

25th April, 1991

MINUTES OF SPECIAL CONVOCATION

Thursday, 25th April, 1991
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence, Q.C.), Arnup, Bragagnolo,
Callwood, Carey, Carter, Chapnik, Copeland, Ferguson, Hall,
Hickey, Howie, Lamek, Lawrence, Peters, Shaffer, Somerville, Thom,
Thoman, Topp, and Yachetti.

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"IN PUBLIC"

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DISCIPLINE COMMITTEE

Re: WOLF VON TEICHMAN, Toronto

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Robert Conway appeared for the Society. Mr. John Olah
appeared for the solicitor who was not present.

Mr. Conway requested an adjournment on consent.

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

Counsel retired.

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Re: MICHAEL FRANK STOYKA, Windsor

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Robert Conway appeared for the Society. Mr. Brian Greenspan
appeared for the solicitor who was not present.

Mr. Conway advised that Mr. Stoyka had been hospitalized and
requested an adjournment on consent.

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

Counsel retired.

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MICHAEL BARRY BIDERMAN

Representations were made by Mr. Conway that the date of Mr.
Biderman's suspension be amended to February 15th, 1991.

It was moved by Mr. Lamek, seconded by Mr. Topp that the date of
Mr. Biderman's suspension be amended to February 15th, 1991.

Carried

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25th April, 1991

Re: FRANCES EARL DAROU, Sault Ste. Marie

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Ron Cohen appeared for the Society and Mr. Roy Youngson appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 15th February, 1991, together with an Affidavit of Service sworn 9th March, 1991, by Louis Katholos that he had effected service on the solicitor by registered mail on 8th March, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 25th April, 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

Mary P. Weaver, Q.C. (Chair)
Bernard Shaffer, Q.C.
Mrs. Netty Graham

In the matter of
The Law Society Act

Ronald Cohen
for the Society

and in the matter of
FRANCES EARL DAROU
of the City
of Sault Ste. Marie
a barrister and solicitor

Roy Youngson
for the solicitor

Heard: January 15, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 20, 1990, Complaint D134/90 was issued against Francis Earl Darou, alleging that he was guilty of conduct unbecoming a barrister and solicitor.

The matter was heard in public on January 15, 1991, before this Committee composed of Mary P. Weaver, Q.C., Chair, Bernard Shaffer, Q.C., and Mrs. Netty Graham. Mr. Darou was in attendance and was represented by Roy Youngson. Ronald Cohen appeared as counsel for the Law Society.

DECISION

The following particulars of conduct unbecoming were admitted and found to have been established:

Complaint D134/90

- 2(a) On October 31, 1989, he pled guilty to the offence of willfully performing an indecent act by exposing his private parts and masturbating at Trout Lake Marina with intent to offend Colleen Elizabeth Farrell and Christine Audrey Craft contrary to Section 173(1)(b) of the Criminal Code;
- (b) On or about September 10, 1989 he performed the indecent act of exposing his penis and masturbating at Trout Lake Marina with intent to offend Colleen Elizabeth Farrell and Cristine Audrey Craft.

Evidence

The entirety of the evidence before the Committee on the issue of conduct unbecoming 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 Complaint D134/90 and is prepared to proceed with a hearing of this matter on

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D134/90 with his counsel, Roy Youngson, and admits the particulars contained therein.

IV. FACTS

4. The Solicitor is 49 years old, was called to the Bar in 1979 and practises as a sole practitioner in Sault Ste. Marie.
5. On September 10, 1989 at approximately 9 p.m., Colleen Farrell, 19, and Christine Craft, 18, were working in the upstairs office at Trout Lake Marina in Sault Ste. Marie. The Solicitor walked on to the deck outside of the office and leaned on the railing directly in front of the open office door. The Solicitor was smiling and laughing and Ms. Craft noticed that the Solicitor's penis was hanging out of his pants. Ms. Craft brought this to Ms. Farrell's attention who also noticed that the Solicitor's penis was exposed. Both Ms. Farrell and Ms. Craft continued to work and tried to ignore the Solicitor. Approximately five minutes later the Solicitor left. The two girls went downstairs and told Ms. Farrell's older sister, Jennifer, what had occurred and then returned to the office.
6. Approximately 30 minutes later the Solicitor, without permission, went directly into the office where the two girls were working. He sat down on a bench between the two girls. As soon as he sat down, he undid his zipper, pulled out his penis and started masturbating. The Solicitor leaned toward Ms. Craft and started to stroke her arm with a piece of paper. Ms. Craft kicked out at him. Then the Solicitor moved over towards Ms. Farrell and put his right hand on her leg just above the knee. She told him to leave and he reached over to grab her left hand but she pulled away. She again told him to leave. Ms. Farrell then stated that the Solicitor's actions were disgusting and she was leaving. The two girls ran downstairs and Ms. Farrell told her sister, Jennifer, what had occurred. The Solicitor left the office and entered the restaurant. His penis was not exposed when he entered the

25th April, 1991

restaurant. Jennifer Farrell then told her sister and Ms. Craft to go upstairs to the office and lock the door. As the two women were returning to the upstairs office they walked in front of the restaurant window and saw the Solicitor standing in the restaurant with his penis again exposed. The two women went to the upstairs office and locked the door.

7. Jennifer Farrell saw the Solicitor leaving the restaurant in the direction of the upstairs office and asked one of the customers to go after the Solicitor. There was a knock on the office door but the two women would not open the door. The customer proceeded to the office door and took the Solicitor back inside the restaurant.

8. At 10:00 p.m. the Marina closed and everyone left. The Solicitor was still on the premises. As the women drove off together the Solicitor waved to them.

9. A similar incident had occurred on November 6, 1987 at approximately 11:30 p.m. Mike Chudoba, 16, was at the Sub & Donut Shop on Queen Street in Sault Ste. Marie. The Solicitor was sitting on a stool at the counter at the same establishment and turned around. Mr. Chudoba observed that the Solicitor's zipper was open and his penis was exposed. Mr. Chudoba left the donut shop approximately 10 minutes later with his friends and noticed the Solicitor walking on Queen Street. The Solicitor had his hands in his jacket pockets and opened up the front of his jacket which showed that his penis was still exposed.

10. With respect to the September 10, 1989 incident, the Solicitor was charged with willfully performing an indecent act, to wit: exposing his private parts and masturbating at Trout Lake Marina with intent thereby to offend Colleen Elizabeth Farrell and Christine Audrey Craft contrary to Section 173(1)(b) of the Criminal Code of Canada.

11. At the proceedings which were heard on October 31, 1989 at Sault Ste. Marie, Ontario by His Honour Judge J.D. Greco, the Solicitor pled guilty to the offence as charged. The Solicitor was represented by counsel who indicated that the Solicitor was seriously under the influence of alcohol at the time of the incident, and that immediately after the events occurred, the Solicitor sought the assistance of counselling from a Dr. Kelleher and had been seeing him regularly once a week. Counsel further advised the Provincial Court that the Solicitor had indicated that he would never drink again and the Solicitor's position to the Provincial Court, as expressed by his counsel, was that he had not had a drink since the incident and he would not drink again.

12. The Provincial Court was also advised that the Solicitor had spent nine years as a steel worker and five years as a teacher prior to being admitted to the Bar. The Solicitor's counsel advised the court that he was aware of no criminal record for his client. The Solicitor's counsel submitted to His Honour Judge Greco that the Solicitor would face a problem with the Law Society due to his conduct.

13. In his reasons for sentence Judge Greco stated that significant repercussions would flow from the registration of a conviction for a barrister and solicitor. His Honour concluded that in his view the public interest would not be offended by the granting of an absolute discharge and granted the Solicitor an absolute discharge.

14. The Crown appealed against sentence. The appeal was heard by District Court Judge J. Loukidelis on March 22, 1990. The Crown's appeal from sentence was dismissed.

DATED at Toronto this 3rd day of October, 1990."

25th April, 1991

RECOMMENDATION AS TO PENALTY

The majority of the Committee recommends that the said Francis Earl Darou be Reprimanded in Convocation.

REASONS FOR RECOMMENDATION

The panel have reviewed carefully the report of Gary R. Keleher, Ph.D., C. Psych., together with the joint submissions of counsel, that the Solicitor be reprimanded in Committee.

We have weighed with care the recommendations of Dr. Keleher's report that the least punitive action be taken against the Solicitor and his observation that the behavior at issue is innocuous and tends not to be associated with more worrisome phenomena. We also considered the statements made by the judge in pronouncing the sentence on the Solicitor at the criminal trial granting an absolute discharge.

The joint submission of counsel focused on the report of Gary R. Keleher, Ph.D., C. Psych. The recommendation is that the least punitive actions to be taken against the Solicitor. His prognosis is that the chances for his overcoming his conflicts are great. The joint submission is that neither the public nor the Solicitor's clients are at any risk so that there is no need to impose a penalty involving the Solicitor leaving the profession and we concur with the submission to that extent. The mitigating circumstances advanced are the fact that the defendant immediately following the commission of the conduct which is the subject matter of this hearing obtained psychological counselling and has determined to overcome any alcoholic dependency and is seeking an ongoing cure for the mental condition that is the underlying cause of the conduct. There has been no further occurrence of similar conduct for a period of twenty-eight months. The question for determination therefore is the appropriate venue for a reprimand to the Solicitor. In making this determination, the Law Society must consider the mitigating circumstances, the protection of the public, the risk to the clients of the Solicitor and the Law Society's responsibility to inform the public and the profession of the outcome of these proceedings. If a lesser penalty were imposed, those most directly concerned with the matter would conclude that the Solicitor is continuing perhaps without penalty. A part of the joint submission advanced as a mitigating circumstance is the fact that the matter and the criminal proceedings have received wide public reporting, both in the Solicitor's community and in widely scattered areas beyond that community but where the Solicitor is known. We are therefore of the view that the penalty we are recommending does not unduly increase the suffering of the Solicitor beyond the measure he has already endured. We are also of the view that it is important that both the public and the profession know of the penalty and the reasons for its imposition. We are therefore of the opinion that the conduct is such that notwithstanding the explanation we have received for the conduct and the mitigating circumstances, the Solicitor must endure the result that flows from such conduct including the publication of the penalty and the reason for its imposition. For these reasons we recommend that the Solicitor be Reprimanded in Convocation.

Francis Earl Darou was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 5th day of April, 1979.

ALL OF WHICH is respectfully submitted

DATED this 15th day of February, 1991

"Mary Weaver"
Mary P. Weaver, Q.C., Chair

Reasons for Dissenting Opinion of Bernard Shaffer, Q.C.

As to Penalty

The third member of the Committee feels that the appropriate penalty would be a reprimand in Committee, as jointly recommended by counsel. The facts have nothing to do with the practice of law. The matter has already received wide reporting in the Solicitor's community and in other areas. To heap further and wider publicity upon the Solicitor would be to compound his punishment and adversely affect his ability to overcome the mental health condition.

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It was moved by Mr. Lamek, seconded by Mr. Topp 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. Lamek, seconded by Mr. Somerville that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded in Convocation be adopted.

Submissions were made by Mr. Youngson on behalf of the solicitor. No representations were made by Society's counsel.

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

The motion by Mr. Lamek that the Recommendation as to Penalty contained in the Report was lost.

It was moved by Mr. Topp, seconded by Mr. Bragagnolo that the solicitor be reprimanded in Committee.

Carried

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

The solicitor was asked to waive the original committee and consent to Convocation sitting as a Committee for the purpose of administering the reprimand. The solicitor consented.

Counsel, the reporter and the public withdrew.

Convocation adjourned and reconstituted as a Committee. After the solicitor signed the waiver of appeal the reprimand was administered.

The solicitor retired.

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Convocation then resumed.

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Re: ROBERT HAROLD EDMONSTONE, Sudbury

Mr. Topp placed the matter before Convocation.

Mr. Lamek did not participate.

The reporter was sworn.

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

25th April, 1991

Convocation had before it the Report of the Discipline Committee dated 4th April, 1991, together with an Affidavit of Service sworn 24th April, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 10th April, 1991 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert J. Carter, (Chair)
Bernard Shaffer
Netty Graham

In the matter of
The Law Society Act

Ronald Cohen
for the Society

and in the matter of
ROBERT HAROLD EDMONSTONE
of the City
of Sudbury
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 15, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 16, 1990, Complaint D119/90 was issued against Robert Harold Edmonstone alleging that he was guilty of professional misconduct and on October 11, 1990, Complaint D171/90 was issued against Robert Harold Edmonstone alleging that he was guilty of professional misconduct.

The matter was heard in public on January 15, 1991, before this Committee composed of Robert J. Charter, Chair, Bernard Shaffer and Mrs. Netty Graham. The Solicitor was in attendance and was not represented. Ronald Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D119/90

- 2(a) He failed to file with the Society within six (6) months of the termination of his fiscal years ending January 31, 1989 and January 31, 1990, a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act.

Complaint D171/90

- 2(a) He engaged in the practise of law during the periods November 24, 1989 to March 16, 1990 and May 15, 1990, to the present when his rights and privileges were suspended for non-payment of the annual levy for the Society's Errors and Omissions Insurance Plan;
- (b) He has failed to provide a reply to the Society regarding a complaint by Laurette Uttley, despite letters dated April 24th and June 19, 1990, and a telephone request on June 4, 1990.

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 Complaint D119/90 and D171/90 and is prepared to proceed with a hearing of these matters on December 4, 1990.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D119/90 and D171/90 and admits the particulars contained therein.

IV. FACTS

4. The Solicitor was called to the Bar on March 22, 1974. He is now under suspension for non-payment of his Errors & Omissions insurance levy.

Complaint D119/90

5. The Solicitor's fiscal year end is January 31st. By virtue of Section 16(2) of the Regulation made pursuant to the Law Society Act the Solicitor is required to file with the Society within six months of the termination of his fiscal year a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant.

6. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal years ending 1989 and 1990.

