wrote to Mr. Dvorak respecting his lack of co-operation with Mr. Spencer. Mr. Dvorak replied to the Society by letter dated August 19, 1989. He apologized for failing to keep the appointments with Mr. Spencer and asserted that he intended to meet with Mr. Spencer in the near future.

On September 13, 1989, the Society wrote to Mr. Dvorak requesting a detailed explanation of his failure to attend the earlier appointments and also asked when he would meet with Mr. Spencer. On September 15, 1989, Mr. Dvorak arranged to meet with Mr. Spencer on September 18th.

Although Mr. Dvorak attended the meeting, the encounter was unproductive. Mr. Dvorak was unco-operative and evasive. He failed to give factual responses, claiming that he could not remember events or that he had no knowledge. Mr. Spencer, who testified before the Committee, remembered that the meeting lasted 15 minutes, after which Mr. Dvorak left in a hurry. Mr. Spencer had the impression that Mr. Dvorak's sole purpose in attending was to make a formal appearance so that he could "get the Discipline Department off his back".

By letters dated January 16 and February 7, 1990, the Society formally requested Mr. Dvorak's response to the allegations of negligence made by Mr. Marchong. The solicitor has never responded.

### FINDING

The Committee concluded that the allegation of professional misconduct had been established.

In the case of Mr. Coates, the solicitor failed to facilitate the orderly transfer of his client's file. Indeed, the record demonstrates that Mr. Dvorak showed not the least concern for Mr. Coates' plight: his only interest was in obtaining elaborate protection for his own exorbitant account, regardless of his client's needs.

In the case of Mr. Swaigen, the evidence established either that Mr. Dvorak has no understanding of the manner in which professionals are obligated to behave toward one another or that he deliberately chose to ignore those important professional standards. His conduct towards Mr. Greenglass, while less serious, demonstrates that in the Swaigen episode, we are not dealing with an isolated incident.

Mr. Dvorak's wild and unsupported allegations about political corruption, made while arguing a case in Provincial Court, demonstrate, in our view, a profoundly irresponsible attitude toward his role as counsel. They also constitute a serious abuse of position: to use one's status as counsel in order to make fanciful and unfounded charges tends to bring the entire profession into disrepute.

In his behaviour toward the Law Society, Mr. Dvorak has shown himself to be ungovernable. He gave assurances he clearly did not intend to honour. He made appointments he clearly did not intend to keep.

When invited to attend at his own discipline hearing, Mr. Dvorak left no doubt about his attitude toward his governing body: "I've got better things to do than waste my time with you jerks up there".

### RECOMMENDATION AS TO PENALTY

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The Committee recommends that Robert Walter Dvorak be disbarred.

### REASONS FOR RECOMMENDATION

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In our view, the evidence makes it clear that Mr. Dvorak does not understand what it means to be a professional. What is more, he has no respect for and no intention of being governed by the Law Society. He has no place in the profession.

Robert Walter Dvorak was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 6th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 6th day of November, 1990.

"A. Rock"  
Allan M. Rock, Q.C.  
Chair

Mr. Greenspan distributed a brief to Convocation.

Representations were made by both Counsel.

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Mr. Greenspan stated that there had not been proper service under the provisions of the Law Society Act and requested that Convocation hear the matter de novo. Mr. Greenspan further indicated that if Convocation did re-open the matter he would be making submissions only on the issue of penalty and would be requesting that Mr. Dvorak be permitted to resign his membership in the Law Society.

Mr. MacKenzie argued that the service was sufficient and that Convocation had no jurisdiction to re-open the matter.

Mr. Dvorak, counsel, the reporter and the public withdrew.

It was moved by Mr. Manes, seconded by Mr. Bragagnolo that the Society had no jurisdiction to proceed.

Not Put

It was moved by Mr. Carey, seconded by Ms. Chapnik that the Society re-open the matter on the basis that service was inadequate.

Not Put

Mr. Dvorak, counsel, the reporter and the public were recalled and further questions were put to counsel.

Mr. Dvorak, counsel, the reporter and the public withdrew.

Ms. Graham did not participate or vote.

It was moved by Ms. Peters, seconded by Mr. Carey that the matter be adjourned on the issue of jurisdiction but that Convocation hear argument as to penalty.

Lost

It was moved by Mr. Campbell, seconded by Mr. Guthrie that the matter be adjourned until 2:30 p.m. on Friday, January 25th, 1991 for argument on the issue of jurisdiction.

Carried

Mr. Dvorak, counsel, the reporter and the public were recalled.

Mr. Dvorak and counsel were informed of Convocation's decision.

The matter was adjourned to Friday, January 25th, 1991 at 2:30 p.m.

Mr. Greenspan waived any quorum requirement.

Mr. Dvorak and counsel retired.

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CONVOCATION ADJOURNED AT 3:30 P.M.

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Confirmed in Convocation this      day of      , 1991.

Treasurer