

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 25th April, 1996
9:00 a.m.

PRESENT:

The Treasurer (Susan E. Elliott), Adams, Angeles, Arnup, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, Cole, Crowe, DelZotto, Feinstein, MacKenzie, Marrocco, Millar, O'Connor, Puccini, Ross, Stomp, Swaye, Thom, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: John Lawrence DEZIEL - Belle River

The Secretary placed the matter before Convocation.

Ms. Angeles did not participate.

Ms. Brown appeared on behalf of the Society. The solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 12th February, 1996, together with an Affidavit of Service sworn 13th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 11th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 15th March, 1996 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton Ruby, Chair
Eleanore Cronk
Nora Angeles

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

Christina Budweth
For the Society

25th April, 1996

JOHN LAWRENCE DEZIEL
of the Town
of Belle River
a barrister and solicitor

Not Represented
For the solicitor

Heard: October 3, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 17, 1995 Complaint D87/95 was issued against John Lawrence Deziel alleging that he was guilty of professional misconduct.

The matter was heard in public on October 3, 1995, before this Committee comprising Clayton Ruby, Chair, Eleanore Cronk and Nora Angeles. The Solicitor attended the hearing and represented himself. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D87/95

2. a) While representing his clients, Kevin King and Cindy Landry-King, in connection with a construction lien claim, he failed to serve his clients in a conscientious, diligent and efficient manner, in that he failed to proceed with his clients' lien claim in a timely manner; and
- b) He misled his clients, Kevin King and Cindy Landry-King, by failing to disclose his lack of progress respecting the lien action.

FINDING OF THE COMMITTEE

A finding of professional misconduct was made on the basis of the following agreed statement of facts:

ADMISSIONS

1. The Solicitor has reviewed Complaint D87/95 and this agreed statement of facts and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

FACTS

2. The Solicitor is 49 years of age. He was called to the Bar on March 23, 1973 and presently practises as a sole practitioner in Belle River, Ontario.

25th April, 1996

3. On or about April 28, 1994, Kevin King and Cindy Landry King retained the Solicitor to lien a property located at 884 Elinor Street, Windsor, Ontario. The lien claim was to be in the amount of \$5,000.00. Mr. King advised the Solicitor that he had last attended at 884 Elinor Street on April 5, 1984.
4. During the April 28 meeting, Kevin King gave to the Solicitor his only copy of all listed dates of work, times of work and dollar amounts charged. The Solicitor assured Mr. King that the documents would be safe with him.
5. Mr. King next met with the Solicitor on June 20, 1994 to find out what was happening with the lien and why he had not been asked to sign the documentation in respect thereof. After some time, the Solicitor had admitted he had lost the paperwork that Mr. King had given him but assured him that the lien had been applied for and that the matter was moving ahead.
6. On July 25, 1994, a member of Mr. King's office staff telephoned the Solicitor's office for information about the lien. The clerk was advised that the Solicitor was busy and that he would call back. The Solicitor did not return the call.
7. Cindy Landry telephoned the Solicitor's office and after approximately 10 minutes on hold spoke to the Solicitor who advised that the documents had been mailed out and they should be received shortly. The documents were not received.
8. On August 3, 1994, a further telephone message was left by the King's for the Solicitor. The Solicitor did not return the call.
9. On August 17, 1994, a staff member of the Kings again telephoned the Solicitor's office for information about the lien. The Solicitor's clerk advised that she was unaware of any lien and that the Solicitor would call once he was back. The Solicitor did not return the call.
10. A further call was placed to the Solicitor's office on September 6, 1994. The call was not returned.
11. On September 8, 1994 Mr. King attended at the Solicitor's office and met with him about the lien. The Solicitor assured Mr. King that the lien had been registered within the applicable time limits. The Solicitor then complained to Mr. King about how overworked he was and the stresses of his practice.
12. On September 16, 1994, Mr. King attended at the Solicitor's office and dropped off a letter the Kings had received from Michael Rivait of Legacy Homes stating that he was being sued by John Stephen, the owner of the home. There was not mention of any claim by the Kings against Mr. Rivait, who is the general contractor on the job. Mr. King advised the Solicitor that he assumed that Mr. Rivait had also been included in the law suit and questioned why there seemed to be no mention of the lien.
13. Mr. King called the Solicitor's office again on September 21 but did not speak to the Solicitor nor did the Solicitor return his call.
14. Mr. King met with the Solicitor on October 31, 1994 in which the Solicitor apologized for the lack of timeliness of the performance thus far. The Solicitor again assured Mr. King that the lien had been registered in time and arranged a meeting with the Kings for November 3, 1994.
15. The November 3, 1994 meeting did take place and lasted for approximately one hour. Again the Solicitor assured the Kings that the lien had been registered but admitted that most of the paperwork had been lost. During a phone call with the Solicitor's staff on November 22, 1994, the Kings were advised that the documents relevant to their file had been mailed on November 20, 1994.

16. On November 23, 1994 the Kings called to complain that they had not received the documents. The Solicitor did not return their call.

17. On January 3, 1995 Mr. King telephoned the Solicitor's office to set up an appointment. Mr. King specifically requested that the Solicitor deliver an additional copy of their lien documents during the meeting.

18. During the January 5, 1995 meeting, Mr. King advised the Solicitor that he believed the Solicitor had misled him with respect to the status of the lien matter. The Solicitor assured Mr. King that the lien had been registered. The Solicitor also had a discussion with Mr. King regarding possible action against Michael Rivait. The Solicitor advised during the meeting that he would try to come up with additional avenues for obtaining the \$5,000.00. The Solicitor advised he would immediately draft a letter to Michael Rivait and provide the Kings with a copy. The Kings have never received a copy.

19. On January 13, 1993 Cindy King conducted a search which revealed that no lien had been filed on the property on the Kings' behalf.

20. On January 17, 1995 the Kings telephoned the Solicitor's office for an explanation about the matter. The Solicitor did not return their call.

21. Mr. King complained to the Law Society by letter dated January 23, 1995.

22. The Solicitor responded to the Kings' letter by letter dated March 14, 1995.

23. Mrs. King would testify that the first meeting occurred on April 28, 1994. The Solicitor would testify that the first date on which this issue was discussed was May 17, 1994. The parties agree that for the purposes of this hearing this specific date is not determinative of anything. [that is because the solicitor is not charged with any negligence but rather with a deliberate misleading of the client subsequent to this event.]

24. The Solicitor admits that the Kings' complaint is accurate insofar as it sets out all of their attempts to obtain documentation from the Solicitor and his promises that it would be provided to them. In addition, the Solicitor admits he failed to register the lien on behalf of the Kings and that his comments during various of their meetings led them to believe the lien had actually been registered by him on their behalf.

25. The Solicitor has resolved this matter with the complainants by the payment of \$2,500.00 to the Kings, inclusive of costs and prejudgment interest.

RECOMMENDATION AS TO PENALTY

The Committee recommends that John Lawrence Deziel be Reprimanded in Convocation; that he attend the Professional Responsibility portion of the Bar Admission Course and pass the examination in that course; that he enroll in the Law Society's Practice Review Programme and co-operate in implementing any recommendations issuing from that programme. The Committee further recommends that the Solicitor pay costs in the amount of \$1,500.

25th April, 1996

REASONS FOR RECOMMENDATION

The Solicitor has practised for twenty-three years and is experienced. He has a discipline history as follows:

1. The Solicitor received a Reprimand in Committee plus a \$1,000 costs Order on February 2, 1988 for failure to produce records for the Audit Department and failure to correct inadequacies in books and records.
2. The Solicitor received a Reprimand in Committee plus a \$3,000 costs Order payable within six months on September 14, 1993 for borrowing \$45,000 from his client contrary to the provisions of Rule 7 of the Rules of Professional Conduct.

As is pointed out, this is an escalating discipline history in terms of the seriousness and gravity of the misconduct. It is inexplicable. We have enquired if there were any particular personal difficulties during this period which might explain the latest misconduct and we are advised that there are none. Economic pressures impressed upon the solicitor, as they do upon all of us these days, and he had a fear of losing this new client. We presume that he was also uncertain as to what he could do about the outstanding lien and claim presented by the client.

At the end of the day it is a serious matter for a solicitor to look a client in the eye and lie. The public has a right to expect that the penalty imposed by the Society should reflect an element of condemnation of that practice and at the same time attempt, for a solicitor with a lengthy history at the bar, to ensure that remedial measures are taken which will offer some guarantee that the offence will not recur.