7. The Forms remain outstanding for the fiscal years ending January 31, 1989 and January 31, 1990.

Complaint D171/90 - Particular 2(a)

8. The Solicitor was suspended on November 24, 1989 for non-payment of his Errors & Omissions insurance levy. On March 16, 1990 the Solicitor was reinstated. On that date he paid the Society \$2,579.00, comprising the outstanding Errors & Omissions insurance levy, a portion of the Solicitor's annual fees as well as a \$600 late filing fee in respect of outstanding Forms 2 and 3.

9. The Solicitor was again suspended on May 25, 1990 for outstanding Errors & Omissions insurance levy. An instalment of \$1,085.00 due January 1, 1990 and payable four months thereafter on May 1, 1990 had not been made. Registered letters were sent to the Solicitor advising him of the suspensions and notice of the suspensions were published in the Ontario Reports.

10. The Solicitor works out of two offices, one in Sudbury and another in Little Current on Manitoulin Island. The Little Current office is the main office and Sudbury is a branch office.

11. The Solicitor's practice is a general practice of law, including real estate and criminal matters. Despite the suspensions, the Solicitor continued to engage in the practice of law on an ongoing basis from the time of the first suspension on November 24, 1989 and continuing from the second suspension of May 25, 1990. The Solicitor, among other things, continued to see clients, make court appearances and engage in real estate transactions.

Complaint D171/90 - Particular 2(b)

12. The Solicitor acted for the complainant on the sale of a residence which was completed on January 15, 1990. The complainant wrote to the Society by letter dated March 5, 1990 complaining about her inability to obtain an accounting of the transaction, despite numerous requests. By letter dated April 24, 1990 the Law Society wrote the Solicitor enclosing a copy of the complainant's letter. A reply was requested within a period of two weeks.

13. On June 4, 1990 a staff member of the Society telephoned the Solicitor's office and left a message requesting that the Solicitor return the call. The Solicitor did not return the call.

14. A registered letter dated June 19, 1990 was sent to the Solicitor. The letter advised that the matter would be referred for disciplinary proceedings unless a response were received no later than seven days from the date of the letter.

15. The letters and telephone call noted above all failed to elicit a response to the Society. By letter dated August 23, 1990 and received by the Law Society on August 28, 1990, the complainant attached a short letter from the Solicitor with an accompanying trust statement that she indicated had been received by her on August 16, 1990.

V. PENALTY

16. The Solicitor has no previous discipline record. The Society submits that he be suspended for a period of two months and thereafter until all outstanding Errors & Omissions insurance levies are paid and until all outstanding Forms 2 and 3 are filed.

17. The Solicitor joins in this submission.

DATED at Toronto this 29th day of November, 1990."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Robert Harold Edmonstone be suspended for a period of two months and thereafter until all outstanding Errors and Omissions insurance levies are paid and until all outstanding Forms 2 and 3 are filed.

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REASONS FOR RECOMMENDATION

In view of the Agreed Statement of Facts, and the Solicitor's previous suspensions for non-payment of his Errors & Omissions insurance levy, and the joint submission as to penalty, we think the above recommendation is appropriate.

Robert Harold Edmonstone was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 22nd day of March, 1974.

ALL OF WHICH is respectfully submitted

DATED this 4th day of April, 1991.

"Robert Carter"
Robert J. Carter, Q.C., Chair

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

Mr. Cohen advised Convocation that he had spoken to Mr. Edmonstone by telephone and Mr. Edmonstone told Mr. Cohen he had no problem with the Report and no objection to the matter proceeding and that he would not be attending.

The Report was adopted.

It was moved by Mr. Topp that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for two months be adopted.

It was moved by Mr. McKinnon, seconded by Mr. Bragagnolo that the penalty be one of suspension until all outstanding fees are paid and forms filed.

Not Put

The Recommendation as to Penalty as moved by Mr. Topp was adopted.

Counsel retired.

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Re: ALLAN ROWAT ELLIOTT, Barrie

Mr. Topped placed the matter before Convocation.

Mr. Lamek did not participate.

The reporter was sworn.

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

Convocation had before it the Report of the Discipline Committee dated 11th March, 1991, together with an Affidavit of Service sworn 24th April, 1991, by Louis Katholos that he had effected service on the solicitor by registered mail on 9th April, 1991 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

In the matter of
The Law Society Act

Ronald Cohen
for the Society

and in the matter of
ALLAN ROWAT ELLIOTT
of the City
of Barrie
a barrister and solicitor

D. Kevin Carroll
(Not in Attendance)
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

On August 20, 1990, Complaint D111/90 was issued against Allan Rowat Elliott alleging that he was guilty of professional misconduct.

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 Peters, Q.C. Neither the Solicitor nor Counsel for the Solicitor was in attendance. Ronald Cohen appeared on behalf of the Society.

DECISION

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

Complaint D111/90

- 2(a) He misappropriated the sum of at least \$204,860.56 from his mixed trust account.

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 Complaint D111/90 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 D111/90 with his counsel, D. Kevin Carroll, and admits the particulars contained therein.

IV. FACTS

Particular 2(a)

4. The Solicitor came to the attention of the Society due to his lack of diligence in the estate of Hilda Summers. Ms. Summers died on August 2, 1985 and the Solicitor was the co-executor and solicitor for the estate. Sometime after Ms. Summers' demise the beneficiaries requested information, including an accounting of the estate assets, from the Solicitor. The Solicitor did not reply to their enquiries and they complained to the Society.

5. The Society attempted to conduct an audit investigation of the Solicitor's practice. The estate material in the Solicitor's possession was reviewed and he was asked to provide answers to certain questions and to forward an accounting. Despite many follow ups by telephone and letter the Solicitor failed to provide the Society with the information required. As a result of the Solicitor's failure to co-operate the auditor could not complete the review of the estate. A formal audit report was issued and authorization was obtained for a Complaint respecting the Solicitor's failure to co-operate. The Solicitor produced the required information shortly before his discipline hearing at which time he was Reprimanded in Committee.

6. After receiving the information from the Solicitor further audit investigations revealed serious improprieties with the Solicitor's trust account. The audit revealed that the Solicitor was involved in a series of misappropriations over a large number of years. Due to the:

- a) Large number of misappropriations;
- b) Long period of time over which the misappropriations occurred;
- c) Solicitor's inability to provide details in the vast number of files involved,

the Society has not been able to conduct a complete audit of the Solicitor's practice. However, the current position is that there is a trust shortage of at least \$204,860.56 due to recent misappropriations for which there has not been restitution.

7. From what the Society has been able to determine to date, it appears as though the misappropriations started in 1981. At that time the Solicitor made an error in a file. He misled his client respecting the status of the file and finally arrived at the situation where he told his client that a settlement had been arranged. In order to effect the settlement he had to misappropriate funds from his mixed trust account. The Solicitor had to assign the loss to a particular client trust ledger account. When this particular client required its trust funds the Solicitor misappropriated further trust funds. This started the chain of misappropriations which continued throughout the years and involved an extensive number of files. Due to these circumstances, the Society cannot determine the number of the misappropriations or the amount misappropriated over the years without committing substantial resources to completing a total audit of the Solicitor's practice throughout the years. While the shortage that can be verified to date is approximately \$200,000.00 there is some potential for additional losses which may amount to a further \$60,000.00.

8. The Society's audit has shown no personal benefit accruing the Solicitor for these misappropriations. Throughout the Society's audit of the misappropriations the Solicitor has attempted to co-operate. However, due to the large number of misappropriations and the long period over which the misappropriations occurred, the Solicitor has been unable to answer many of the questions posed by the Society. Another factor is the large number of files maintained by the Solicitor. At the time when he undertook not to practise he had carriage of 861 active files.

9. The following file provides an illustration of the Solicitor's misappropriations.

David Wilson - Shortage: \$71,000.00

The Solicitor represented Mr. David Wilson on a real estate transaction. Mr. Wilson provided the Solicitor with a bank draft for \$150,000.00 payable to the Solicitor "in trust". The funds were to be used as a deposit. On July 11, 1989 the Solicitor deposited the \$150,000.00 into his trust account. Instead of using the funds for the deposit the Solicitor misappropriated \$71,000.00 of these funds and paid them out as follows:

- a) Bank draft dated July 11, 1989 in the amount of \$29,000.00 payable to Dirk Cockburn;
- b) Bank draft dated July 11, 1989 in the amount of \$40,000.00 payable to William Maguire;
- c) A cheque dated July 12, 1989 in the amount of \$2,000.00 payable to Julia Brown.

Prior to this the Solicitor represented Mr. Cockburn on a mortgage transaction. The Solicitor held funds in trust for Mr. Cockburn and had misappropriated \$29,000.00 of these trust funds for another transaction unrelated to Mr. Cockburn's transaction. In order to correct the trust shortage in Mr. Cockburn's ledger account the Solicitor misappropriated \$29,000.00 from Mr. Wilson.

The Solicitor had also acted for William Maguire respecting a real estate sale. Subsequent to the sale the Solicitor had held funds in trust for Mr. Maguire. He had misappropriated these funds to satisfy an obligation on another file. In order to replace the funds that he had misappropriated from Mr. Maguire he misappropriated \$40,000.00 from Mr. Wilson.

The Solicitor had to make a \$2,000.00 payment to Ms. Brown for the same reasons as noted in the Cockburn and Maguire cases.

10. The current trust shortage of over \$200,000.00 has resulted from situations similar to that respecting Mr. Wilson. There have, however, been actual recoveries of \$46,386.00 with further possible recoveries. The Solicitor is not in a position to make restitution.

11. Both the Society's insurance and compensation departments are involved. The insurance department has made payments to date on twelve files totalling more than \$250,000.00. The Compensation Fund has received claims totalling \$87,000.00. The insurance department has paid some of these claims and others are outstanding. Due to the uncertain nature of the situation there is a potential for increased involvement by both of these departments.

12. The Barrie city police have also conducted an investigation of the Solicitor and have charged him with five counts of theft over \$1,000.00.

V. PENALTY

13. The Solicitor was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on March 23, 1973.

25th April, 1991

14. The Solicitor is not in a position to make restitution either for the trust shortage of over \$200,000.00 (subject to recoveries and potential recoveries) nor for any potential additional shortages to the trust account. As a result of this, payouts from the Compensation Fund will have to occur.

DATED at Toronto this 5th day of November, 1990.

RECOMMENDATION AS TO PENALTY

The Committee unanimously recommends that the said Allan Rowat Elliott be disbarred.

REASONS FOR RECOMMENDATION

On the Agreed Statement of Facts there was a long history of dishonesty and misappropriation of clients' trust funds resulting in substantial payments by the Insurance Department and claims against the Compensation Fund. While there was no evidence of direct benefit to the Solicitor, there were no mitigating or extenuating circumstances that would justify any penalty less than disbarment.

Although the Solicitor did not appear and was not represented by counsel, there were two letters from his counsel filed as exhibits confirming that Mr. Elliott fully appreciated the consequences of signing the Agreed Statement of Facts and his decision not to attend, and was aware of the likelihood of disbarment.

Allan Rowat Elliott 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 11th day of March, 1991.

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

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

No submissions were made.

The Report was adopted.

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

No submissions were made.

The Recommendation that the solicitor be disbarred was adopted.

Counsel retired.

.....

25th April, 1991

Re: CALUM DONALD GRAHAM, Mississauga

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Ron Cohen appeared for the Society. No one appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 28th March, 1991, together with an Affidavit of Service sworn 24th April, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 25th April, 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

Laura L. Legge, Q.C. (Chair)
Frances Kiteley
June Callwood

In the matter of
The Law Society Act

H. Reginald Watson and
Ronald Cohen
for the Society

and in the matter of
CALUM DONALD GRAHAM
of the City
of Mississauga
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 19, 1990
October 12, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 1, 1990, Complaint D68/90 was issued against Calum Donald Graham alleging that he was guilty of professional misconduct.

The matter was heard in public on June 19, 1990 and October 19, 1990, before this Committee composed of Laura L. Legge, Q.C., Chair, Frances Kiteley and June Callwood. Mr. Graham attended the hearing and was not represented. H. Reginald Watson appeared as counsel for the Law Society on June 19, 1990. Ronald Cohen appeared as counsel for the Law Society on October 12, 1990.

DECISION

The Complaint

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

(Para. 2; Complaint D68/90)

- (a) He failed to file within the Society within six (6) months of the termination of his fiscal years ending February 28, 1988 and February 28, 1989, a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act.

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 Complaint D68/90 and is prepared to proceed with a hearing of this matter on June 19, 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 D68/90 and admits the particular contained therein.

IV. FACTS

Particular 2(a)

4. The Solicitor's fiscal year end is February 28th. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal years ending 1988 and 1989.

5. As the Solicitor did not file his Form 2 or Form 3, each year he was subject to a late filing levy of \$5.00 per day. When this levy amounted to \$600.00 he was subject to suspension pursuant to Section 36 of The Law Society Act. In order to avoid suspension the Solicitor paid the late filing fees for each year. However, he did not file the required forms. As a Form 3 is a report of a public accountant respecting the compliance of the Solicitor's books and records with the regulations, the Society has no way of verifying that the Solicitor is maintaining books and records save for arranging for an audit examiner to attend at the Solicitor's practice thereby substantially increasing the costs of the audit branch.

DATED at Toronto this 19th day of June, 1990."

RECOMMENDATION AS TO PENALTY

This Committee recommends that the said Calum Donald Graham be suspended until his Forms 2/3 are filed and his books and records are in order.

REASONS FOR RECOMMENDATION

On June 19, 1990, the Committee heard evidence from the Solicitor concerning his personal tragedy in the loss of his son and the effect the tragedy had had on his practice. The Committee also heard evidence that the Solicitor was winding down his practice with the intention of ceasing practice. At the request of the Solicitor, the decision as to penalty was postponed to afford to him an opportunity to make the necessary filings.

The hearing as to penalty took place on October 12, 1990. The Solicitor did not attend, nor was he represented by counsel. There was no evidence that the filings had been made. Accordingly, the Committee recommends that for the protection of the public, the Solicitor should be suspended from practice until the Law Society is satisfied that the Solicitor's books and records are in order.

Calum Donald Graham was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 6th day of April, 1979.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"Laura Legge"

Laura L. Legge, Q.C., Chair

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

There were no submissions by Society's counsel or the solicitor.

The Report was adopted.

It was moved by Mr. Lamek, seconded by Mr. Howie that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended until his Forms 2/3 are filed and books and records are in order, be adopted.

It was moved by Mr. Topp, seconded by Mr. Copeland that the matter be adjourned until the September Convocation.

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

It was moved by Mr. Topp, seconded by Mr. Carter that if the solicitor's books and records are not in order to the satisfaction of the Secretary by September 1st, 1991 the solicitor be suspended at that time until the matters are concluded.

Carried

Counsel, the solicitor, the reporter and the public were recalled.

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

Mr. Bragagnolo rose on the point of order that if Convocation were seised at the September Convocation a number of the Benchers might not be present.

Convocation therefore ordered that if the solicitor did not meet his filing requirements to the satisfaction of the Secretary he would be suspended as of September 1st, 1991.

Counsel and the solicitor retired.

.....

25th April, 1991

Re: KLEMENS FASS, Scarborough

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Ron Cohen appeared for the Society. No one appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 8th March, 1991, together with an Affidavit of Service sworn 24th April, 1991, by Louis Katholos that he had effected service on the solicitor by registered mail on 4th April, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 25th April, 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

Lee K. Ferrier, Q.C. (Chair)
Samuel Lerner, Q.C.
Patrick G. Furlong, Q.C.

In the matter of
The Law Society Act

Ronald Cohen
for the Society

and in the matter of
KLEMENS FASS
of the City
of Scarborough
a barrister and solicitor

J. Douglas Crane, Q.C.
for the solicitor

Heard: October 10, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 26, 1990, Complaint D55/90 was issued against Klemens Fass alleging that he was guilty of professional misconduct and on October 10, 1990 Complaint 55a/90 was issued against the Solicitor replacing Complaint D55/90.

The matter was heard in public on October 10, 1990 before this Committee composed of Lee K. Ferrier, Q.C., Chair, Samuel Lerner, Q.C. and Patrick G. Furlong, Q.C. Mr. Fass was in attendance and was represented by J. Douglas Crane, Q.C. Ronald Cohen appeared as counsel for the Law Society.

DECISION

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

Complaint D55a/90

2. a) He attempted to evade personal income tax liability for fees he received in the amount of \$12,800.00, more or less;
- b) He failed to record the fees he misappropriated in the books and records of his practice of law;
- c) He issued cheques from mortgage and estate trust funds without issuing an accurate fee billing. Instead, he had the clients endorse cheques to him and then deposited those cheques into his personal account;
- d) He failed to make it clear to his clients that they may be entitled to compensation for executors' fees provided they did the work.

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 Complaint D55/90 and is prepared to proceed with a hearing of this matter on October 10, 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 D55a/90 with his counsel. J. Douglas Crane, and admits the particulars therein.

IV. FACTS

4. The Solicitor acted for Mr. Selwyn Cooke in taking instructions and preparing a last Will and Testament. The Will was executed on November 2, 1984 and nominated the Solicitor and Mr. Cooke's two children, Beverley and James Cooke, all as co-executors. The Solicitor was a witness to Mr. Cooke's execution of the Will. Ms. Beverley Cooke and Mr. James Cooke were the sole beneficiaries of the estate. In addition to being one of the co-executors, the Solicitor also acted for the estate.

5. The Solicitor had acted for Mr. Cooke and for his wife, Margaret Cooke, on the sale of their cottage property in 1984. The sale price was \$25,000 with the vendors taking back a mortgage in the sum of \$20,000. That transaction was completed on March 9, 1984.

6. Margaret Cooke died on December 30, 1986. Selwyn Cooke died on June 7, 1987.

7. Prior to the death of Selwyn Cooke, problems arose in the collection of the mortgage. As a result, the Solicitor was retained to attempt to collect the money due on the mortgage. Eventually the Solicitor succeeded in collecting \$19,027.30.

8. In February, 1987 Selwyn Cooke agreed to sell his home for \$157,000. The transaction was to close on July 15, 1987. As noted, Mr. Cooke died on June 7, 1987.

25th April, 1991

9. In the months of June and July, 1987, the Solicitor met with the other co-executors several times at his office. The issue of fees was discussed at least during one of the meetings and possibly at others. On July 2, 1987, the Solicitor discussed his fees and made a proposal, the effect of which allowed him to evade the payment of personal income tax on the sum of \$12,800.

10. The Solicitor indicated that his fees could be as high as \$18,000 depending on the size of the estate, which at that date had not been determined. However, he indicated that if he was paid immediately, his fees would be less. The clients agreed with this proposal so the Solicitor issued a trust cheque to each of Beverley Cooke and James Cooke in the amount of \$6,400 for a total of \$12,800. The Solicitor concedes that he told the clients that if they endorsed the two trust cheques back to him he would not charge them the balance of the executors' fees to which he felt he was entitled. Based on this discussion, Beverley and James Cooke endorsed the cheques back to the Solicitor.

11. The Solicitor advised Beverley and James Cooke that executors' fees on an estate of \$300,000, which was approximately the size of the estate of Selwyn Cooke, amounted to \$15,000. The Solicitor advised that the \$12,800 would cover his fees. He is of the view that this amount was to include legal fees for the collection of the mortgage but not legal fees in respect of the sale of the home. Beverly Cooke is of the view that the \$12,800 was to cover all of his fees, including legal fees for the sale of the home.

12. The Solicitor did not record his receipt of the \$12,800 in the books and records of his practice of law nor did he issue a fee billing for the amount of this compensation. The Solicitor deposited the two endorsed trust cheques to his personal account.

13. The Solicitor did not advise the other co-executors that they may have been entitled to one third of the executors' compensation if they did one third of the work. There was discussion about entitlement to executors' fees being tied to executors' work. The brother, James Cooke, did not want to do any work and the only work that would be done would be done by his sister, Beverley Cooke. The Solicitor advised the other co-executors that they should look upon him as a resource.

14. The Solicitor admitted to the Society during its investigation that he attempted to evade the payment of income tax on the \$12,800 in fees he had obtained from the estate. When the Solicitor filed his income tax return for the fiscal year 1987 he did not declare the \$12,800. However, when the Society conducted its investigation in 1989 it required that the Solicitor issue a fee billing which he did. On August 14, 1989 the Solicitor issued a fee billing to Beverley and James Cooke in the amount of \$12,000.

15. The complaint of Beverley Cooke was not primarily directed at the issue of fees but questioned, among other things, Mr. Fass' advice concerning the possible necessity of holding back funds for tax responsibility. The complaint arose primarily as a result of no money being held back for tax.

16. Beverley Cooke is of the view that the Solicitor told the other co-executors to retain an accountant who should get in touch with him. The Solicitor and Beverley Cooke have different views as to what discussion took place respecting the responsibility of the clients to hold back funds for taxes.

17. The fee billing issued in August, 1989 was only for \$12,000. However, the Solicitor had issued an earlier fee billing dated September 11, 1987 which reads as follows:

25th April, 1991

STATEMENT OF ACCOUNT

Re: Cooke Estate Sale to Caggianiello
149 Benjamin Boulevard,
and the Estate of Selwyn Floyd Cooke

RECEIVED Balance due on Closing Sale of 149 Benjamin Boulevard	\$152,303.43
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RECEIVED Funds on Muskoka Mortgage	19,027.30
Interest on Mortgage Funds in Term Deposit	82.71

PAID Surrogate Court Probate Fees	\$ 1,540.00
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PAID to Beverley M. Cooke	81,519.46
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PAID to James Cooke	81,519.47
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PAID Robert Case Realty Ltd.	4,420.00
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PAID Legal Fees of Klemens Fass	
Re: Sale	835.00
Re: Transmission of Margaret Cooke	350.00
Re: Transmission of Selwyn Cooke	350.00
Re: Estate of Selwyn Floyd Cooke	805.00

DISBURSEMENTS

Paid Photocopies, Postage, Etc.	\$30.01	
Couriers	10.00	
Registration of Application	16.00	
Mileage to Closing	10.00	
Paid Parking	8.50	
	74.51	
	<u>\$171,413.44</u>	<u>\$171,413.44</u>

The Statement of Account reflects fees obtained by the Solicitor totalling \$2,340, of which \$805 represents fees from the estate. The Statement of Account does not accurately reflect the total fees received in that it makes no reference to the \$12,800 the Solicitor had received on July 2, 1987, when the clients endorsed the cheques over to him.

18. The Solicitor is 48 years of age and has two children.

19. He obtained a B.A. from Western University in 1967, an L.L.B. from Osgoode Hall at York University in 1970 and was called to the Bar in 1972.

20. Since 1972, the Solicitor has practised in a general practice with emphasis on real estate and estate matters in small firms in Toronto and Scarborough.

21. The Solicitor has filed ten character letters with the Law Society, which should be read in conjunction with this Agreed Statement of Facts.

DATED at Toronto this 10 day of October, 1990."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Klemens Fass be reprimanded in Convocation.

REASONS FOR RECOMMENDATION

In the Committee's view, the appropriate penalty is a reprimand in Convocation. Although the occurrences comprised a single event, the actions of the Solicitor constituted a deliberate attempt to evade income taxes. To further the evasion, he deliberately failed to record the fees, and issued cheques from trust funds without an accurate fee billing, in breach of his obligations as a Solicitor. A lesser penalty might create the appearance to the profession that the Society does not consider such conduct to be a serious breach of professional ethics.

Klemens Fass was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 24th day of March, 1972.

ALL OF WHICH is respectfully submitted

DATED this 8th day of March, 1991

"Lee Ferrier"
Lee K. Ferrier
Chair

Mr. Cohen asked that the Report be amended on page 1, paragraph 2 by deleting the word "misappropriated" and inserting the word "appropriated" so that the sentence should now read:

"He failed to record the fees he appropriated in the books and records of his practice of law;"

There were no further submissions by the Society's counsel or the solicitor.

The Report was adopted.

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

No submissions were made.

The Recommendation as to Penalty was adopted.

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

.....

Re: ERNEST VALORIE SWAIN, Kingston

Mr. Lamek placed the matter before Convocation.

Messrs. Somerville, Howie, Carey and Thom did not participate.

The reporter was sworn.

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

25th April, 1991

Convocation had before it the Report of the Discipline Committee dated 10th January, 1991, together with an Affidavit of Service sworn 23rd January, 1991, by Louis Katholos that he had effected service on the solicitor by registered mail on 14th January, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 24th April, 1991. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas J.P. Carey, Chair
Stuart Thom
Jeffery S. Lyons

In the matter of
The Law Society Act

J. Robert Conway
for the Society

and in the matter of
ERNEST VALORIE SWAIN
of the City
of Kingston
a barrister and solicitor

T. O'Hara
for the solicitor

Heard: April 18 and
December 17, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 14th, 1990, Complaint D22/90 was issued against Ernest Valorie Swain, alleging that he was guilty of professional misconduct.

The matter was heard IN PUBLIC on April 18 and December 17, 1990 before this Committee composed of Thomas J.P. Carey, Chair, Stuart Thom and Jeffery S. Lyons. Mr. Swain was in attendance and was represented by Mr. T. O'Hara. 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 D22/90

- 2(a) In or about May, 1986 he misappropriated the sum of \$15,000.00, more or less, from trust funds which were to be used for a mortgage investment for his client, William Wallace;
- (b) In an effort to cover up his misappropriation he falsely reported to William Wallace by letter dated May 28, 1986;

25th April, 1991

- (c) In a further effort to cover up his misappropriation he provided William Wallace with a series of post-dated cheques representing monthly mortgage payments and thereafter took sufficient steps to ensure that the cheques were honoured;
- (d) In or about June, 1989 he forged the signatures of the mortgagors, Mr. and Mrs. Howard Mayo, on an agreement to extend the term of the non-existent mortgage from Mayo to Wallace in the amount of \$15,000.00, more or less;
- (e) In or about June, 1989 he misappropriated the sum of \$14,000.00 from his mixed trust account;
- (f) In or about November, 1989 he borrowed the sum of \$20,000.00 from his client, Susan Dunn, in order to eliminate an overdrawn trust balance of \$10,000.00;
- (g) On or about November 21, 1989 he abandoned his practice of law following which the Society obtained a Trusteeship Order pursuant to Section 43 of the Law Society 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 Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D22/90 and D39/90 and is prepared to proceed with a hearing of this matter on April 18, 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 Society withdraws particular 2(f) of Complaint D22/90.

4. The Solicitor has reviewed Complaints D22/90 and D39/90 with his counsel, Terence O'Hara, and admits the particulars contained therein.

IV. FACTS

D22/90

Particular 2(g)

5. In November, 1989 the Society was informed that the Solicitor had abandoned his law practice. The Solicitor left the city of Kingston on November 20, 1989. As a result of this information an immediate audit was instructed on the Solicitor's practice. During the audit the Society found a letter from the Solicitor dated November 21, 1989 addressed to Mr. Lesley Morley, a solicitor employed in his office. Among other things, the letter stated that there were two problem files, the Mayo/Jackson file and the Lovelock file. The Solicitor also said that his trust account was overdrawn by approximately \$24,000.00 respecting these two files but that he has borrowed \$20,000.00 from his secretary, Susan Dunn and injected \$10,000.00 to reduce the shortage. The balance of \$10,000.00 was deposited to his office general account. The letter also said that Mr. Howard Mayo had nothing to do with the problems. The Society's audit revealed that the Solicitor had misappropriated \$29,000.00 and that the mixed trust account was overdrawn by approximately \$10,000.00 which was corrected by the funds borrowed from Ms. Dunn.

6. On December 7, 1989 the Solicitor returned to Kingston. At that time he informed the Society that Mr. and Mrs. Mayo had no knowledge of either the \$15,000.00 misappropriation or the \$14,000.00 misappropriation and that they had not benefited from these monies. He admitted that he alone had benefited from the \$29,000.00. He indicated that the funds had been used for the most part to pay his creditors. He further indicated that the \$15,000.00 and \$14,000.00 misappropriations were isolated incidents and that there were no other instances in which he had improperly taken trust monies. He further stated that at the time of taking the money he had hoped and intended to repay the trust account when things straightened out for him. He had been under a great deal of stress and he had been suffering financial difficulties since the early 1980s. The Solicitor also admitted that he had signed Mr. and Mrs. Mayo's names to the Mortgage Amending Agreement without their knowledge.