We note also that, in this case, the client has been paid a \$2,500 amount in satisfaction of the claim and has accepted that with the advice of independent counsel.

And so, we propose a recommendation to Convocation which has a strong remedial aspect. We suggest, pursuant to a joint submission, that there be a Reprimand in Convocation and that the Solicitor be required to attend the professional responsibility portion of the Bar Admission Course next and to pass the exam in that course; that he enroll in the Practice Review programme operated by the Law Society of Upper Canada and co-operate in implementing any recommendations that emerge from that programme.

Finally, we suggest to Convocation that he be ordered to pay costs of the Society in connection with this matter in the amount of \$1,500.

This penalty has a strong remedial aspect and we caution the Solicitor that he is unlikely to receive such leniency again.

John Lawrence Deziel was called to the Bar on the 23rd day of March, 1973.

ALL OF WHICH is respectfully submitted

DATED this 12th day of February ,1996

Clayton C. Ruby
Chair

25th April, 1996

There were no submissions and the Report was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be reprimanded in Convocation, attend the Professional Responsibility portion of the Bar Admission Course and pass the exam, that he enroll in the Society's Practice Review Programme and co-operate in implementing their recommendations and pay costs in the amount of \$1,500.

Both Mr. Brown and the solicitor made brief submissions in support of the recommended penalty.

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that the recommended penalty be adopted.

Carried

The Treasurer administered the reprimand.

Counsel and solicitor retired.

Re: David Henry CONRAD - Markham

The Secretary placed the matter before Convocation.

Mr. Wilson withdrew for this matter.

Ms. Cameron 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 8th March, 1996, together with an Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th March, 1996 (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

Clayton Ruby, Chair
Paul D. Copeland
Richmond C. E. Wilson, Q.C.

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

Leslie Cameron
for the Society

DAVID HENRY CONRAD
of the City
of Markham
a barrister and solicitor

E. J. Weisdorf
for the solciitor

Heard: November 16, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 28, 1995, Complaint D180/95 was issued against David Henry Conrad alleging that he was guilty of conduct unbecoming.

The matter was heard in public on November 16, 1995 before this Committee comprised of Clayton Ruby, Chair, Paul D. Copeland and Richmond C.E. Wilson, Q.C. The Solicitor was not present at the hearing and was represented by E.J. Weisdorf. Leslie Cameron appeared on behalf of the Law Society.

DECISION

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

2. a) In or about May, 1992, the Solicitor was convicted of the offence of fraud over \$1000.00, contrary to the provisions of the Criminal Code;
- c) In or about October, 1987, the Solicitor was convicted of one count of assault, contrary to the provisions of the Criminal Code.

Evidence

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

"I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D180/95 and is prepared to proceed with a hearing of this matter on November 14 and 15, 1995.

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 D180/95 and this agreed statement of facts with his counsel and admits the particulars contained therein. The Solicitor also admits that the particulars of Complaint D180/95 supported by the facts set out below constitute conduct unbecoming a barrister and solicitor.

IV. FACTS

2(a) In or about May 1992, the Solicitor was convicted of the offence of fraud over \$1,000.00, contrary to the provisions of the *Criminal Code*;

4. At Tab 1 of the Document Book is a copy of an Indictment dated August 2, 1991 which charges the Solicitor with two counts of defrauding individuals "of a sum of monies of a value exceeding \$1,000.00, contrary to the *Criminal Code*" between January 1, 1990 and July 31, 1990. The Indictment indicates that the Solicitor pled not guilty to both charges and that on May 13, 1992, the Solicitor was found guilty on both charges.

5. At Tab 2 of the Document Book are the Reasons for Judgment following the Solicitor's trial on these two fraud charges. The face page of the Reasons indicates that the Solicitor was represented by counsel, Bruce Duncan.

25th April, 1996

6. The passing of sentence was suspended and the Solicitor was placed on probation for three years with one of the conditions being three hundred hours of community work. There was also a compensation order made jointly against both a coaccused and the Solicitor in the sum of \$65,902.58 payable to the individuals defrauded in count #2.

7. The Solicitor appealed his conviction. At Tab 3 of the Document Book is a copy of the certified copy of the endorsement of the Ontario Court of Appeal made October 27, 1994, setting aside the conviction on count 1 and in its place, substituting a verdict of acquittal. The appeal with respect to the conviction on count 2 was dismissed. The endorsement also indicates that the Solicitor was represented by counsel, Michelle Fuerst.

2(b) In or about April, 1989, the Solicitor was convicted of two counts of careless storage of a firearm, contrary to the provisions of the *Criminal Code*.

8. At Tab 4 of the Document Book is a copy of a certified copy of the Information of James Sweeney sworn June 10, 1988, charging the Solicitor with two counts of storage of a firearm without reasonable precaution for the safety of other persons contrary to section 84, subsection 2 of the *Criminal Code*.

9. This Information indicates that the Crown elected to proceed summarily on both counts, the Solicitor pled not guilty on both counts and the Solicitor was found guilty on both counts and given a conditional discharge with three years probation.

2(c) In or about October, 1987, the Solicitor was convicted of one count of assault, contrary to the provisions of the *Criminal Code*.

10. As part of the Crown Brief prepared for the prosecution of the Solicitor on the fraud charges referred to in particular (a) of Complaint D180/95, the Crown included a copy of the Solicitor's criminal record. At Tab 5 of the Document Book is a copy of this criminal record, which indicates that on October 19, 1987, the Solicitor was convicted of assault. This criminal record also indicates the Solicitor's conviction for careless storage of a firearm on April 21, 1989, which is consistent with the certified copy of the Information of James Sweeney sworn June 10, 1988.

V. DISCIPLINE HISTORY

11. The Solicitor appeared before a Discipline Committee on October 22, 1991 and was found guilty of professional misconduct for contempt of court, failure to serve clients, rude and intemperate remarks and failure to meet financial obligations to clients. No penalty was imposed.

12. On April 19, 1995 the Solicitor was found guilty of professional misconduct for failure to file within six months of his fiscal year ending January 31, 1994. The Solicitor did not attend at the hearing before the Discipline Committee or when the matter was dealt with by Convocation on June 22, 1995. The Solicitor is suspended until he attends at Convocation to receive his reprimand and was ordered to pay costs of \$550.00 within thirty days, which costs have not been paid."

RECOMMENDATION AS TO PENALTY

The Committee recommends that David Henry Conrad be disbarred.

REASONS FOR RECOMMENDATION

The Committee thanks counsel for their assistance and we are particularly mindful of the hurdle that was faced by Mr. Weisdorf who has, as usual, discharged his responsibilities in the best possible fashion.

This is a case where we note, first of all, that there is a history of discipline in 1991, and while, on consent, no penalty was then imposed, the discipline record does disclose conduct in the nature of contempt of court, failure to meet obligations to a client and the like, and these are potentially serious offences.

Again, we note that in April of 1995, there was a failure to file required reports with the Law Society and a finding of professional misconduct with respect to that. The Solicitor did file and he was to be reprimanded in Convocation, but he did not then attend to receive that reprimand and has not done so to the present date.

We have been referred to a number of cases which established the proposition that the usual disposition for a serious fraud, which is the principal charge with which we are concerned, is disbarment.

We have noted the case of Reid, in which my colleague Mr. Copeland wrote the judgement, and we find it distinguishable from the present case in that, in that case there was no previous discipline history. That case was indeed a scheme which featured some element of planning, namely, the switching of tags and attempting to fraudulently obtain a refund for a \$260 barbeque. Reid suffered from depression and drinking problems and so was able to make some explanation to the discipline panel and later to Convocation of the context in which that offence arose.

Here, we take into account the pattern of criminal offences which the record before us discloses, and the fact that this offence is an extremely serious one involving the deprivation of some \$62,000 respecting two particular persons.

The question of whether there has been restitution to those victims is not entirely clear. It would appear from the submissions of Mr. Weisdorf that a cottage mortgage was given in May or June of 1995 in full or partial satisfaction of this debt, but we do not know whether that was successfully realized, and if so, to what extent. We have no documents or other evidence indicating that the victims are satisfied in full. So that issue remains somewhat murky.