William Wallace - Particulars 2(a), 2(b), 2(c)

8. The Society's audit revealed that in May, 1986 the Solicitor received \$15,000.00 in trust from his client, William Wallace, for the purpose of investing in a second mortgage. The Solicitor misappropriated these funds and did not obtain a mortgage for Mr. Wallace. The Solicitor issued two trust cheques payable to Howard Mayo in the amount of \$7,728.50 and \$7,000.00. The Solicitor deposited these two cheques to account number 243-507354 at the Princess Street branch of Canada Trust in Kingston. This account was in the name of Howard Mayo.

9. Mr. Mayo and the Solicitor have known each other for over 30 years. The Solicitor acted for Mr. Mayo on many occasions and they had also been business partners many years before. The Solicitor approached Mr. Mayo and asked him if he would do him a favour by opening a bank account at Canada Trust in Mr. Mayo's name and signing several blank cheques. The Solicitor advised him that he was having financial difficulties and that he needed an account to pay certain creditors and that he wished to keep these payments separate from his own accounts. The Solicitor then deposited Mr. Wallace's funds and used the funds in this account for his own purposes. He did not obtain a mortgage for Mr. Wallace. One of the uses for the funds was to pay the monthly mortgage payments to Mr. William Wallace in the amount of \$168.75 thereby concealing the fact that the monies had been misappropriated.

10. Mr. and Mrs. Mayo never applied for a mortgage. They did not receive the two trust cheques for \$7,728.50 and \$7,000.00 and they knew nothing of any mortgage. The Society conducted a sub-search of Mayo's residence at 19 Plum Street in Kingston. There was no mortgage registered in favour of William Wallace.

11. The Solicitor issued a false reporting letter to Mr. William Wallace dated May 28, 1986. The reference line on the letter is "Re: Mayo" and the third numbered enclosure is "Your Second Mortgage Registered May 26, 1986 as Instrument Number 427598". The mortgage enclosed with the reporting letter is in the amount of \$15,000.00 and shows the mortgagors as Mr. and Mrs. Mayo and the mortgagee as William Wallace. The mortgage is not signed by Mr. and Mrs. Mayo and was not registered. However, in the upper left-hand corner of the mortgage where the registration particulars are to be entered the Solicitor made the following handwritten entries which indicated a fictitious registration number, date and time:

"427598
12:40 May 26, 1986"

12. In a further attempt to cover up the Solicitor's misconduct he provided Mr. Wallace with a series of post-dated cheques each year. The payments of \$168.75 were made by the Solicitor until June, 1989 at which time the payment was increased to \$189.50.

Particular 2(d)

13. The "Mortgage" given to Wallace indicated that it was to mature on June 1, 1989. William Wallace died on June 2, 1989. The Solicitor prepared a Mortgage Amending Agreement extending the period of the mortgage for one year. The amending agreement was purportedly signed by Mr. and Mrs. Mayo on July 7, 1989. However, the Solicitor forged the signatures of Mr. and Mrs. Mayo as they were not aware of the mortgage. In the upper left-hand corner of the document it appears as though there is a registration stamp dated September 1, 1989 indicating Registration Number 510709. However, this document was never registered.

Particular 2(e)

14. On July 6, 1989 the Solicitor misappropriated a further sum of \$14,000 when he issued a trust cheque to Mr. Howard Mayo in the amount of \$14,000.00. The cheque was deposited on July 6, 1989 into the same Canada Trust bank account which received the two previous cheques. The Solicitor used the blank cheques endorsed by Mr. Mayo to obtain the funds from the bank account. The funds were used to pay Mr. Swain's personal expenses.

15. A \$10,000.00 trust shortage occurred during a real estate transaction. The trust shortage was brought to the Solicitor's attention by his bookkeeper. The Solicitor's secretary, Susan Dunn, had recently inherited approximately \$30,000, which was quite unexpected. The Solicitor borrowed the sum of \$20,000 from Ms. Dunn and deposited \$10,000.00 to the mixed trust account and \$10,000.00 to his general account. The Solicitor did not provide Ms. Dunn with any security for her loan save for a Promissory Note. Ms. Dunn did not have independent legal advice prior to making the loan.

D39/90

16. The Solicitor operated two offices; one in Kingston, the other in Odessa. The Odessa office was opened in February, 1989. He employed staff in each office and as a result was required to make payroll deductions. These deductions were impressed with a trust and were to be submitted to Revenue Canada pursuant to Section 227(4) of the Income Tax Act which reads as follows:

"Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for Her Majesty."

17. The Solicitor had been in practice for a number of years and had always made the payroll deductions which were reflected on the regular accounting provided to his staff. However, for the months of February to November, 1989, the Solicitor made the deductions from the regular paycheques of the staff at the Odessa office but he did not remit the funds to Revenue Canada. Also, several months of payroll deductions for the Kingston office were not remitted to Revenue Canada. The total deductions which were not remitted to Revenue Canada amount of \$7,613.44. These funds were used by the Solicitor for operating expenses of his law practice.

18. As a result of the Section 43 Order appointing a trustee, the Society's Staff Trustee is in the process of collecting fees from the Solicitor's practice. Sufficient funds have been realized. The Solicitor's obligation to Revenue Canada has been retired.

19. The Solicitor was also before Convocation in January, 1977. At that time the Solicitor admitted to misappropriations which totalled \$33,000.00. In both cases the Solicitor received money belonging to a client to be invested in a mortgage. The money was never invested on the security of a mortgage but was used by the Solicitor for his own purposes. He told the client he had a mortgage and made all the payments to him in accordance with the amortization schedule. The Discipline Committee recommended that the Solicitor be reprimanded in Convocation which was adopted by Convocation. A copy of the decision of the Discipline Committee is attached as Appendix 1.

DATED at Toronto this 18th day of April, 1990."

RECOMMENDATION AS TO PENALTY

The Committee are all of the view that the only appropriate penalty for Ernest Valorie Swain is disbarment.

REASONS FOR RECOMMENDATION

This matter has come before us with an Agreed Statement of Facts admitting the particulars of Complaints D22/90 and D39/90.

It is clear that the Solicitor has, in many respects, led an exemplary life, devoted to public service in his community and despite his difficulties and the attendant publicity, he still enjoys the respect of many of his peers in the legal profession as evidenced by letters received in evidence at this hearing. However, some \$9,605 remains owing from the misappropriation of his trust fund and there is a substantial deficit in his general fund of over \$100,000.

Public confidence in the profession requires a clear message that misappropriation of clients' trust funds will be dealt with firmly by the Law Society of Upper Canada.

If there was any doubt that the facts here could be mitigated by the background of the Solicitor and his personal circumstances, it is in our view negated by the fact that the Solicitor was before Convocation in 1977 for a similar misappropriation and received at that time every benefit of leniency.

In the reasons given for a reprimand in Convocation the Discipline Panel at that time had this to say:

"Your Committee was mindful of its duty and the seriousness of the charges against the Solicitor and the fact that there must be some deterrent to the profession with reference to this type of conduct. However, your Committee was also cognizant of its duty towards the profession and the fact that in this particular case, the Solicitor was an exceptional person and it was readily apparent that this type of conduct would never happen again."

It is for these reasons we make the recommendation as to the above penalty.

Ernest Valorie Swain was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 26th day of June, 1958.

ALL OF WHICH is respectfully submitted

DATED this 10th day of January, 1990

"Thomas Carey"
Thomas J.P. Carey, Chair

The matter was stood down and Convocation adjourned for a short recess.

.....

25th April, 1991

.....

CONVOCATION RECONVENED

.....

Re: VICTOR LEO MALONEY, Thunder Bay

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society. Mr. L. Shore appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 14th January, 1991, together with an Affidavit of Service sworn 23rd January, 1991, by Louis Katholos that he had effected service on the solicitor by registered mail on 14th January, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 25th April, 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

Donald H.L. Lamont, (Chair)
Frances Kiteley
June Callwood

In the matter of
The Law Society Act

Gavin MacKenzie
for the Society

and in the matter of
VICTOR LEO MALONEY
in the City
of Thunder Bay
a barrister and solicitor

L. Shore
for the solicitor

Heard: June 20, 1990
October 12, 1990
December 15, 1990

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 1st, 1990 Complaint D35/90 was issued against Victor Leo Maloney, alleging that he was guilty of conduct unbecoming a barrister and solicitor.

The matter was heard in public on June 20, 1990, October 12, 1990 and November 15, 1990, before this Committee composed of Donald H.L. Lamont, Chair, Ms. Frances Kiteley and Ms. June Callwood. Mr. Maloney was in attendance and was represented by L. Shore. 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 D35/90

- 2(a) On January 15, 1990, the Solicitor was convicted on four charges of making false or deceptive statements in his income tax returns for the years 1981 through 1984, under Section 239(1)(a) of the Income Tax Act.

Evidence

The entirety of the evidence before the Committee on the issue of conduct unbecoming 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 Complaint D35/90 and is prepared to proceed with a hearing of this matter on June 20, 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 D35/90 with his counsel, Leonard M. Shore, and admits the particular contained therein.

IV. FACTS

Particular 2(a)

4. Revenue Canada conducted an examination of the Solicitor's income tax filing for the taxation years 1981, 1982, 1983 and 1984. The focus of the investigation was on the alleged evasion of income tax by the Solicitor during that period. Correspondence and meetings ensued between the Solicitor's counsel and Revenue Canada.

5. In September, 1988 the Solicitor was charged with:

- a) One count of unlawfully and willfully evading the payment of income taxes for the years 1981 through 1984; and
- b) Four counts of making false or deceptive statements on income tax returns for the years 1981 through 1984.

6. A newspaper article was published shortly before the Solicitor's first appearance at Provincial Court on January 13, 1989. The Society then started an investigation. Prior to this period, counsel for the Solicitor had informal discussions with the Society advising of the status of the matter in the Provincial Court.

7. On January 15, 1990 the Solicitor pled guilty to the four counts of making false or deceptive statements on his income tax returns for the taxation years 1981 through 1984. The Crown withdrew the one count of income tax evasion for the same taxation years.

25th April, 1991

8. The facts supporting the plea arose from the Solicitor's personal business interests. In particular, the false statements arose through the Solicitor's failure to include income and his overstatement of expenses on his income tax returns for the four taxation years as follows:

<u>Year</u>	<u>Amount</u>
1981	\$25,839.61
1982	25,674.43
1983	17,537.91
1984	<u>14,544.70</u>
TOTAL:	\$83,596.65

9. The following samples will give a representative illustration of how the total of \$83,596.65 was omitted from the Solicitor's income tax returns. In 1981 the Solicitor sold a property and a mortgage was taken back. The interest earned on the mortgage totalled \$12,910.29 and was not reported over the four year period. Also in 1981 property owned by the Solicitor was expropriated. The resulting taxable capital gain of \$19,981.00 was not reported by the Solicitor.

10. In 1982 the Solicitor sold one of his rental properties for \$25,000. The taxable capital gain of \$5,238.50 was not reported by the Solicitor. In 1983 property owned by the Solicitor was sold for \$44,000. The taxable capital gain of \$11,255.00 was not reported by the Solicitor. In 1984 the Solicitor sold a property for \$25,000. The Solicitor did not report the taxable capital gain of \$10,750.00.

11. The federal tax owing on the unreported sum of \$83,596.65 is \$20,876.11.

12. A joint submission of a fine equal to the amount of unpaid tax was accepted by his Honour Judge Fraser of the Provincial Court (Criminal Division) in Thunder Bay. However, in addition to paying the fine the Solicitor will be liable for any amounts owing when Revenue Canada recalculates his returns for all previous years. This will result in further interest and penalties being assessed.

DATED at Toronto this 20th day of June, 1990.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Victor Leo Maloney be reprimanded in Convocation.

REASONS FOR RECOMMENDATION

The Solicitor was born in 1930 and is sixty years old. He has been practising in Thunder Bay since he was called to the Bar and has been a member of the profession since.

The charge against the Solicitor is one of conduct unbecoming, arising out of four charges of making false or deceptive statements in his income tax returns over a period of four years. When the matter first came before us on June 20th, 1990, an Agreed Statement of Facts was filed.

On June 20th, the Solicitor entered a plea of guilty to the charge of conduct unbecoming. The hearing was adjourned in order to give counsel for the Solicitor an opportunity to lead evidence on the issue of penalty. It was adjourned to October 12th, 1990.

25th April, 1991

When the hearing resumed on October 12th, 1990, events took an unexpected turn. Mr. Shore indicated to the Committee that information had come to his attention during the week of September 24th which prompted him to have his client assessed by a psychiatrist, Dr. Francis Wayne Quan, in Ottawa. Mr. Shore indicated his concern that the plea of guilty entered in June to the charge of conduct unbecoming was in jeopardy.

Mr. Shore filed with the Committee a report from Dr. Quan dated October 1st, 1990. Dr. Quan indicated in his first report that he had had only a brief opportunity to meet with the Solicitor and he recommended that the conclusion of the hearing be postponed a sufficiently lengthy period of time to enable him to do a complete assessment.

On October 12th, Mr. Shore also had in attendance the Solicitor's partner, Donald Nelson. In view of the fact that Mr. Nelson was present in Toronto, the Committee agreed to hear his evidence.

Mr. Nelson's evidence is important for purposes of the ultimate disposition and so will be summarized here. Donald Nelson has been a partner of the Solicitor since 1968 and has been associated with him in practice since 1961. Mr. Nelson was called in 1960. The firm includes litigators and solicitors. Mr. Maloney's practice is primarily real estate.

According to Mr. Nelson, there was no question about the Solicitor's ability to carry on his legal practice. Mr. Nelson indicated, however, that the Solicitor probably has more difficulty adapting to change than others. He indicated that recently the partners had assigned a senior non-legal person to assist Mr. Maloney and help him to eliminate his backlog. In addition, he indicated that the Solicitor was coming in earlier and was keeping roughly 9:00 to 6:30 or 7:00 p.m. office hours. Mr. Nelson advised that he was prepared to monitor Mr. Maloney's practice in order to see it through. He agreed that he would speak with the senior non-legal person in order to ensure that there would be smooth functioning of his practice. He confirmed to the Committee that there was no problem between Mr. Maloney and his clients and that if there were problems in his practice, it was in procrastinating in closing and reporting to clients on real estate transactions.