In this case, no character evidence was called and no mitigating circumstances were suggested, except for the fact that this occurred when a solicitor with some extensive history at the Bar stepped out of the sphere in which he usually practised (namely, criminal and civil litigation) and got involved in investing with clients. And indeed, in that investment process he took on a major role. This is regrettable but far from unusual. It cannot significantly mitigate the penalty that we feel compelled to impose.

We are mindful of the fact that in addition to trying to deal fairly with the solicitor as a person, we must meet the public interest that demands that the Law Society be able to assure the public at all times that those whom it licenses to practise do not engage in conduct which falls afoul of the rules. When that conduct becomes sufficiently unbecoming, the dignity and respect the profession seeks to garner from the public can no longer be maintained.

This is a case, having regard to the seriousness of the fraud, and the amount involved, and the absence of any significant mitigating factors, where we feel compelled to recommend to Convocation that disbarment must result.

25th April, 1996

David Henry Conrad was called to the Bar on March 19, 1970.

ALL OF WHICH is respectfully submitted

DATED this 8th day of March, 1996

Clayton C. Ruby
Chair

There were no submissions and the Report was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be disbarred.

It was moved by Mr. Cole, seconded by Ms. Puccini that the recommended penalty be adopted.

Carried

The solicitor was disbarred.

Counsel retired.

Re: Shane William EDWARDS - Carlton Place

The Secretary placed the matter before Convocation.

Ms. 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 14th March, 1996, together with an Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th March, 1996 (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 Topp, Chair
Paul Copeland
Ronald Manes

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

SHANE WILLIAM EDWARDS
of the Town
of Carlton Place
a barrister and solicitor

Audrey Cado
for the Society

Not Represented
for the solicitor

Heard: October 5, 1994
February 8, 1995
September 29, 1995

25th April, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 18, 1994 Complaint D39/94 was issued and on January 19, 1995 Complaint D3/95 was issued against Shane William Edwards alleging that he was guilty of professional misconduct.

Complaint D39/94 was heard in public on October 5, 1994 and February 8, 1995 before a Committee comprising Robert Topp, Chair, Paul Copeland and Netty Graham. The penalty portion of the hearing of this Complaint was combined with the hearing of Complaint D3/95.

Complaint D3/95 was heard in public on September 29, 1995 before Robert Topp, Chair, Paul Copeland and Ronald Manes.

The Solicitor attended the hearing on each occasion and represented himself. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D39/94

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending April 30, 1993, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Complaint D3/95

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending April 30, 1994, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.
- b) He failed to reply to the Law Society's requests that he provide copies of his trust comparisons for November, 1993, December 1993, and January, 1994, despite letters dated June 13, 1994, August 2, 1994 and September 8, 1994.

Evidence

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

Complaint D39/94

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D39/94 and is prepared to proceed with a hearing of this matter on October 4 and 5, 1994.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D39/94 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 13, 1987. He practices as sole practitioner.

5. The Solicitor's fiscal year end is April 30th. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending April 30, 1993, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. A Notice of Default in Annual Filing, dated November 3, 1993 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated December 7, 1993. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was signed for and delivered on December 17, 1993. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

8. The late filing fee began to accrue on December 22, 1993.

9. By registered mail, the Law Society forwarded to the Solicitor a Third Notice of Default in Annual Filing, dated April 22, 1994. The Solicitor was advised that his name would go before Convocation on May 27, 1994 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on May 26, 1994. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. The Society's Third Notice was signed for and delivered on April 29, 1994. A copy of the Society's Third Notice and Acknowledgement of receipt of a registered item card is attached as Exhibit "C" to this Agreed Statement of Facts.

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10. Solicitor advised the Law Society by telephone on May 25, 1994 that his filing and cheque in payment of the late filing fee was being forwarded by courier that day.

11. By letter dated June 28, 1994, the Law Society advised the Solicitor that his cheque in the amount of \$1,500.00 had been returned by the Bank marked "NSF". The Solicitor was requested to provide a certified cheque prior to September 23, 1994 or his rights and privileges may be suspended by Order of Convocation.

12. The Solicitor paid the late filing fee on September 23, 1994.

13. 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.

14. To date, the Solicitor has not filed the required forms.

V. DISCIPLINE HISTORY

15. The Solicitor does not have a discipline history.

DATED at Toronto this 5th day of October, 1994."

Complaint D3/95

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D3/95 and is prepared to proceed with a hearing of this matter on June 22, 1995.

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 D3/95 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 13, 1987. He practices as sole practitioner.

Particular 2(a)

Failure to File for the Fiscal Year Ended April 30, 1994

5. The Solicitor's fiscal year end is April 30th. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending April 30, 1994, as required by S.16(2) of Regulation 708 under the Law Society Act.

25th April, 1996

6. A Notice of Default in Annual Filing, dated November 3, 1994 (Document Book, Tab 1) was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated December 14, 1994 (Document Book, Tab 2). The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings to a maximum of \$1,500.00.

The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was signed for and delivered on or about December 23, 1994. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

8. The late filing fee began to accrue on December 28, 1994.

9. The Solicitor advised the Law Society by telephone on January 9, 1995 that he was unable to file the required forms as he was unable to pay his accountant. The Solicitor advised that he hoped to have the funds to pay his accountant by the following week.

10. To date, the Solicitor has not filed the required forms.

Particular 2(b)
Failure to Reply to the Law Society

11. On September 29, 1993, a Law Society examiner completed the examination of the Solicitor's books, records and files. The Solicitor was provided with a copy of the Examiner's Report (Tab 3, Document Book). The Solicitor executed an Acknowledgment to the Law Society, dated September 29, 1993 (Tab 4, Document Book) in which he agreed to ensure that the deficiencies in his books and records were corrected forthwith.

12. By letter dated October 29, 1993 (Tab 5, Document Book), the Law Society forwarded to the Solicitor an article on the spot audit programme, as well as, a pamphlet setting out sections 13 to 18 of the Regulation. The Solicitor was requested to provide the Law Society with the following:

- Copies of the listing of trust obligations, trust bank reconciliations and trust bank statements for each month ended September 30, 1993 to January 31, 1994 inclusive.
- Review the enclosed article titled "Computer Systems for Law Offices," and advise, in writing, that he was conforming with its provision.

The Solicitor was requested to acknowledge receipt of this letter, in writing, and to confirm that he was in compliance with section 14 and 15 of Regulation 708 and the Rules of Professional Conduct.

25th April, 1996

13. By letter dated November 19, 1993 (Tab 6, Document Book), the Solicitor provided the Law Society with copies of his trust bank statements for September and October 1993 together with the trust bank reconciliation and the listing of trust obligations. The Solicitor advised that he was printing out hard copies of the books and original entry and maintaining a hard copy of the clients' trust ledger accounts.

14. By letter dated June 13, 1994 (Tab 7, Document Book), the Solicitor was asked to forward to the Law Society copies of his listing of trust obligations, trust bank reconciliation and trust bank statements for the months ended November 30, 1993 to January 31, 1994, inclusive. The Solicitor did not respond.

15. By letter dated August 2, 1994 (Tab 8, Document Book), the Law Society forwarded to the Solicitor a copy of its June 13, 1994 letter. The Solicitor was requested to respond forthwith. The Solicitor did not respond.

16. By registered letter dated September 8, 1994 (Tab 9, Document Book), the Law Society forwarded to the Solicitor a copy of its letters dated June 13, 1994 and August 2, 1994. The Solicitor was reminded of his professional obligation to respond to communications from the Society. The Solicitor was requested to provide his full and complete written response within 15 days, or the matter would be referred to the Chair and Vice-Chair of the Discipline Committee. The Law Society's September 8, 1994 letter was signed for and delivered on or about September 19, 1994.

17. To date, the Solicitor has not requested an extension to reply nor has he provided the Law Society with an explanation for his failure to reply.

V. DISCIPLINE HISTORY

18. The Solicitor does not have a discipline history.

DATED at Carlton Place this 21st day of June, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Shane William Edwards be reprimanded in Convocation if he has complied with all the requirements of the Law Society by the time this matter is considered by Convocation, failing which, that he be suspended for three months and month to month thereafter until he has complied fully with the requirements of the Law Society._

REASONS FOR RECOMMENDATION

The Committee views the conduct of the Solicitor in light of the tremendous financial distress from which he was suffering. That distress affects many members of the profession and has become a plague especially among young members of the Bar.

The Committee recognizes the obligation of solicitors to both, file the report completed by a public accountant, and, to respond to requests from the Law Society for information. Regrettably, the Solicitor found himself paralyzed by his situation, and due to the financial circumstances and the other pressures surrounding him, he simply chose to do nothing.