After hearing from Mr. Nelson on October 12th, the Committee considered the request by Mr. Shore for a lengthy adjournment. Ultimately, the Committee declined to postpone the resolution beyond approximately a month and required that the matter proceed on November 15th.

During the course of the attendance on October 12th, it became apparent that Mr. Maloney and Mr. Shore were not ad idem on what should take place on that occasion. Mr. Maloney spoke up and indicated that he preferred to have matters dealt with then and there on October 12th.

In addition, Mr. Maloney spontaneously offered to the Committee, on October 12th, his version of the events arising out of the charges pursuant to the Income Tax Act.

He provided to the Committee (albeit not under oath and spontaneously on October 12th) his explanation of the events. It consisted of the following:

Mr. Maloney was of the view that his conduct was not questionable. He rationalized it on the basis of being a "very busy lawyer". He indicated that he had much personal business which had been "terribly neglected". He said that he often left his personal business until the last minute and was therefore required to do complex work in a short period of time. As a result, he said, "I make mistakes".

25th April, 1991

He then catalogued what he considered were the mistakes. By way of example, he indicated that he had been charged with failing to report interest on one transaction. His response was that he had reported the sale and the capital gain but had overlooked reporting the interest. A second transaction was one where a fellow owed Mr. Maloney a small amount of money and he paid interest on the amount of money twice a year. Since Mr. Maloney had no tax record of any kind, he overlooked reporting the interest. He sold property to the Department of Highways. He did not report the sale on his tax return but he said that it was tax neutral in any event. He said that he sold a house which he inherited from his mother and overlooked reporting it. He said he sold another house in another year and overlooked reporting that as well. He said he sold a cottage lot and overlooked reporting that transaction. He added that he had not used any of his capital gain exemption so that if he had reported all of these transactions, he still would not have had to pay tax.

He also indicated that he had obtained a judgment against a tenant and had collected \$4,000 in rent from the tenant through the Sheriff's office. He failed to recognize that rental income in his tax return. He had other tenants who owed rent and he had agreed to set off the rent against certain car repairs. He failed to report that transaction. He had 28 rental units and two of the tenants deposited directly to his bank account. He did not pick up those two tenants' payments. He received an \$800 grant for converting oil to gas on one of his properties and failed to record the grant. He made a mathematical error and reflected \$30,000 when it should have read \$300.

He concluded by saying that had he gone to trial on the charges of making false or deceptive statements in his income tax returns for the four years in question, it was estimated to take twenty days of trial time, probably with a day here and a day there, and likely would have taken up to five or six months. He had a choice in the criminal charges and based on an inclination to effect "damage control", he pleaded guilty to the criminal charges to "get it over with". He clearly stated to the Committee, however, that he "felt in my heart not morally guilty of trying to deceive". He hastened to point out that he had paid every penny of tax and penalty that had been determined to be owed by him.

He finished his spontaneous presentation by saying: "If I could fix it somehow, I would - but can't".

The Committee was not satisfied that the explanations of Mr. Maloney really answered the list of items not reported to Revenue Canada in the years 1981, 1982, 1983 and 1984 as set out in paragraphs 8, 9 and 10 of the Agreed Statement of Facts.

When the hearing reconvened on November 15th, Mr. Shore presented the evidence of Dr. Francis Wayne Quan. Dr. Quan has impressive credentials as a forensic psychiatrist. He reported on his meetings with the Solicitor, the first on September 28th which led to his report dated October 1st and the second on October 17th which led to his report dated October 31st.

In the course of his examination-in-chief and cross-examination by counsel for the Law Society, Dr. Quan elaborated on his report dated October 31st, 1990.

Dr. Quan testified that Mr. Maloney suffers from obsessive compulsive personality disorder - the criteria of which are set out in D.S.M. III, the diagnostic handbook used by the American Psychiatric Association. The symptoms of an obsessive compulsive personality disorder are that the person is unusually orderly, moralistic, can not delegate and prone to procrastinate. At the same time, the person is scrupulously honest, neat, tidy and organized.

25th April, 1991

In the course of his evidence, Dr. Quan made the distinction between Mr. Maloney's personal life and his professional practice. Dr. Quan was of the view that the dilatory side of the disorder affected Mr. Maloney only in his personal business dealings.

All members of the Committee were struck by the apparent inconsistency between a man who could be so well regarded in his community and a perfectionist on the one hand and a man who could make such large and small mistakes on his personal tax returns on the other hand. As Mr. MacKenzie pointed out in his submissions, it is difficult to accept that his obsessive compulsive personality is so compartmentalized.

In submissions by Mr. MacKenzie, he invited the Committee to make a threshold decision about intent. Namely, he indicated that the Committee should decide whether to infer from the guilty plea in the criminal charges that Mr. Maloney admitted to knowingly making false and deceptive statements; or whether the events, including the evidence of Dr. Quan were consistent only with some inadvertence.

Notwithstanding the evidence of Dr. Quan and the submissions of Mr. Maloney's counsel, we had at the outset of this matter accepted the guilty plea of Mr. Maloney to the allegation 2(a) and we see no reason to change that finding. Accordingly, the allegation 2(a) of conduct unbecoming has been established.

RECOMMENDATION AS TO PENALTY

Mr. MacKenzie for the Law Society indicated that if the Committee concluded that there was an admission of knowingly making false and deceptive statements, then the penalty should be a suspension for a period not to exceed six months. On the other hand, Mr. MacKenzie indicated that if the Committee concluded that the events were more consistent with some inadvertence, then a reprimand in Convocation was the appropriate penalty.

To the Solicitor's credit, Mr. MacKenzie acknowledged that Mr. Maloney's reputation was not in dispute and that the criminal proceedings did not arise out of his practice. Also, filed as evidence, were fifteen letters signed by seventeen prominent solicitors in the Thunder Bay community; this represents a substantial number of the approximately 100 lawyers in the immediate area.

Mr. Shore, relying on the seventeen signatories and fifteen letters, and relying heavily on Dr. Quan's evidence, submitted to the Committee that the appropriate penalty should be a reprimand in Convocation. He referred the Committee to the decision of Quintin and suggested that the facts in that case were closer than any of the other four cases presented to the Committee in which convictions under the Income Tax Act have led to charges of conduct unbecoming a Solicitor.

After giving earnest consideration, we have come to the conclusion that the appropriate penalty would not be suspension, but rather that we would accept the recommendation of counsel for the Solicitor which was a reprimand in Convocation.

We are mindful of this man's unblemished career and reputation in the community. Indeed, it is for that reason that a penalty as light as a reprimand in Convocation is recommended. The events occurred over four years. The total income not reported as indicated in the Agreed Statement of Facts was \$83,596.65 leaving unpaid tax of \$20,876.11.

The facts, as seen by the Committee, justify the recommended penalty of a reprimand in Convocation.

25th April, 1991

Victor Leo Maloney was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 26th day of June, 1958.

ALL OF WHICH is respectfully submitted

DATED this 14th day of January, 1991

"D.H. Lamont"
Donald H.L. Lamont, Q.C.
Chair

There were no submissions by either counsel.

The Report was adopted.

It was moved by Mr. Lamek, seconded by Mr. Topp that the Recommendation as to penalty contained in the Report that is, that the solicitor be reprimanded be adopted.

There were representations by both counsel. Counsel for the Society sought a short suspension and counsel for the solicitor sought a reprimand in Committee.

Mr. Maloney addressed Convocation apologizing for the adverse publicity his conduct had brought on the profession.

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

It was moved by Mr. Thom, seconded by Mr. Somerville that the solicitor be suspended for six months.

It was moved by Mr. Somerville, seconded by Mr. Hall that the solicitor be suspended for three months.

Counsel, the solicitor, the reporter and the public were recalled and informed of the motion for a suspension up to a period of six months.

Further representations were made by the solicitor's counsel that if Convocation was to proceed on the suspension motion then counsel wanted an adjournment in order to call additional evidence.

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

It was moved by Mr. Copeland, seconded by Mr. Howie that the matter be adjourned as requested by the solicitor to call evidence on the issue of penalty only.

Lost

The motion for a six month suspension was lost and the motion for a three month suspension was carried.

Counsel, the solicitor, the reporter and the public were recalled and informed of the decision and advised written Reasons would follow.

Counsel and the solicitor retired.

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RESUMPTION OF ERNEST VALORIE SWAIN

Mr. Conway informed Convocation that neither Mr. Swain or his counsel would be present. Mr. Conway also asked that the Report be amended at page 2, by deleting paragraph 2(f).

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

Carried

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

Carried

Counsel retired.

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Re: VICTOR LEO MALONEY, Thunder Bay

Mr. Shore, on behalf of Mr. Maloney addressed Convocation asking that Mr. Maloney's suspension take effect on June 1st, 1991 in order that Mr. Maloney could make provisions for his practice.

It was moved by Mr. Yachetti, seconded by Ms. Callwood that Mr. Maloney's suspension commence on June 1st, 1991.

Carried

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CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M.

.....

CONVOCATION RECONVENED AT 2:15 P.M.

.....

PRESENT:

The Treasurer (James M. Spence, Q.C.), Arnup, Callwood, Campbell, Carey, Carter, Chapnik, Copeland, Ferguson, Hall, Howland, Lamek, McKinnon, Peters, Shaffer, Somerville, Thom, Topp, Weaver and Yachetti.

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CLINIC FUNDING COMMITTEE

Mr. Campbell presented the Report of the Clinic Funding Committee of its meeting on April 23rd, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The Director of LEGAL AID begs leave to report:

CLINIC FUNDING

The Clinic Funding Committee submitted a report to the Director recommending funding for various projects.

The Director recommends to Convocation that the report of the Clinic Funding Committee dated April 24th, 1991 be adopted.

Attached is a copy of the Clinic Funding Committee's report.

ALL OF WHICH is respectfully submitted

Robert L. Holden,
Director,
Legal Aid.

April 24th, 1991

To: Robert L. Holden, Esq.,
Provincial Director
The Ontario Legal Aid Plan.

The Clinic Funding Committee met on April 23, 1991. Present were: Colin Campbell, Q.C., Chair, Paul Copeland, Thea Herman, Jim Frumau.

A. DECISIONS

1. Community Legal Services of Niagara South re. Immigration CLW

The Clinic Funding Committee reviewed further reports from Community Legal Services of Niagara South on the activities of the CLW immigration project to date, noted its continued success, and agreed to extend funding for this project for the period April 1, 1991 to March 31, 1992, in an amount up to \$40,300.

2. Summer Students 1991

The Committee has approved the allocation of funds for summer students for 1991, as follows:

Correctional Law Project (4 students)	\$ 27,136
Parkdale Community Legal Services (20 students)	135,680
Legal Assistance of Windsor (12 students)	81,408
Kensington-Bellwoods Community Legal Services (12 students)	<u>81,408</u>
	<u>\$325,632</u>

3. Toronto Workers' Health and Safety Legal Clinic re. Contract Position

The Clinic Funding Committee has reviewed an application from the above clinic to continue funding to a contract outreach worker for the period April 1, 1991 to March 31, 1992. The Committee is recommending that an amount up to \$35,000 be allocated for this purpose.

4. Special Legal Education/Outreach Projects

The Access to Legal Information Fund (ALIF) agreement between the Department of Justice and the Clinic Funding Committee provides funding for clinic outreach and public legal education projects. For the fiscal year 1990/91, the Clinic Funding Committee recommends funding for six projects, as follows:

Justice for Children and Youth/CLEO - up to \$20,000

To publish booklets for young people concerning the Young Offenders' Act, and the rights of persons under the age of 18.

Parkdale Community Legal Services - up to \$9,000

To publish a pamphlet concerning the Employment Standards Act and Unemployment Insurance Act which will be translated into Spanish, Cantonese, Portuguese, Vietnamese and Tamil.

Landlord's Self Help Centre - up to \$6,500

To produce a brochure series on basic landlord and tenant issues from a landlord's perspective, in Portuguese and Chinese.

Georgina Community Legal Services - up to \$3,000

To provide community outreach programs for women who are potentially the subjects of domestic violence in the Keswick area.

Hamilton Mountain Legal and Community Services - up to \$5,500

To produce a "Survival Guide to Housing in the 1990's" for residents of Hamilton-Wentworth.

25th April, 1991

Metro Toronto Chinese & Southeast Asian Legal Clinic - up to \$5,000

To provide training about workers' rights to social service workers in the Chinese and Vietnamese communities, and conduct educational workshops for specific groups of workers.

5. Clinique juridique populaire de Prescott et Russell re. Additional Personnel Funds

The Committee has approved an application from Clinique juridique populaire de Prescott et Russell for additional funds for personnel costs arising out of the termination of employment, in an amount up to \$12,500.

ALL OF WHICH is respectfully submitted

"C. Campbell"
Colin L. Campbell, Q.C.
Chair,
Clinic Funding Committee

April 24th, 1991

THE REPORT WAS ADOPTED

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ADMISSIONS COMMITTEE

Ms. Peters presented the Report of the Admissions Committee of its meeting on April 11th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of April, 1991 at 9:30 a.m., the following members being present: Ms. Peters (Chair), and Messrs. Guthrie and Levy.

B.
ADMINISTRATION

1. DIRECT TRANSFERS - COMMON LAW - REGULATION 4(1)

(a) Martin Steven Kenny (LL.B. 1983 from the University of Saskatchewan and B.A. 1988 from the University of Regina) was called to the Bar of the Province of British Columbia on the 10th day of July 1984. Since his call none of his practice has been within Canada.

The applicant presents a Certificate of Good Standing, seeks to proceed under Regulation 4(1) and asks the Committee to consider him as satisfying the requirements of that regulation in that his practice in Arizona had been in Canadian law even if he was not physically practising in "one or more common law provinces in Canada". The applicant has filed an affidavit and makes submissions as to why his application should be accepted.

25th April, 1991

In the affidavit he states that from the 1st August 1984 to the 1st March 1990 he has practised B.C. law in the law department of the wholly controlled U.S. affiliate of a Canadian Corporation in Arizona. He states that he confined his activities to the practice of British Columbia and Canadian law particularly in relation to the application of Canadian Corporate income tax law, and the U.S. - Canada Tax Treaty, 1942, together with its successor, the U.S. - Canada Tax Protocol, 1985. On March 1st 1991 he resigned his position to begin an LL.M. program at the University College, London and continues to pursue that degree. Mr. Kenny expects to have completed the program in September 1991.

The Committee reviewed the affidavit submitted by Mr. Kenny together with a detailed Curriculum Vitae and considered that his employment in Arizona satisfied the requirements of Regulation 4(1). The Committee was of the view that the wording of the Regulation had to be interpreted in light of developments in the practice of law and the increasing mobility of lawyers and the increasing number of lawyers practising with Canadian firms in locales outside Canada. The Committee recommends that his application to transfer be approved.

The applicant's affidavit is before Convocation for information.

(Attachment #1 - Pgs. 5 through 13)

Lawrence Ignatius O'Neil (B.A. 1976 from St. Francis Xavier University and LL.B. 1979 from Dalhousie University) was called to the Bar of the Province of Nova Scotia on the 18th day of December, 1979 and practised in that province as outlined below:

1. January and February 1980 - in general practice of law - Nova Scotia
2. February 1980 - July 1982 - executive assistant to the Premier of Nova Scotia
3. August 1983 - September 1984 - engaged in general practice of law - Nova Scotia
4. September 1984 - November 1988 - served as member of Parliament from Nova Scotia
5. April 1989 - present - in general practice of law - Nova Scotia

Mr. O'Neil presents a Certificate of Good Standing, seeks to proceed under Regulation 4(1) and asked the Committee to interpret the work he performed when not engaged in the general practise of law as satisfying the terms of the regulation. The Committee recommends that he be approved to proceed.

The Committee considered the material before it and was of the view that Mr. O'Neil's experience and service as a member of Parliament, combined with the fact that he has practised for the last two years, were sufficient to meet the requirements of the regulation. The Committee recommends that his application be approved.

The applicant described the nature of his service in other capacities in his letter of the 20th March, 1991 which is before the Convocation for information.

(Attachment #2 - Pgs. 14 & 15)

2. DIRECT TRANSFERS - QUEBEC - REGULATION 4(2)

The following have met all the requirements to transfer under Regulation 4(2):

Monique Charlebois
Caroline Lise Coderre
Franck Laveaux
Marcel R. Pelletier

Approved

3. Full-Time Member of a Faculty of an Approved Law School

The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under Regulation 5 respecting full-time members of approved law faculties in Ontario:

Carol Jean Rogerson	B.A. 1974 from the University of
Faculty of Law,	Alberta and LL.B. 1982 from the
University of Toronto	University of Toronto.

Approved

4. APPLICATIONS - FOREIGN LEGAL CONSULTANTS

In November 1990, the following application was before the Committee:

"Miren Argi Letemendia - Ontario Ministry of the Attorney General
- English Law

An application was received from Miren Argi Letemendia of the Ontario Ministry of the Attorney General to be licensed as a foreign legal consultant.

Ms. Letemendia was called to the Bar at the Middle Temple, London, England, in 1973 where she actively practised from October 1985 to October 1988 as a lawyer in the Solicitor's Office of the Department of Trade and Industry in London (three years within the last five).

As described in her letter dated the 26th of October, 1990, since July 18th, 1990, Ms. Letemendia has been retained by the Ontario Ministry of the Attorney General to provide advice on trade law to the Ministry of Industry, Trade and Technology.

Ms. Letemendia is a Canadian citizen and states that she has been a resident in Ontario since November 1988.

Ms. Letemendia's application is complete and both she and the Ontario Ministry of the Attorney General's Office have filed all necessary material and undertakings.

The application and supporting material are available at the request of the Committee."

After reviewing the material, the Committee did not see why she would be required to have the foreign legal consultant designation. The designation is required of those who are providing legal advice on the law of their home jurisdiction to members of the public in Ontario. Where a foreign lawyer is employed by one entity such as a corporation or government department, to provide legal advice on the law of a foreign jurisdiction, a foreign legal consultant designation is not required.

25th April, 1991

On the instruction of the Committee, the Secretary wrote a letter to Ms. Ingrid Peters advising her as to their thoughts on the matter and that if she still felt that Ms. Letemendia should be licensed as a foreign legal consultant she was to provide the Society with the reasons to be put before the Committee.

Ms. Ingrid Peters replied by letter dated the 27th February, 1991 in which she outlined the Ministry of the Attorney General's reasons for wishing a foreign legal consultant designation for Ms. Letemendia. The first was that Ms. Letemendia was providing advice on international trade law and EEC law to a number of ministries at senior levels and the designation would give her the formal status of being a recognized foreign legal consultant. The second reason is more practical in that it will be easier to equate her position to existing lawyer positions in the Ministry of the Attorney General.

Approved

5. CALL TO THE BAR AND CERTIFICATE OF FITNESS

(a) Bar Admission Course

The following candidates having successfully completed the Thirty-Second Bar Admission Course, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted Certificates of Fitness:

John Roderick Cattanach
Larry Norman Chartrand
Ronald John Schlumpf
Robin Shulp Sharma
Thomas William Ward

Approved

(b) Transfer from another province - Regulation 4(1)

The following candidates having successfully completed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness:

Ian Lawson	Province of British Columbia
Kimberly Prost	Province of Manitoba

Approved

(c) Full-Time Member of a Faculty of an Approved Law School

The following candidate, having filed the necessary documents and complied with the requirements of the Society, is now entitled to be called to the Bar of Ontario and to be granted a Certificate of Fitness:

Professor Carol Jean Rogerson	Faculty of Law, The University of Toronto
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Fee: \$200.00

Approved

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"P. Peters"
Chair

Attached to the original Report in Convocation file, copies of:

- B-Item 1 - Application of Mr. Martin S. Kenney.
(Attachment #1, pages 5 - 13)
- B-Item 1 - Application of Mr. Lawrence Ignatius O'Neil.
(Attachment #2, pages 14 - 15)

THE REPORT WAS ADOPTED

.....

PROFESSIONAL STANDARDS COMMITTEE

Mr. Yachetti presented the Report of the Professional Standards Committee of its meeting on April 11th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of April, 1991 at eleven thirty in the morning the following members being present: Mr. Yachetti (Chair), Mrs. Weaver (Vice-Chair), Ms. Chapnik, Mr. Ferguson, and Mrs. Legge.

Also present were Ms. McCaffrey, Ms. Poworoznyk, and Messrs. Conway, Kerr, and Stephany.

B.

ADMINISTRATION

1. PROFESSIONAL STANDARDS CHECKLIST - RESIDENTIAL REAL ESTATE LAW

A number of requests have been received from members to obtain additional copies of the checklist for their non-legal staff.

The Committee considered whether all such parties should be charged a per copy price and if so how much.

It was concluded that the checklist would be available free of charge to members and that additional copies of the checklist for non-legal staff could be purchased at \$10.00 each, including GST. The Committee further concluded that non-lawyers should be charged a fee for all Standards Checklists with a provision that the price will vary depending on the publication.

C.

INFORMATION

1. SUB-COMMITTEE CIVIL LITIGATION

Mr. Yachetti, Mr. Howie and Mr. Manes met on April 10th and developed terms of reference. Mr. Manes will chair the sub-committee and Messrs. Howie and Yachetti have agreed to participate. The addition of further members will take place in the near future.

2. SUB-COMMITTEE FAMILY LAW

Members of the Bar Admissions Course Faculty are presently reviewing the checklist.

It is expected that the checklist will be ready for consideration at the May Committee meeting.

3. PRACTICE ADVISORY SERVICE - STATUS REPORT

Attached as C1 - C2 is a copy of the monthly status report.

4. GST UPDATE

As was discussed in the February Committee meeting, Sue McCaffrey of the Practice Advisory Service, drafted a letter to Revenue Canada setting out concerns that have arisen with respect to the application of the GST to law practices. The Canadian Bar Association - Ontario was contacted about its concerns in this area, and a copy of the draft letter provided to Bernard Morris, the head of the Tax Section of the CBAO. In addition, input was sought from the Law Societies of Alberta and British Columbia, both of which have been dealing with Revenue Canada on GST issues other than those of concern to Ontario (in particular, contingency fees and motor vehicle insurance questions). The Federation of Law Societies is also being consulted. It was felt advisable to ensure that Revenue Canada was not receiving identical enquiries from the various law societies across Canada, so as to facilitate the receipt of a response to the concerns raised in this particular letter. A meeting was held with Bernard Morris and his associate, Deborah Duncan, and the letter redrafted to suggest a possible resolution of the issues raised. Although we hope to have a reply from Revenue Canada before the meeting of the Committee in May, we anticipate providing a final report on this matter for the June meeting.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"Roger Yachetti"
Chair

C-Item 3 - Monthly Status Report of Practice Advisory Service.
(Marked C1 - C2)

THE REPORT WAS ADOPTED
.....

RESEARCH AND PLANNING COMMITTEE

Mr. Campbell presented the Report of the Research and Planning Committee of its meeting on April 11th, 1991.

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

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of April, 1991, at 8:00 a.m, the following members being present: H.T. Strosberg (Chair), T.G. Bastedo, D.E. Bellamy, R.C. Bragagnolo, C.L. Campbell, S. Chapnik, L.K. Ferrier, R.D. Manes, V. Prince, R.J. Smith.

Also present: M.J. Angevine, R.F. Tinsley, H. Sava.

A.
POLICY

1. ALTERNATIVE DISPUTE RESOLUTION

At its March meeting, the Committee asked Sandra Chapnik to prepare a proposal outlining:

- a. Draft terms of reference for an Alternative Dispute Resolution Subcommittee.
- b. A time frame within which the Subcommittee would be asked to complete its work.
- c. Suggestions for memberships of the Subcommittee.

Ms. Chapnik suggested the following terms of reference and time schedule for the ADR Subcommittee:

TERMS OF REFERENCE

1. to conduct a series of consultations with members of the profession regarding ADR techniques and the role of the Law Society with respect to same, including acting as liaison with regard to ongoing ADR projects in Ontario.
2. to prepare a list of specific recommendations with respect to:
 - (a) professional liability or insurance implications for lawyers acting as ADR professionals,
 - (b) the impact of ADR on the Rules of Professional Conduct,
 - (c) the educational component of ADR at the law school, bar admission course and continuing legal education levels of study,
 - (d) the role of the Law Society re: the public information aspect of ADR techniques and sources.
3. to determine whether or not regulation, training and certification of ADR professionals should be undertaken by the Law Society.
4. to prepare a draft budget, if necessary, for the implementation of the above.

TIME SCHEDULE

1. A preliminary report be available for consideration by Convocation at its January 1992 meeting.
2. The final report be presented in March or April 1992.

Your Committee recommends that the Terms of Reference and Time Schedule outlined above be adopted and that the Chair of the Research and Planning Committee appoint the members of the Subcommittee following the Benchers' Election.

2. SUITABILITY OF TITLES EMPLOYED BY THE LAW SOCIETY

The Committee had a fairly lengthy discussion on the issue of what Law Society titles, if any, should be changed. The Committee noted that Section 7 of the Law Society Act provides that "The Treasurer is the president and head of the Society." Thus the use of the title President by the Treasurer would not require any legislative amendment or change to the Rules. Further, it was the Committee's view that it would be a positive step for the Treasurer to begin to use the title President in

25th April, 1991

circumstances where to do so would reduce or eliminate confusion as to the Treasurer's role as, for example, in dealing with the public. The Committee also felt that the title of Treasurer should be preserved and used internally, at Convocation and at ceremonial functions. Accordingly, your Committee so recommends. No other changes are recommended at this time. Your Committee feels that this issue merits further thought and study.

Note: Motion, see page

3. BENCHERS' RETREAT

The Committee recommends that no provision be made for a Benchers Retreat in the 1991-1992 Budget year but that the issue be revisited in February or March of 1992 with a view to organizing a retreat for the fall of 1992.

B.

ADMINISTRATION

No matters to report.

C.

INFORMATION

No matters to report.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"C. Campbell"
for Chair

It was moved by Mr. Thom, seconded by Mr. Lamek that item 2 under Policy re: Suitability of Titles..., be deferred to Regular Convocation on Friday.

Carried

THE REPORT WITH THE EXCEPTION OF A-ITEM 2 WAS ADOPTED
.....

UNAUTHORIZED PRACTICE COMMITTEE

Ms. Callwood presented the Report of the Unauthorized Practice Committee of its meeting on April 11th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of April, 1991 at 10:30 a.m., the following members were present: Mr. Hickey (Acting Chair), Ms. Callwood, Messrs. Cass, Lawrence, Shaffer and Ms. Weaver. Also in attendance were: Mr. Bell and Ms. Gerber.

25th April, 1991

B.

ADMINISTRATION

1. ACCOUNTS

Accounts of counsel and investigators were approved in the total amount of \$31,242.74.

2. INVESTIGATIONS

The Society does not have sufficient evidence in one case to commence a prosecution. The Committee is asked to authorize a request to the Treasurer for the use of an investigator who will not disclose that he/she is from the Law Society and to authorize the commencement of a prosecution if the necessary evidence is obtained.

3. PRACTICES OF SEARCH HOUSES

The department received a letter from a member regarding the matter of search houses rendering legal opinions following patent-related investigations, thereby possibly engaging in the unauthorized practice of law. Your Committee requires further information before considering what action, if any, is to be taken; therefore further correspondence has been initiated with the member.