25th April, 1996

This is not a case of malfeasance nor is it a case of gross misconduct, rather, it appears to be caused by the difficult times faced by the legal profession throughout Ontario.

Initially, the majority of your Committee was of the view that in addition to the recommendation of a reprimand in Convocation if he has complied with all of the requirements of the Law Society and failing that, that he be suspended for three months and month to month thereafter until he has complied fully with the requirements of the Law Society, that costs be paid in the sum of \$400.00. Since the date of the hearing in this matter, the majority view of the Committee has changed and costs are not recommended, as it simply would be a tremendous added burden upon the Solicitor given his financial circumstances.

In addition, your Committee notes that the Solicitor spent a complete day in Toronto for a Discipline Hearing and due to a hearing room change, he could not be located and the effect of his travelling costs and a day away from his practice has been taken into consideration.

Shane William Edwards was called to the Bar on April 13, 1987.

ALL OF WHICH is respectfully submitted

DATED this 14th day of March, 1996

Robert C. Topp
Chair

There were no submissions and the Report was voted on and adopted.

The penalty recommended by the Discipline Committee was that the solicitor be reprimanded in Convocation if he has complied with the requirements of the Society, failing which, that he be suspended for a period of 3 months and month to month thereafter until he has complied.

Ms. Cohen advised that the solicitor had not fulfilled the requirements of the Society.

It was moved by Mr. MacKenzie, seconded by Mr. Millar that the solicitor be suspended for a period of 3 months and month to month thereafter until the solicitor has complied with the requirements of the Society.

Carried

Counsel retired.

Re: Larry Andrew ROINE - Ottawa

The Secretary placed the matter before Convocation.

Ms. O'Connor and Ms. Ross withdrew for this matter.

Mr. P. Lukasiewicz appeared for the Society. The solicitor was not present.

Mr. Lukasiewicz requested on consent that the Report be referred back to the Committee to be amended because of certain inconsistencies contained in it. He advised that Mr. Neville, counsel for the solicitor, could be reached by telephone if necessary.

25th April, 1996

It was moved by Mr. Millar, seconded by Ms. Backhouse that the Report be referred back to the Committee for clarification.

Carried

Counsel retired.

Re: John ROTHEL - Timmins

The Secretary placed the matter before Convocation.

Mr. Perrier appeared for the Society. Ms. Levine from Mr. Greenspan's office appeared for the solicitor who was present.

Mr. Rothel made submissions for an adjournment and requested Convocation to allow him an extension to file a Notice of Disagreement.

Mr. Perrier made submissions against the request for an adjournment.

There was a brief reply by the solicitor.

There were questions from the Bench.

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

It was moved by Mr. Banack, seconded by Ms. Backhouse that the matter be adjourned, that the solicitor be granted 1 month (May 25th) to file documentation and that the matter go before the Assignment Tribunal on the solicitor's written undertaking not to practise law.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the matter be adjourned, that the solicitor have until May 25th to file documentation and that the matter go before the Assignment Tribunal on the solicitor's written undertaking not to practise law.

The matter was stood down until an Undertaking was prepared.

Re: David HARRIS - Toronto

The Secretary placed the matter before Convocation.

Messrs. Swaye and MacKenzie and Ms. Puccini withdrew for this matter.

Ms. Cohen appeared for the Society and Mr. Morris Manning appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 14th March, 1996, together with an Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th April, 1996 (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:

25th April, 1996

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Gerald A. Swaye, Q.C. Chair
Helene B. Puccini
Gary Gottlieb, Q.C.

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

Rhonda Cohen
for the Society

DAVID HARRIS
of the City
of Toronto
a barrister and solicitor

Morris Manning, Q.C.
For the solicitor

Heard: January 10, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

There were no submissions and the Report was voted on and adopted.

REPORT

On May 27, 1994 Complaint D308/93 was issued and on May 8, 1995 Complaint D78/95 was issued against David Harris alleging that he was guilty of professional misconduct. These complaints were replaced respectively by Complaint D308a/93, issued on January 10, 1996 and Complaint D78a/95 issued on January 9, 1996.

The matters were heard in public on January 10, 1996, with medical evidence being received in camera, before this Committee comprising Gerald A. Swaye, Q.C., Chair, Gary Gottlieb, Q.C. and Helene Puccini. The Solicitor attended the hearing and was represented by Morris Manning, Q.C. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D308a/93

2. I. a) He failed to serve his client, David Hatcher, in a conscientious, diligent and efficient manner in that he:
- i) failed to answer promptly reasonable requests from his client for information;

25th April, 1996

- ii) failed to report to his client and to keep his client informed and advised as to the status of his wrongful dismissal action;
 - iii) failed to prosecute his client's action in a timely fashion in that he failed to take prompt steps to reinstate his client's action to the trial list.
 - b) He failed to serve his client, Douglas Laird, in a conscientious, diligent and efficient manner in that he:
 - i) failed to keep his client reasonably informed; and
 - ii) failed to answer reasonable requests from his client for information;
 - c) He failed to serve his client, Oracle Corporation, in a conscientious, efficient and diligent manner in that he failed to make appropriate inquiries as to the status of his client's Appeal despite repeated correspondence from a fellow solicitor that the client's Notice of Appeal had not been filed within the time for filing.
 - d) He failed to serve his client, Carlin Sales Limited, in a conscientious, diligent and efficient manner in that he:
 - i) failed to keep his client reasonably informed; and
 - ii) withheld information from his client about the status of its action in order to avoid disclosure of the Solicitor's neglect.
 - e) He failed to serve his client, Ted Waffle, in a conscientious, diligent and efficient manner in that he failed to report to and keep his client informed regarding the client's request that the Solicitor return certain client documents which the Solicitor undertook to return in July, 1993.
- II.
 - a) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of an investigation of a complaint by his client, David Hatcher, regarding the matter referred to in particular 2.I(a) above.
 - b) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by his client, Douglas Laird, in respect of which he agreed by letter dated July 19, 1993 to provide a further response to the Law Society.
 - c) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by his client, Josephine O'Brien.

25th April, 1996

- d) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by a fellow solicitor, Robert Colson, regarding the matter referred to in particular 2.I.(c) above.
 - e) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by a fellow solicitor, Irvin Schein, regarding the matter referred to in particular 2.I.(d) above.
 - f) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by a fellow solicitor, Alfred Kwinter, regarding a default judgment obtained against former clients, Robert Shearer and Peter Dreifelds.
 - g) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by a client, Jim Vella, in respect of which the Law Society wrote the Solicitor on July 30, 1993 without response.
- III. a) He failed to provide a prompt response to communications from the Law Society in respect of the investigation of a complaint by his client, Sondra Schneider.
- IV. a) He failed to provide a prompt, full and complete response to communications from a fellow solicitor, Irvin Schein regarding the matter referred to in particular 2.I.(d) above; and
- b) He failed to respond in a timely manner to communications from a fellow solicitor, Robert Colson, in respect of the approval of the judgment, the execution and appeal of an action successfully prosecuted by Robert Colson's client.

Complaint D78a/95

2. I. a) He failed to serve his client, Bryan Boyle, in a conscientious, diligent and efficient manner in that he:
- i) failed to answer requests from his client for information;
 - ii) failed to answer within a reasonable time communications from his client which required replies;
 - iii) failed to report to his client and to keep his client informed and advised as to the status of his wrongful dismissal matter following the receipt of settlement funds; and

25th April, 1996

- iv) failed to take diligent steps to determine on behalf of his client, the amount of repayment due from his client to the Unemployment Insurance Commission.
- b) He failed to serve his client, Mark Abbot, in a conscientious, diligent and efficient manner in that he:
 - i) failed to answer reasonable requests from his client for information;
 - ii) failed to answer within a reasonable time communications from his client which required replies;
 - iii) failed to report to this client and to keep this client informed and advised as to the status of settlement funds received by the Solicitor; and
 - iv) failed to proceed in a timely fashion with a motion to ascertain his client's income tax liability to Revenue Canada.
- II. a) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by his client, Bryan Boyle, regarding the matter referred to in particular 2.I.(a) above;
- b) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by a fellow solicitor, Michael Silver.

Evidence

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

With respect to Complaint D308a/93:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D308a/93 and is prepared to proceed with a hearing of this matter on January 10, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D308a/93 with his counsel, Morris Manning, and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 21, 1975. He practices as a partner in a law firm of Harris & Partners, specializing in the field of employment law.

IRVIN SCHEIN

Particular 2.I (e) He failed to serve his client, Carlin Sales Limited, in a conscientious, diligent and efficient manner in that he:

(i) failed to keep his client reasonably informed; and

(ii) withheld information from his client about the status of its action in order to avoid disclosure of the Solicitor's neglect.

5. On November 30, 1984, the Solicitor commenced an action on behalf of Carlin Sales Limited ("Carlin Sales") against Menceles Management Limited and Cosmoda Design Inc.

6. By Order of the Court dated June 26, 1990, Carlin Sales was ordered to provide certain answers to undertakings given at its examination for discovery failing which the action would be struck. The Solicitor did not report to his client the existence of the Order, nor did he provide answers to the undertakings which formed the subject of the Order.

7. By Order dated May 21, 1990, the Court dismissed Carlin Sales' action as a result of the failure to provide answers to the undertakings. At no time did the Solicitor advise his client that the first action had been dismissed.

8. In April, 1991, the Solicitor, commenced a fresh action on behalf of Carlin Sales. The Solicitor did not consult with or seek instructions from his client prior to commencing the second action.

9. The second action was subsequently dismissed on the grounds of res judicata. The Solicitor did not report the second dismissal to his client.

Particular 2.II (e) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by a fellow solicitor, Irvin Schein, regarding the matter referred to in particular 2.I.(e) above.

10. In early April, 1992, Carlin Sales Limited consulted Mr. Irvin Schein, of the law firm of Minden, Gross, Graftstein & Greenstein ("Minden, Gross") because the Solicitor had not reported to the client for some considerable time.

11. By letter dated April 7, 1992 (Document Book "A", Tab 1), Minden, Gross advised the Solicitor that it was Carlin Sales' understanding that its action had been listed for trial for some time. Minden, Gross requested; on behalf of the client, a report on the status of the action. The Solicitor did not reply.

12. Minden, Gross then retrieved the Carlin Sales' Court file from storage and discovered that the client's action had been dismissed two years prior in May, 1990.

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13. By letter dated April 23, 1992 (Document Book "A", Tab 2), Minden, Gross wrote to the Solicitor, advising him of the aforesaid, and in particular the facts set out in paragraphs 6-9 herein. The Solicitor did not reply to this letter.

14. By letter dated May 6, 1992 (Document Book "A", Tab 3), Minden, Gross asked the Solicitor to forward a reply to its April 23, 1992 letter, and further confirmed the following:

- (a) since writing the April 23 letter, Minden, Gross had learned from the solicitor for the defendant that following the dismissal of the client's action in May, 1990, in April 1991 the Solicitor commenced a second action (similar in substance to the first action) which was subsequently dismissed on grounds of res judicata;
- (b) the Solicitor filed a Notice of Appeal from the second Order but the appeal was not perfected; and
- (c) the client had no knowledge whatsoever of the second action, was not consulted for instructions to commence the second action, and was under the impression that the first action was proceeding to trial.

The Solicitor was advised that should he fail to provide an explanation for the aforementioned by week's end, the matter would be referred to the Law Society and its insurer.

15. By letter dated May 8, 1992, the Solicitor delivered the client's file to Minden, Gross and offered to meet to discuss the matter further. The Solicitor's letter did not address the substantive issues raised in any of the Minden, Gross letters (Document Book, Tab 3A).

16. By letter dated May 11, 1992 (Document Book "A", Tab 4) Minden, Gross reported to the Law Society the particulars described in its earlier correspondence.

- Particular 2.IV (a) He failed to provide a prompt, full and complete response to communications from a fellow solicitor, Irvin Schein, in respect of a former client, Ira Carlin.

17. By letter dated June 8, 1992 (Document Book "A", Tab 5), the Law Society sent to the Solicitor a copy of Minden, Gross' May 11, 1992 letter. The Solicitor was asked to provide his comments within two weeks. The Solicitor did not reply.

18. Meanwhile, Carlin Sales Limited commenced an action against the Solicitor. The Solicitor's insurer assigned counsel, Mr. Sean Gosnell, of the law firm Borden & Elliott, to defend the claim.

19. By letter dated May 21, 1992, delivered by hand, Mr. Gosnell requested that the Solicitor send to him all relevant documentation (Document Book "A", Tab 3B) and meet with him during the week of June 1, 1992. The Solicitor did not respond.

20. Mr. Gosnell sent two follow-up letters and left two telephone messages for the Solicitor (Document Book "A", Tab 3C and Tab 3D). The Solicitor did not respond.

21. The Solicitor finally met with Mr. Gosnell on June 19, 1992. The Solicitor did not provide originals or copies of any documentation to Mr. Gosnell.

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22. On July 2, 1992, the Solicitor's junior, Mr. Chenoweth met with and provided certain documentation to Mr. Gosnell. (Document Book "A", Tab 3E)

23. The Solicitor and Mr. Gosnell met again on July 6, 1992 at which time the Solicitor confirmed that he:

- (a) had delivered his file to Minden, Gross on May 8, 1992;
- (b) did not know why he did not bring a motion to set aside that dismissal Order;
- (c) did not report the dismissal to his client;
- (d) commenced the second action; and
- (e) when the second action was dismissed, requested Mr. Chenoweth, his junior, to report to the client.

24. A Law Society staff employee spoke with the Solicitor by telephone on December 10, 1992. The Solicitor asked the Law Society to forward, by facsimile transmission, a copy of its June 8, 1992 letter. The Solicitor advised that he would provide a response by December 14, 1992. A copy of the Law Society's facsimile transmission cover sheet dated December 10, 1992, is contained in the Document Book "A", Tab 6.

25. By letter dated December 14, 1992 (Document Book "A", Tab 7), the Solicitor requested the Law Society's indulgence for a few days to enable him to submit his response.

26. On December 15, 1992, a Law Society staff employee spoke with the Solicitor by telephone. The Solicitor advised that he had recently moved and all his files were in storage. The Solicitor said that he would submit his response to the Law Society by December 18, 1992. A copy of the Law Society's verbal transaction form is contained in the Document Book "A" at Tab 8.

27. On December 18, 1992, a Law Society staff employee spoke by telephone with the Solicitor's secretary. She advised that the Solicitor had been called away on a family matter, and that he would submit his response by December 21, 1992. A copy of the Law Society's handwritten notes are contained in the Document Book "A" at Tab 9.

28. On December 21, 1992, the Solicitor's secretary advised the Law Society by telephone that the Solicitor was still away due to a family emergency. A copy of the Law Society's handwritten notes are contained in the Document Book "A" at Tab 10.

29. By facsimile transmission dated December 22, 1992 (Document Book "A", Tab 11), the Solicitor advised the Law Society that he would provide his written response to the Law Society's June 8, 1992 letter by December 23, 1992. The Solicitor did not provide a response to the Law Society.

30. By registered letter dated January 13, 1993 [sic] (Document Book "A", Tab 12), the Law Society sent the Solicitor a further copy of its June 8, 1992 letter for the Solicitor's comments. The Solicitor was reminded of his obligation to reply promptly to communications from the Law Society and advised that, should his response not be received within seven days, the matter would be referred to the Discipline Committee. The Law Society's January 13, 1993 letter was signed for and delivered on January 19, 1993.

25th April, 1996

31. By letter dated January 20, 1993 (Document Book "A", Tab 13), the Solicitor advised the Law Society that he had reviewed his file, but believed that he had sent the bulk of his file to the Law Society's insurer. The Solicitor asked for the Law Society's assistance in having his file returned to him.

32. By memorandum dated June 17, 1993 (Document Book "A", Tab 14), the Law Society's adjuster, Aisha Bhabha advised the Law Society that at no time did the Solicitor provide either the insurer or its counsel, Sean Gosnell, copies or originals from the client's file.

33. By letter dated July 19, 1993 (Document Book "A", Tab 15), the Law Society advised the Solicitor of Ms. Bhabha's findings. The Solicitor was asked to respond to the Society's June 8, 1992 letter within two weeks. The Solicitor did not reply.

34. By letter dated November 9, 1993 (Document Book "A", Tab 16), the Solicitor advised the Law Society that he was certain that he had met with Mr. Gosnell on July 6, 1992 from 5:00 p.m. to 7:45 p.m. and had provided Mr. Gosnell numerous pieces of documentation from the Solicitor's file. The Solicitor advised that once the balance of the documents were returned to him, he would provide his response.