Approved

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"J. Callwood"
for Chair

Prosecutions

Next Court Date

Michael Baldasaro
Hamilton

April 9, 1991 at 2 p.m.
Courtroom 1
To set a date

Richard T. Loney
Ottawa

April 10, 1991 at 9 a.m.
Courtroom 1
Trial

Jane Baker
Chatham

April 15, 1991 at 10 a.m.
Courtroom
Appeal

Marc Monson
(Action Paralegal)
Downsview

April 17, 1991 at 10 a.m.
Courtroom 303
To set a date for continuation of
trial

786301 Ontario Ltd.
(Action Paralegal)
Downsview

April 17, 1991 at 10 a.m.
Courtroom 303
To set a date for continuation of
trial

Natalie MacPhee
Ottawa

April 23, 1991 at 10 a.m.
Courtroom - Sault Ste. Marie
Trial

John Galbreath
Ottawa

April 23, 1991 at 10 a.m.
Courtroom - Sault Ste. Marie
Trial

Richard Perry (Regional Paralegal) Hamilton	April 26, 1991 at 10 a.m. 140 Hunter Street, Hamilton For judgment
Natalie MacPhee (Paralegal Consultants Inc.) Ottawa	May 1, 1991 at 2:30 p.m. Courtroom 9 For judgment
Paralegal Consultants Inc. Ottawa	May 1, 1991 at 2:30 p.m. Courtroom 9 For judgment
Julian T. Shumka (Paralegal Associates) Kitchener	May 27, 1991 at 10 a.m. Courtroom 2 Trial
834259 Ontario Inc. (Paralegal Associates) Kitchener	May 27, 1991 at 10 a.m. Courtroom 2 Trial
Norine Earl Toronto Divorce Services Toronto	May 29, 1991 at 9:30 a.m. Courtroom 111 - Old City Hall Trial Continuation
Sandra Sheldrick (Paralegal Associates) Nepean	June 14, 1991 at 10 a.m. Courtroom 7 Trial

THE REPORT WAS ADOPTED

.....

COMMUNICATIONS COMMITTEE

Mr. McKinnon presented the Report of the Communications Committee of its meeting on April 11th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of April, 1991 at 9:30 a.m., the following members were present:

F. Kiteley (Chair), J. Callwood, B. Shaffer, S. Thom and R. Tinsley, M. Angevine, T. Starkes and G. Zecchini.

A.
POLICY

1. LAWYER REFERRAL SERVICE - REMOVAL FROM THE PANEL

Convocation is asked to approve the draft policy for removal from the Lawyer Referral Service panel and the new Lawyer Referral Service Application Form attached (A-1). A mailing to all Lawyer Referral Service members will be undertaken to ensure each member is aware of the conditions for membership and removal from the panel.

B.

ADMINISTRATION

1. LAW SOCIETY BULLETIN

The Committee discussed preparing a bi-weekly bulletin for the profession that will incorporate the E&O Bulletin, Legal Aid Letter, Practice Advisor, a letter from the Treasurer and updates from the Communications Committee. The Director of Communications has been advised to undertake an audit of all Law Society materials sent to the public and profession. A detailed cost analysis has also been requested.

C.

INFORMATION

1. MEDIA CALLS

February and March media inquiry statistics are attached (A-2).

2. DIAL-A-LAW/LAWYER REFERRAL STATISTICS

The most recent statistics for the Dial-A-Law and Lawyer Referral Service are attached (A-3).

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"C. McKinnon"
Chair

Attached to the original Report in Convocation file, copies of:

A-Item 1 - Draft policy for removal from the Lawyer Referral Service panel and the new Lawyer Referral Service Application Form.
(Marked A-1, pages 1 - 4)

C-Item 1 - February and March 1991 media inquiry statistics .
(Marked A-2, pages 1(-2)

C-Item 2 - Dial-A-Law and Lawyer Referral Service Calls to March 31, 1991.
(Marked A-3)

Mr. McKinnon accepted an amendment on attachment A-3 re: Dial-A-Law "March" statistics which should read under the 1991 calls - "37,488 (1,209)" rather than "28,747 (927)" and under the Total, 1991 calls "(1,143)" rather than "(1,157)".

It was moved by Mr. Topp, seconded by Mr. Copeland that on attachment A-1 item 6 under Removal from the Panel, be deleted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

.....

LIBRARIES AND REPORTING COMMITTEE

Mrs. Weaver presented the Report of the Libraries and Reporting Committee of its meeting on April 11th, 1991.

25th April, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of April, 1991 at 9:00 a.m., the following members being present:

R. Bragagnolo (Vice-Chair in the Chair), M. Cullity, M. Hickey, R. Lalonde, R. Topp, and Mrs. Weaver; and D. Crosbie, G. Howell and P. Bell also attended.

A.

POLICY

NO ITEMS

B.

ADMINISTRATION

1. BUDGET ESTIMATES FOR 1991 - 1992

The Chief Librarian reported that the Finance Committee had its preliminary look at Committee budgets. The Chief Librarian reported on the areas of concern. The Committee approved the revised budget documents to be forwarded to the Finance Committee.

C.

INFORMATION

1. COUNTY LIBRARY BUDGETS 1991

The Secretary reported that Convocation adopted the Report of this Committee meeting of March 27th, 1991 with the Schedule of Grants for the counties attached.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"M. Weaver"
for Chair

THE REPORT WAS ADOPTED

.....

COUNTY AND DISTRICT LIAISON COMMITTEE

Mr. Carey presented the Report of the County and District Liaison Committee of its meeting on March 7th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 7th of March, 1991 at four o'clock in the afternoon, the following members being present: J. Lyons, Chair, T.J.P. Carey, R.G. Ferguson, P.S.A. Lamek. Members of the County and District Law Presidents' Association Executive in attendance were: M. O'Dea, R. Smith, H. Arrell, M. Bode, S. Foley, R. Gates, M. Hennessy, D. Lovell, R. Weekes.

I. Pro Bono Pilot Project

The Executive of the County and District Law Presidents' Association reported that it endorses the recommendation of the Research and Planning Committee to establish a voluntary pro bono pilot project in a designated County. The Executive further advised the members of the Committee that it will be contacting various County and District Law Associations with a view to recommending a specific one for the pilot project and will coordinate its efforts with the Chair of the Voluntary Pro Bono Subcommittee.

II. Professional Standards

The Executive reported that it will be reviewing the Wills and Estates draft checklist with its membership at the May plenary session in response to the request from the Professional Standards Committee for input and that this arrangement is acceptable to that Committee.

III. Legal Education

Your Committee received an oral report from Marc Bode on the work of the Continuing Education Reform Subcommittee chaired by Thomas G. Bastedo. There was discussion of the subcommittee's draft report with particular emphasis on the issue of self-funding of Continuing Legal Education. The Executive expressed concerns that the requirement of self-funding is adversely affecting the delivery of Continuing Legal Education to the regions. The Executive also expressed the view that the issue of self-funding is adversely affecting the delivery of Continuing Legal Education to the regions. The Executive also expressed the view that the issue of self-funding ought to be revisited sooner than the two year review suggested by Mr. Bastedo's subcommittee. There was further discussion on the option of creating a special levy on the membership to fund Continuing Legal Education but there was no consensus reached on this option. Other topics discussed in this regard included;

- (i) the issue of competition between the Law Society and the Canadian Bar Association - Ontario with respect to certain programs and
- (ii) experimenting with a system whereby the Law Society would make a grant to the County and District Law Presidents' Association to provide its own Continuing Legal Education program for members practising outside Metropolitan Toronto to determine whether such a system would be a more cost effective method for the provision of Continuing Legal Education to those members.

25th April, 1991

IV. Special Committee on Paralegals

The Executive suggested that the Special Committee on Paralegals be urged to meet with the Chairs of various other Committees which are also considering the Ianni Report. In particular, it was recommended that there be a meeting with the Chair of the County and District Law Presidents' Association, the President of the Advocates' Society, the President of the County of York law Association and the President of the Canadian Bar Association - Ontario in order to ensure that, to the extent possible, there is a consensual approach taken when comments are prepared for submission to the Attorney General for Ontario.

ALL OF WHICH is respectfully submitted

DATED this 28th day of March, 1991

"T. Carey"
for Chair

THE REPORT WAS ADOPTED

.....

FRENCH LANGUAGE SERVICES COMMITTEE

Mr. Topp presented the Report of the French Language Services Committee of its meeting on April 11th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of April, 1991 at 11:30 a.m. The following members attended the meeting: Bencher representation: Ms. D.E. Bellamy (Chair), Mr. R.C. Topp (Vice-Chair), Mr. J.D. Ground and Ms. P.J. Peters. Staff representation: Ms. M.J. Angevine, Mr. A. Treleaven, Ms. H. Harris and Ms. D. Paquet (Secretary). Special guests: E. Brunet and C. Wright, Archives.

A.

POLICY

1. Francophone Week - Public Awareness Campaign

The Law Society should approach representatives from the Canadian Bar Association - Ontario (CBAO), the Association des juristes d'expression française de l'Ontario (AJEFO) and the Association canadienne française de l'Ontario (ACFO) to determine the viability of a joint French promotional campaign to raise public awareness of legal services in Ontario during the Francophone Week from June 17-24, 1991.

B.

ADMINISTRATION

1. Budget status

The French Language Services Coordinator reported that expenditures in the Travel and Office supplies accounts have slightly exceeded this fiscal year's budget. This will be offset by underspending in the Salaries account.

C.
INFORMATION

1. French Continuing Legal Education Seminar - Ottawa

The Regional Director of Legal Education (Ottawa) reported that the Commercial Law Seminar to be held in French in Ottawa on April 19 has attracted ten additional registrants since the last Committee meeting. It was felt that the seminar theme and delayed promotion might have discouraged even more people from registering. The Regional Director will report again at the next meeting on the actual seminar. The Committee will then discuss the continued viability of French Continuing Legal Education seminars being offered by the Law Society alone and jointly with other law associations in Ontario.

2. French Skills Upgrading Programme

In accordance with the Law Society's French Language Skills Upgrading Programme, French training classes started at Osgoode Hall on April 8, 1991 under the tutelage of Ms. Patricia Gendreau. Because of cancellations from support staff, three senior managers were included in the programme. Three groups meet every week for one and a half or three hours, depending on their level of proficiency. Classes are now at full capacity.

3. "Dieu et mon Droit" Travelling Exhibition

Representatives from the Archives Department presented an overview of the "Dieu et mon Droit" exhibition which will introduce the history of Franco-Ontarians and the law to Ontarians in various targeted areas of the province. The exhibit will be launched in Toronto during the Francophone Week from June 17-24, 1991. The Archives Department is working in consultation with the Communications Branch and the French Language Services Office on the promotional aspect of the exhibition.

4. First Discipline Hearing in French

The Chair reported on the first discipline hearing to be held in French at the Law Society.

5. Law Day - Public Awareness Campaign

The French Language Services Coordinator reported that the Law Day French promotional campaign was being discontinued due to agency delays in submitting a proposal. New plans are in the making for a more comprehensive public awareness campaign during the Francophone Week from June 17-24, 1991. The Law Society intends to hold an exploratory meeting with other Ontario law associations to determine the viability of a joint French campaign.

6. Staff translator - Toronto

The Chair introduced Dominique Picouet-Bhatt as the Law Society's full-time translation specialist. Ms. Picouet-Bhatt joined the Law Society on April 2, 1991 after two years with the Office of Legislative Counsel and four years with the Translation Services of the Government of Ontario. She holds an M.A. in Languages and International Relations, a B.A. in English and a degree in Translation from the Université de Paris.

25th April, 1991

The meeting was adjourned at 12:35 p.m.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"R. Topp"
for Chair

THE REPORT WAS ADOPTED
.....

LAWYERS' FUND FOR CLIENTS' COMPENSATION COMMITTEE

Ms. Callwood presented the Report of the Lawyers' Fund for Clients' Compensation Committee of its meeting on April 11th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAION ASSEMBLED

The LAWYERS' FUND FOR CLIENTS' COMPENSATION COMMITTEE
(formerly the Compensation Fund Committee) begs leave to
report:

Your Committee met on Thursday, the 11th of April, 1991 at 11:45
a.m. the following members being present:

C. Ruby (Chair), H. Strosberg (a Vice-Chair), Ms. Callwood, T. Carey and
S. Thom; P. Bell also attended.

A.

POLICY

1. NATIONAL DEFALCATION FUND

The Secretary reported that the Federation of Law Societies of Canada sent a Report, dated November 19, 1990, from its Inter-Jurisdictional Practice Committee concerning inter alia a National Defalcation Fund for discussion purposes. The National Fund would be made up of \$10-\$20 annual per member assessments. There would be a per lawyer cap of \$1,000,000. There would be exclusions - damages, interest, legal fees or investment losses would not be covered. Financial institutions would be compensated, where appropriate. The National Fund would have a discretion. There would be a refund if the money raised from each Province resulted in a large surplus.

At the January meeting of the Committee a summary of the Inter-Jurisdictional Practice Committee report of the Federation on the National Defalcation Fund was requested. A copy of an excerpt of the Report, a memorandum, containing a summary of the report, from Donald Crosbie Q.C., the Under-Treasurer, to the Committee, together with memos from Heather Werry and Peter Bell, and a letter from Mr. Lerner were before the Committee for consideration.

RECOMMENDATION: It was the consensus of the Committee that the National Defalcation Fund is an unnecessary expense for Ontario Lawyers at this time. The Committee will consider the matter again if there are compelling reasons concerning the mobility of lawyers in the interprovincial practice of law.

B.
ADMINISTRATION

1. FEEES PAID TO REFEREES AND COUNSEL FOR CLAIMANTS

At the last meeting the staff were asked to prepare a report for the Committee reviewing the fees paid to Referees appointed by the Society to hear claims and those paid to counsel for claimants that appear on Referee hearings.

RECOMMENDATION: It is recommended that the fees paid to Referees hearing compensation claims be increased from \$500.00 a day, (the amount that has been in effect since September 23rd, 1988), to \$600.00 a day which would still be within the budget for 1991 - 1992. It is also recommended that Paragraph 5 of the General Guidelines for the Fund be amended by deleting the amount of \$500.00 in the third last line and inserting \$800.00 for counsel fees to counsel for claimants in the discretion of the Referee at a Referee hearing. The amount of \$500.00 per day, including preparation, has been in effect since April 1988. This amount should also be within budget for 1991 - 1992.