35. On April 15, 1994 Mr. Gosnell reviewed his file and re-confirmed that the Solicitor had not provided him with any documentation during the July 6, 1992 meeting nor at any other time. A copy of the telephone transaction form dated April 15, 1994 is contained in the Document Book "A" at Tab 17.

36. The Solicitor did not reply to the Law Society until September 29, 1995, thirty-eight months after the Law Society's first request for a response from the Solicitor and sixteen months after the within Complaint was sworn by the Law Society.

DAVID HATCHER

Particular 2.I (a) He failed to serve his client, David Hatcher, in a conscientious, diligent and efficient manner in that he:

(i) failed to answer promptly reasonable requests from his client for information;

37. In or about April and May, 1987, David Hatcher retained the Solicitor to bring a wrongful dismissal claim against Century 21 Chartland Realty Limited ("Century 21").

38. Two Statements of Claim were issued on May 11, 1987. Action 19617/87, issued in the Supreme Court of Ontario (Document Book "A", Tab 18), claimed for damages resulting from a breach of contract on the part of Century 21, namely that it had failed to pay to Mr. Hatcher his share of profits equal to 10% of gross profits for the period January 1st, 1987 to April 22nd, 1987, being the date of dismissal. Action 19618/87, issued in the Supreme Court of Ontario (Document Book "A", Tab 19) sought a declaration that the termination of Mr. Hatcher's employment with the defendant was wrongful, and damages in lieu of 18 months notice in the amount of \$400,000.00.

39. On or about June, 1987, a Statement of Defence was served upon the Solicitor by the defendant's counsel, the law firm of Borden & Elliott.

25th April, 1996

40. On August 21, 1987, Century 21 terminated its retainer with the law firm Borden & Elliott and retained the law firm, Torkin, Manes, Cohen & Arbus.

41. An amended Statement of Defence, dated October 15, 1987, was served on the Solicitor.

42. Examinations for Discovery were completed in November, 1988.

43. Toward the end of 1988 and in early January, 1989, Mr. Hatcher made several attempts, verbal and written, to contact the Solicitor in an effort to receive a report on the status of his matters. Mr. Hatcher left over 70 telephone messages for the Solicitor. The Solicitor did not respond. (Document Book "A", Tab 20)

44. By letter dated February 1, 1989 (Document Book "A", Tab 21), the Solicitor advised Mr. Hatcher that he had not received payment of his account in the amount of \$7,610.88 which was then seven months overdue. The Solicitor advised Mr. Hatcher that should payment of the outstanding account not be received within ten days, he would have no alternative but to refrain from rendering any further services until his account was paid. Mr. Hatcher paid the account. The Solicitor did not report to his client.

45. By letter dated June 2, 1989 (Document Book "A", Tab 22), Mr. Hatcher again requested that the Solicitor report of the status of his two actions. The Solicitor did not reply.

46. By letter dated July 13, 1989 (Document Book "A", Tab 23), Mr. Hatcher again asked the Solicitor to report on the status of his matters.

47. By letter dated July 17, 1989 (Document Book "A", Tab 24), the Solicitor acknowledged receipt of Mr. Hatcher's July 13th letter. The Solicitor advised Mr. Hatcher that he had not yet received the transcript of his examination for discovery but that upon receipt, the Solicitor would "take the steps described to [Mr. Hatcher] previously".

48. The action was eventually set down for trial. However, Mr. Hatcher states that this was not reported to him.

- Particular 2.I (a) He failed to serve his client, David Hatcher, in a conscientious, diligent and efficient manner in that he:
- (ii) failed to report to his client and to keep his client informed and advised as to the status of his wrongful dismissal action; and
 - (iii) failed to prosecute his client's action in a timely fashion in that he failed to take prompt steps to reinstate his client's action to the trial list.

25th April, 1996

49. On September 18, 1989, a status hearing was held in respect of both actions. Christopher Chenoweth, the Solicitor's junior, attended. Mr. Hatcher did not attend at the status hearing. As a result of a misunderstanding on the part of Mr. Chenoweth, both of Mr. Hatcher's actions were dismissed. A copy of the Order dismissing action 19617/87 is contained in the Document Book "A" at Tab 25. A copy of the Order dismissing action 19618/87 is contained in the Document Book "A" at Tab 26. The respective dismissals were not reported to Mr. Hatcher. Mr. Harris states that he believed that his junior, Mr. Chenoweth, would report to Mr. Hatcher. Mr. Chenoweth states that he did not understand it to be his responsibility to report to Mr. Hatcher nor was Mr. Chenoweth given those instructions from Mr. Harris.

50. Throughout the succeeding six months neither the Solicitor nor a representative of his office reported to Mr. Hatcher that his actions had been dismissed.

51. In the interim, by letter dated October 23, 1989 (Document Book "A", Tab 27), Mr. Hatcher asked the Solicitor to report on the status of Mr. Hatcher's two actions. The Solicitor did not reply.

52. Mr. Hatcher finally met with the Solicitor on March 16, 1990 (six months after the action had been dismissed). At that time, the Solicitor admitted that his office had "screwed up" at the status hearings and that, as a result, Mr. Hatcher's actions would be delayed. The Solicitor further advised that he was in the process of preparing a motion to reinstate the first action and to have that matter put back on to the trial list.

53. On May 15, 1990, eight months after the actions were dismissed, orders were obtained reinstating both actions (Document Book "A", Tab 28).

Particular 2.II (a) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of an investigation of a complaint by his client, David Hatcher, regarding the matter referred to in particular 2.I(a) above.

54. By letter dated February 7, 1992 (Document Book "A", Tab 29), David Hatcher complained to the Law Society about the Solicitor's carriage of the actions.

55. By letter dated February 28, 1992 (Document Book "A", Tab 30), the Law Society sent to the Solicitor a copy of Mr. Hatcher's February 7, 1992, letter and asked the Solicitor to provide his comments within two weeks.

56. By letter dated March 12, 1992 (Document Book "A", Tab 31), the Solicitor advised the Law Society that he had reviewed Mr. Hatcher's matter with the Law Society's insurance adjuster and had provided the adjuster with the contents of his file. The Solicitor advised that he was uncertain as to what further information the Law Society desired of him and requested that he be provided with particulars thereof.

57. By letter dated April 1, 1992 (Document Book "A", Tab 32), the Law Society asked the Solicitor to provide his comments on the specific allegations made by Mr. Hatcher.

The Solicitor was requested to provide his response within two weeks. The Solicitor did not reply.

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58. A Law Society staff employee left telephone messages for the Solicitor at his office on each of April 21 and 22, 1992, requesting that he return the calls. A copy of the Law Society's handwritten notes dated April 21, 1992 and April 22, 1992 are contained in the Document Book "A" at Tab 33. The Solicitor did not reply.

59. By registered mail dated April 27, 1992 (Document Book "A", Tab 34), the Law Society sent to the Solicitor a copy of its April 1, 1992 letter. The Solicitor was reminded of his obligation to reply promptly to communications from the Law Society and was advised that should a response not be received within seven days, the matter would be referred to the Discipline Committee. The Law Society's April 27, 1992 letter was signed for and delivered on April 29, 1992.

60. By letter dated May 7, 1992 (Document Book "A", Tab 35), the Solicitor advised the Law Society that he had provided his file to the Law Society's insurer and therefore was not in a position to provide a response to the April 1, 1992 letter. The Solicitor asked the Law Society to assist in obtaining the return of his file from the insurer.

61. By letter dated June 8, 1992 (Document Book "A", Tab 36), the Law Society advised the Solicitor that a request had been made to the insurer to have his file returned to him.

62. The Law Society's insurer returned the Solicitor's file to him on July 27, 1992. However, the Solicitor did not submit a reply to the Law Society.

63. By letter dated November 9, 1992 (Document Book "A", Tab 37), the Law Society sent to the Solicitor a copy of its April 1, 1992 letter. The Law Society reminded the Solicitor that the adjuster had returned his file to him on July 27, 1992, and requested that he provide a response to the Law Society's April 1, 1992 letter within two weeks. The Solicitor did not reply.

64. A Law Society staff employee left telephone messages for the Solicitor at his office on each of November 26 and 27, 1992 requesting that he return the calls. The Solicitor did not return the calls. A copy of the Law Society's verbal transaction form dated November 26, 1992 is contained in the Document Book "A" at Tab 38.

65. By a second registered letter, this dated December 2, 1992 (Document Book "A", Tab 39), the Law Society reminded the Solicitor of his obligation to reply promptly to communications from the Law Society. The Solicitor was advised that, should no response be received within seven days, the matter would be referred to the Discipline Committee. The Law Society's December 2, 1992 letter was signed for and delivered on December 8, 1992.

66. By letter dated December 22, 1992 (Document Book "A", Tab 40), five months after his file was returned to him from the insurer, the Solicitor provided a response to the Law Society.

ROBERT L. COLSON

Particular 2.I (c) He failed to serve his client, Oracle Corporation, in a conscientious, efficient and diligent manner in that he failed to make appropriate inquiries as to the status of his client's Appeal despite repeated correspondence from a fellow solicitor that the client's Notice of Appeal had not been filed within the time for filing.

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- Particular 2.IV (b) He failed to respond in a timely manner to communications from a fellow solicitor, Robert Colson, in respect of the approval of the judgment, execution and appeal of an action successfully prosecuted by Robert Colson's client.
67. Diane Gareau, through her counsel, Robert Colson, issued a Statement of Claim against Oracle Corporation ("Oracle"). The Solicitor was retained by Oracle to defend the action. A trial was held and on October 16, 1992, judgment was rendered against Oracle in the amount of \$151,000.00, plus solicitor and client costs.
68. On October 19, 1992, Mr. Colson wrote to the Solicitor and asked him to approve a draft judgment which Mr. Colson enclosed. The Solicitor did not respond.
69. By letter dated October 26, 1992 (Document Book "A", Tab 41), the Solicitor advised Mr. Colson that he had received instructions to appeal the judgment, and would forward a Notice of Appeal shortly. No mention was made of the draft judgment.
70. By letter dated October 28, 1992 (Document Book "A", Tab 42), Mr. Colson advised the Solicitor that he intended to strictly enforce the time limit for the appeal. Mr. Colson further advised the Solicitor that he had not received back from the Solicitor the draft judgment duly approved, nor had the Solicitor responded to Mr. Colson on the issue of costs. Mr. Colson advised the Solicitor that should he fail to contact him within the next day or two, Mr. Colson would take out an appointment to have the judgment settled. The Solicitor did not reply.
71. On November 4, 1992, the Solicitor was served with an appointment to settle the judgment. The appointment was returnable on November 18, 1992. The Solicitor did not respond.
72. By letter dated November 9, 1992, (Document Book "A", Tab 43) the Solicitor sent to Oracle a copy of a draft Notice of Appeal and advised that the Notice of Appeal should be finalized and served upon the opposing counsel.
73. By letter dated November 12, 1992 (Document Book "A", Tab 44), the Solicitor ordered from the Court Reporter the transcripts of the trial, and enclosed a copy of the Appellant's Certificate which the Solicitor stated in his letter "outlines the Court File Number". In fact, the Notice of Appeal had not yet been filed, thus no court file number existed.
74. The time for filing a notice of appeal expired on November 16, 1992.
75. On the morning of November 18, 1992, the Solicitor left a voice mail message at Mr. Colson's office advising that he would not contest the form of judgment which had been sent to him on October 19, 1992. Judgment was therefore settled by the Deputy Local Registrar on November 18, 1992, without opposition. The voice mail message made no mention of the Solicitor's client's intentions with respect to an appeal.
76. On November 18, 1992, the Solicitor sent Mr. Colson a letter enclosing the draft judgment approved as to form and content. The letter was sent by ordinary mail and received on November 19, 1992. The letter made no mention of the Solicitor's client's intentions with respect to an appeal.

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77. By letter dated November 24, 1992 (Document Book, "A", Tab 45) Mr. Colson advised the Solicitor that his firm had obtained an order settling the Judgment and that Judgment had been issued and entered and writs of seizure and sale had been lodged with the Sheriff's Office, together with a direction to enforce. Mr. Colson further advised that he was prepared to instruct the Sheriff to abeyance his attendance should the Solicitor advise that the judgment monies were forthcoming.

78. By letter dated November 26, 1992 (Document Book "A", Tab 46), the Solicitor wrote to Mr. Colson to confirm his voice mail message of November 18, 1992, and that a Notice of Appeal had been served upon Mr. Colson "some time ago". The Solicitor enclosed a copy of the Notice of Appeal which was without a Court File number.

79. On or about December 2, 1992 a representative of the Sheriff's Office attended at Oracle's offices to levy execution. Upon his arrival the Sheriff's representative was informed by Oracle's in-house counsel that Oracle was proceeding with an appeal. Execution was therefore not proceeded with at that time, and this was reported to Mr. Colson who upon reviewing his file and confirming that a Notice of Appeal had not been filed (the time for filing having expired two weeks earlier) instructed the Sheriff's Office to re-attend at Oracle and execute.

80. A representative of the Sheriff's Office re-attended at Oracle on December 8, 1992 at which time he was informed by Oracle's in-house counsel that appeal documents had been prepared. The Sheriff's representative then contacted the Solicitor who assured him that a Notice of Appeal had been filed with the Court of Appeal.

81. Mr. Colson was advised of the foregoing, and on December 8, 1992, had his firm's process server attend at the Court of Appeal to determine whether a Notice of Appeal had been filed. It had not.

82. By letter dated December 9, 1992 (Document Book "A", Tab 47), Mr. Colson asked the Solicitor to explain his representation to the Sheriff's Office that a Notice of Appeal had been filed when this was apparently not the case. The Solicitor was advised that should no response be received within twenty-four hours, the matter would be referred to the Law Society. The Solicitor did not reply.

83. Instead, by facsimile transmission dated December 9, 1992 (Document Book "A", Tab 48), the Solicitor sent to the Sheriff's office a copy of a Notice of Appeal, dated November 9, 1992 without a Court File number. The Solicitor also provided the Sheriff's office a copy of his correspondence dated November 12, 1992 to the court reporter and his letter of October 26, 1992 to Mr. Colson. The Solicitor advised the Sheriff's office that it was his opinion that a proper appeal was in place and that no steps should be taken to execute upon the judgment.

84. By letter dated December 14, 1992 (Document Book "A", Tab 49), Mr. Colson wrote to the Law Society outlining the aforesaid events.

85. By follow-up letter dated December 15, 1992 (Document Book "A", Tab 50), Mr. Colson further advised the Law Society that:

- (a) the Court Reporter's office had confirmed that it had no record of having received an order for the trial transcript from the Solicitor or his office;
- (b) Mr. Colson's process server had attended at the Court of Appeal a second time and confirmed that a Notice of Appeal had not been filed; and

- (c) Mr. Colson's office never received the Solicitor's letter of November 26, 1992.

Particular 2.II (d) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by a fellow solicitor, Robert L. Colson, regarding the matter referred to in particular 2.I.(c) above.

86. By letter dated December 21, 1992 (Document Book "A", Tab 51), the Law Society sent the Solicitor a copy of Mr. Colson's December 15, 1992 letter. The Solicitor was asked to provide his written comments within two weeks. The Solicitor was specifically requested to provide a copy of the Notice of Appeal bearing the court file number and filing date stamp and a copy of the Affidavit of Service. The Solicitor did not reply.

87. The Solicitor's Motion was heard before Mr. Justice Labrosse of the Ontario Court of Appeal on December 21, 1992. The Court's endorsement (Document Book "A", Tab 52) is as follows:

There has been a clear intention to appeal. Leave to extend time for filing notice of appeal is granted. Notice of appeal to be filed within 2 days of this date.

In view of the failure to answer correspondence and failure to act after advised that action would be undertaken and apparent lack of disclosure, the defendant is to be allowed 2 days to pay the amount of the Judgment into court, failing which there shall be no stay of the Judgment & the plaintiff is to be at liberty to proceed as she deems appropriate.

Otherwise, the balance of this application is dismissed with costs, payable forthwith after assessment.

88. On each of January 13 and 14, 1993, a Law Society staff employee left telephone messages for the Solicitor at his office requesting that he return the calls. A copy of the Law Society's notes of these calls are contained in the Document Book "A", Tab 53. The Solicitor did not return the calls.