2. NAME OF THE COMMITTEE - TO BE REVISITED

The Chair asked the Committee to reconsider the name of the Committee. The Secretary submitted several options that had been discussed with Gemma Zecchini, Director of Communications.

RECOMMENDATION: It is recommended that the name of the Committee be changed to Lawyers Fund for Client Compensation.

C.
INFORMATION

1. MEMORANDA OF ASSISTANT SECRETARIES

The Secretary reported that the following memoranda of Assistant Secretaries were approved by the Review Committee and the grants recommended as shown on Schedule A attached.

Peter B. Bell, Assistant Secretary

a.) Goldstein, K. (Indefinite Suspension
Oct.26/89)
one claim \$ 3,495.80

b.) Solicitor No. 8 (Pending discipline)
one claim \$ 9,168.42

Heather A. Werry, Assistant Secretary

c.) Wong, M. (Suspended June 23/89)
one claim \$ 560.00

2. The total amount of accounts approved by Assistant Secretaries for the month of March 1991 was \$22,647.53, (includes an account of outside counsel for the Society in the amount of \$20,240.56 approved by the Committee on March 7th).

25th April, 1991

3. The Secretary reported that the Law Society of England has approved measures aimed at reducing dishonesty among sole practitioners. The Secretary was instructed to obtain copies of the English report.

4. The Financial Summary and the Activity Report for the month of March 1991 are attached. (Pgs. C1 - C3)

5. DEPARTMENT BUDGETS

The Lawyers' Fund Financial Summary as at March 31st, 1991 shows that there is an over-expenditure in outside counsel fees because of an account of counsel for the Society on a trial in January 1991. It is anticipated that this will be made up from other accounts.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"J. Callwood"
for Chair

Attached to the original Report in Convocation file, copies of:

C-Item 1 - Grants approved by the Review Committee and by the Lawyers' Fund for Clients' Compensation Committee, Thursday, April 11th, 1991. (Schedule A)

C-Item 4 - The Financial Summary and the Activity Report for the month of March 1991. (Marked C1 - C3)

THE REPORT WAS ADOPTED
.....

CERTIFICATION BOARD

Mr. Yachetti presented the Report of the Certification Board of its meetings on March 22nd and April 10th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Friday, the 22nd of March, 1991 at eight-thirty in the morning, the following members being present: A.M. Rock (Chair), J. Callwood, P.G. Furlong, M.G. Hickey and R.D. Yachetti. S. Thomson, E. Greenall and D. Moreira (of the Law Society) were also present.

Your Board met on Wednesday, the 10th of April, 1991 at three-thirty in the afternoon, the following members being present: G.P. Sadvari (Vice-Chair), M.G. Hickey and R.D. Yachetti. R.E. Dimock (Chair - Intellectual Property Law Specialty Committee), S. Thomson and E. Greenall (of the Law Society) were also present.

Specialty Committees met as follows:

The Immigration Law Specialty Committee met on Tuesday, the 12th of February, 1991 at four-thirty in the afternoon.

The Intellectual Property Law Specialty Committee met on Monday, the 18th of February, 1991 at four o'clock in the afternoon.

The Criminal Litigation Specialty Committee met on Friday, the 22nd of February, 1991 at one o'clock in the afternoon.

The Bankruptcy and Insolvency Law Specialty Committee met on Wednesday, the 27th of February, 1991 at six o'clock in the evening.

The Environmental Law Specialty Committee met on Friday, the 1st of March, 1991 at twelve-thirty in the afternoon.

The Workers' Compensation Law Specialty Committee met on Monday, the 4th of March, 1991 at four-thirty in the afternoon.

The Labour Law Specialty Committee met on Monday, the 4th of March, 1991 at five o'clock in the afternoon.

The Intellectual Property Law Specialty Committee held a public forum in Toronto to review Standards on Monday, the 4th of March, 1991 at five o'clock in the afternoon.

The Intellectual Property Law Specialty Committee held a public forum in Ottawa to review Standards on Wednesday, the 6th of March, 1991 at six o'clock in the evening.

The Entertainment Law Specialty Committee met on Thursday, the 21st of March, 1991 at twelve o'clock noon.

The Criminal Litigation Specialty Committee met on Friday, the 22nd of March, 1991 at one o'clock in the afternoon.

The Workers' Compensation Law Specialty Committee met on Monday, the 25th of March, 1991 at four-thirty in the afternoon.

The Bankruptcy and Insolvency Law Specialty Committee met on Tuesday, the 26th of March, 1991 at four o'clock in the afternoon.

The Workers' Compensation Law Specialty Committee met on Thursday, the 28th of March, 1991 at four-thirty in the afternoon.

The Intellectual Property Law Specialty Committee met on Tuesday, the 2nd of April, 1991 at one o'clock in the afternoon.

The Labour Law Specialty Committee met on Tuesday, the 2nd of April, 1991 at five o'clock in the afternoon.

The Environmental Law Specialty Committee met on Friday, the 5th of April, 1991 at twelve-thirty in the afternoon.

A.
POLICY

1. "SPECIAL ABILITY"

All Specialist Standards require that lawyers, by reason of their skill, aptitude, experience and reputation among their peers, are fit to be identified to the public as having a "special ability" to practise in the area of law of which application is made.

Applicants and members of assessing Specialty Committees alike have asked what is meant by "special ability". The Certification Board has approved the following explanation, which was prepared by A.M. Rock for the Civil Litigation Specialty Committee and is offered as an example of what is meant by "special ability":

"It is clear from the Standards in each area of specialty that those who are certified are to demonstrate an extraordinary level of professional expertise. The Standards speak of a "special ability". Derived from both study and experience, that ability should be evident to Committee members in a variety of ways. The application and supporting material should reveal:

- (a) a ready grasp of the substantive law bearing upon both typical and more obscure issues that arise in the relevant area of practice;
- (b) immediate awareness of and experience with the entire range of appropriate remedies that can be invoked in aid of clients involved in both typical and unusual cases;
- (c) sound judgment in proposing solutions and approaches, so that proportion (both as to expense and delay) is maintained between the nature of the problem and the cost and elaborateness of the proposed response; and
- (d) an attitude of professionalism in every aspect of the applicant's approach to the client, the courts and fellow solicitors.

"Bear in mind that those who are certified are permitted to advertise that they have, in effect, been recognized by their peers as possessing this "special ability". The entire purpose of the Certification Program is to assist the public in finding lawyers who can bring expertise to bear in given areas of practice. Without demanding either perfection or an unreasonably high level of legal knowledge, we owe it to the public to ensure that the Standards are observed in the case of each and every applicant."

The Board has instructed that this explanation should be made available to all applicants and Committee members in the form of a separate statement.

B.

ADMINISTRATION

1. CERTIFICATION PROGRAM FEES

The Certification Program is required to operate on a break-even basis commencing July 1, 1991.

The current fees are: \$250.00 (+ GST) application fee, and \$250.00 (+ GST) administrative fee upon successful certification. These fees apply for the duration of the certification (five years).

The Board recommends to Convocation that the following fee structure should be implemented, commencing September 1, 1991:

APPLICATION FEE	\$150.00 (+ GST)	
ADMINISTRATIVE FEE	\$350.00 (+ GST)	- this fee will cover cost of the certificate, administrative costs, and the first year annual fee
ANNUAL FEE	\$100.00 + (GST)	- the first separate annual fee would be charged September 1, 1992

NO ANNUAL FEE WILL BE CHARGED TO LAWYERS WHO APPLY PRIOR TO SEPTEMBER 1, 1991 FOR THE CURRENCY OF THEIR FIVE-YEAR CERTIFICATE.

C.
INFORMATION

1. CERTIFICATION OF SPECIALISTS

The Board is pleased to report the certification of the following lawyer as a Specialist in Civil Litigation:

James D. Higginson (of Toronto)

The Board is pleased to report the certification of the following lawyers as Specialists in Criminal Litigation:

J. Randall Barrs	(of Toronto)
Andrew J. Bradie	(of Windsor)
Frederic M. Campling	(of Hamilton)
Peter C. West	(of Toronto)

The Board is pleased to report the certification of the following lawyer as a Specialist in Civil and Criminal Litigation:

John R. Belleghem (of Oakville)

2. ENTERTAINMENT LAW SPECIALTY

The need of a Certification Program in the field of Entertainment Law has been questioned by a number of entertainment lawyers. There is a feeling on the part of the Entertainment Law Specialty Committee that this is a threshold issue and should be canvassed within the profession before the Committee continues.

The Board approved the Committee's request that it be granted permission to poll the views of the profession in the form of a questionnaire or an explanatory memorandum at an upcoming Law Society C.L.E. Program on Entertainment, Advertising and Media Law or at a dedicated meeting of members of the communications bar prior to the Committee's completion of the Standards.

3. ETHICAL STANDARDS/REVOCATION COMPONENT OF SPECIALIST STANDARDS

The Board has adopted the Immigration Law Specialty Committee's recommended restructuring of the Ethical Standards and Revocation components of the Specialist Standards. These sections will appear as follows in all existing and future Standards:

" ETHICAL STANDARDS

It shall be required that all applicants adhere to the highest standards of professional conduct.

25th April, 1991

The Certification Board has adopted the following policy:

- i. Any applicant who has ever been convicted of professional misconduct and/or conduct unbecoming may be denied certification for that reason alone. In determining whether to exercise a discretion in favour of such an application, the Board will consider all the circumstances, and, in particular, will consider:
 - (a). the nature of the offence;
 - (b). the date when the offence was committed; and
 - (c). the applicant's conduct since the date of the conviction.
- ii. where a discipline investigation or complaint is pending at the date when the application is received, the Board may postpone consideration of the application until the discipline matter has been disposed of it in its entirety, whether by final order or otherwise.

The certified Specialist will be under an obligation to notify the Board if he/she fails to meet the minimum standards at any time during the currency of the Certificate.

REVOCATION

The Board will retain the power to revoke the Specialist status where warranted."

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"Roger Yachetti"
for Chair

It was moved by Mr. Topp, seconded by Ms. Peters that Item 1 under Administration be deferred to the Regular Convocation on Friday.

Lost

THE REPORT WAS ADOPTED

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LEGISLATION AND RULES COMMITTEE

Mr. Thom presented the Report of the Legislation and Rules Committee of its meeting on April 11th, 1991.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of April, 1991, at 11:15 a.m. the following members being present:

M. Cullity (Acting Chair), R. Cass and S. Thom; P. Bell and A. Stone also attended.

A.
POLICY

1. APPEARANCES BY STUDENT MEMBERS

This matter originally came before the Committee in October 1990 and was deferred for further consideration. The new draft has been reviewed by Mr. Justice Trainor and a copy of his letter of March 22nd, 1991 was before the Committee.

RECOMMENDATION: It is recommended that this matter be deferred.

2. AMENDMENT TO RULE 50 AND RULE 50A TO PROVIDE THAT ANY TAX (INCLUDING G.S.T.) MUST BE PAID AS A PART OF A FEE OR LEVY

The Finance Committee, in its Report of March 7, 1991, adopted by Convocation on March 28th, asked this Committee to draft an amendment to Section 36 of the Law Society Act so that suspension of a member for failure to pay any fee or levy includes suspension for failure to remit to the Society any tax, such as G.S.T., that is payable by the member in connection with the payment of any fee or levy. Counsel for the Society has drafted amendments to Rules 50 and 50A to implement this change. He is of the opinion that an amendment to Section 36 of the Act is not necessary.

RECOMMENDATION: It is recommended

(1) that Rule 50 of the Rules made under the Law Society Act be amended by striking out "The following fees and levies are payable to the Society in the circumstances, at the times, and in the amounts specified:" in the first and second lines and inserting in lieu thereof "The fees and levies that are payable to the Society shall be paid in the circumstances and at the times specified as follows, and the amount of a fee or levy shall be the sum of the amount specified and any tax that is required by law to be paid by the person receiving the service and collected by the Society". The first and second lines as amended of Rule 50 would read as follows:

FEES

50. The fees and levies that are payable to the Society shall be paid in the circumstances and at the times specified as follows, and the amount of a fee or levy shall be the sum of the amount specified and any tax that is required by law to be paid by the person receiving the service and collected by the Society:

and

(2) that Rule 50A of the said Rules be amended by adding at the end thereof "together with any tax that is required by law to be paid by the member or members in respect of such costs and collected by the Society", so that the amended Rule 50A would read as follows:

50A Where an investigation of a member or members required by the Chair or Vice-Chair, pursuant to section 18 of Regulation 573, takes more than ten hours to complete, the Chair or a Vice-Chair, may require that a member or members pay the costs of the investigation for the period in excess of ten hours, at \$50.00 per hour up to a maximum of \$2,500.00 together with any tax that is required by law to be paid by the member or members in respect of such costs and collected by the Society.

B.

ADMINISTRATION

1. RULE 14(2) OF THE RULES UNDER THE LAW SOCIETY ACT

Rule 14(2) as presently worded refers to Rule 13(4) the rule that states that a vote for a person not on the list of candidates or who is ineligible to be a bencher or who is a bencher ex-officio or a life bencher is void, and the election shall be reported as if such vote had not been cast. The Committee considered Donald Crosbie's memo, suggesting that the reference should be to section 12(4) of the Law Society Act that provides that an elected bencher who becomes qualified, may choose to become an ex-officio bencher at any time. The Committee has considered a memo from Arthur Stone indicating that in his opinion the reference in the present rule to Rule 13(4) is correct.

RECOMMENDATION: It is recommended that there be no change to the wording of Rule 14(2).

C.

INFORMATION

1. DEPARTMENT BUDGETS

The Legislation and Rules financial statement for March shows an over-expenditure in courier service of \$59.87. It is anticipated that this will be made up from other accounts.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1991

"S. Thom"
for Chair

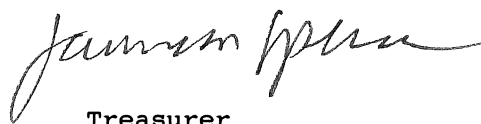
THE REPORT WAS ADOPTED

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CONVOCATION ADJOURNED AT 3:40 P.M.

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Confirmed in Convocation this *21st* day of *June*, 1991.


Treasurer