89. By registered mail dated January 18, 1993 (Document Book "A", Tab 54), the Law Society forwarded to the Solicitor a copy of its December 21, 1992 letter. The Solicitor was reminded of his obligation to reply promptly to communications from the Law Society. The Solicitor was requested to provide his response within seven days, failing which the matter would be referred to the Discipline Committee.

90. On January 25, 1993, the Solicitor's secretary advised the Law Society by telephone that its January 18, 1993 letter had been received only that day and that the Solicitor could not provide his response until later in the week. The Law Society's notes dated January 25, 1993 are contained in the Document Book "A" at Tab 55.

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91. By letter dated February 1, 1993 (Document Book "A", Tab 56), the Solicitor advised the Law Society that in his view all of the Law Society's inquiries had been answered in the Affidavit sworn by the Solicitor in support of his motion for an order extending the time to file the Notice of Appeal (Document Book "A", Tab 57). The Solicitor's letter did not enclose a copy of the Notice of Appeal bearing a Court File number and filing date stamp. The Solicitor's letter enclosed the Affidavit of Service of Ilona Sadlej, sworn February 1, 1993, in which she swears to having served Mr. Colson with the Solicitor's letter of November 26, 1992 which purported to enclose a copy of the Notice of Appeal. Ms. Sadlej's Affidavit did not attach a copy of either the Notice of Appeal which was purportedly served or the facsimile transmission report. (Document Book "A", Tab 58).

92. By letter dated February 9, 1993 (Document Book "A", Tab 59), the Solicitor was again asked by the Law Society to provide a copy of the Notice of Appeal containing both the court file number and the filing date stamp, as well as, a copy of the Affidavit of Service which accompanied the Notice of Appeal when it was filed with the Court Office. The Solicitor was asked to provide his comments within two weeks. The Solicitor did not reply.

93. A Law Society staff employee left telephone messages for the Solicitor at his office on each of February 23 and 24, 1993 requesting that he return the calls. A copy of the Law Society's verbal transaction form is contained in the Document Book "A" at Tab 60. The calls were not returned.

94. By a second registered letter, this dated February 25, 1993 (Document Book "A", Tab 61), the Law Society sent to the Solicitor a copy of its February 9, 1993 letter. The Solicitor was reminded of his obligation to reply promptly to the Law Society and advised that should he fail to provide his written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's February 25, 1993 letter was signed for and delivered on March 1, 1993. The Solicitor did not reply.

95. A Law Society staff employee spoke with the Solicitor by telephone on March 3, 1993. The Solicitor advised that he would respond by March 5, 1993. A copy of the Law Society's handwritten notes, dated March 3, 1993 are contained in the Document Book "A" at Tab 62. The Solicitor did not reply.

96. By letter dated March 5, 1993 (Document Book "A", Tab 63), the Solicitor advised the Law Society that he had prepared a substantive response to its inquiries, but that his response revealed confidential opinions provided to his client. The Solicitor therefore requested the Law Society's assurance that his client's interests would be protected.

97. A Law Society staff employee left telephone messages for the Solicitor at his office on each of March 8, 12, 22, and 23, 1993 requesting that he return the calls. A copy of the Law Society's handwritten notes are contained in the Document Book "A" at Tab 64. The Solicitor did not return the calls.

98. On or about March 23, 1993, a Law Society staff employee spoke with the Solicitor by telephone and advised him of the Law Society's policy respecting "third-party complaints". The Law Society confirmed with the Solicitor its policy by letter dated March 29, 1993 (Document Book "A", Tab 65) and asked the Solicitor to provide his full and complete response within two days of the date of the letter. The Solicitor did not reply.

99. A Law Society staff employee left telephone message for the Solicitor at his office on each of April 14 and 19, 1993 requesting that he return the calls. A copy of the Law Society's handwritten notes dated April 14, 1993 and April 19, 1993 are contained in the Document Book "A" at Tab 66. The calls were not returned.

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100. By a third registered letter, this dated April 23, 1993 (Document Book "A", Tab 67), the Law Society again requested the Solicitor respond to its March 29, 1993 letter. The Solicitor was advised of his obligation to provide a reply to the Law Society and advised that should he fail to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's April 23, 1993 letter was signed for and delivered on April 27, 1993.

101. By letter dated April 30, 1993 (Document Book "A", Tab 68), the Solicitor sent the Law Society the following documents:

- (a) his letter to Oracle dated October 19, 1992;
- (b) Mr. Colson's letter of October 28, 1992;
- (c) correspondence to the principal of Oracle dated November 9, 1992, enclosing the draft Notice of Appeal; and
- (d) correspondence to Mr. Colson, dated November 26, 1992.

The Solicitor further advised that:

- (a) on November 12, 1992 he instructed his secretary to serve and file a Notice of Appeal and to send a letter to the court reporter's office requesting the delivery of the trial transcript;
- (b) November 12, 1992 was his secretary's last day of employment in his office;
- (c) he was firmly of the view that his secretary had served the Notice of Appeal on Mr. Colson and filed same on November 12;
- (d) when he reviewed his file he found that the Notice of Appeal had not been served; and
- (e) all positions and advice he had taken following November 12 were based on the apparent mistake that the Notice of Appeal had been served.

102. By letter dated June 1, 1993 (Document Book "A", Tab 69), the Law Society asked the Solicitor to advise of the date on which he discovered that the Notice of Appeal had not been served and filed. The Solicitor was requested to provide his response within two weeks. The Solicitor did not reply

103. A Law Society staff employee left two telephone messages for the Solicitor at his office on July 9, 1993 requesting that he return the calls. A copy of the Law Society's handwritten notes dated July 9, 1993, are contained in the Document Book "A" at Tab 70. The calls were not returned.

104. By a fourth registered letter, this dated July 15, 1993 (Document Book "A", Tab 71), the Law Society forwarded to the Solicitor a copy of its June 1, 1993 letter. The Solicitor was reminded of his obligation to reply to the Society and advised that should he fail to provide his written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's July 15, 1993 letter was signed for and delivered on July 23, 1993.

105. By letter dated July 19, 1993 (Document Book "A", Tab 72), the Solicitor advised that he could not recall when he became aware or suspicious that his secretary had failed to serve and file the Notice of Appeal.

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106. A Law Society staff employee left a telephone message for the Solicitor at his office on July 20, 1993 requesting that he return the call. A copy of the Law Society's handwritten notes dated July 20, 1993, are contained in the Document Book "A" at Tab 73.

107. By letter dated July 23, 1993 (Document Book "A", Tab 74, the Solicitor's secretary, Ilona Sadlej, acknowledged receipt of the Law Society's July 15, 1993 letter advised that the Solicitor was away from the office until August 3, 1993 and that upon his return, she would bring the Law Society's letter to his attention. The Solicitor did not reply, until September 29, 1995, twenty six months after the July 23, 1993 letter and sixteen months after the within Complaint was sworn by the Law Society. The Solicitor's response reiterated his previous position and further advised that "I must have become [sic] aware of the fact the Notice of Appeal was not served and filed on or about December 18th or shortly prior to that date".

DOUGLAS LAIRD

Particular 2.I (b) He failed to serve his client, Douglas Laird, in a conscientious, diligent and efficient manner in that he:

- (i) failed to keep his client reasonably informed; and
- (ii) failed to answer reasonable requests from his client for information.

108. Douglas Laird retained the Solicitor to represent him in a wrongful dismissal action against Irwin Toy Limited.

109. By letter dated January 14, 1992 (Document Book "B", Tab 1), the Solicitor sent to Mr. Laird a copy of a draft release and confirmed a settlement agreement with counsel for Irwin Toy Limited wherein Mr. Laird would receive a total of \$67,865.14, and a credit to his pension for a further 13 1/2 months service. The Solicitor requested that Mr. Laird return the executed release and advise whether he had received any unemployment insurance benefits since the date of termination. The Solicitor advised Mr. Laird that any benefits would have to be repaid to the Unemployment Insurance Commission.

110. By letter dated February 19, 1992 (Document Book "B", Tab 2), the Solicitor advised Employment and Immigration Canada that settlement of Mr. Laird's matter had been reached in the amount of \$67,865.14 and that legal fees with respect to the matter would total \$11,000.00, excluding disbursements.

111. By letter dated March 10, 1992 (Document Book "B", Tab 3), the Solicitor sent to Mr. Laird a revised release for execution. The Solicitor also confirmed that:

- (a) "[Mr. Laird's] unemployment insurance refund [would] be lessened by [his] fees and disbursements incurred to date";
- (b) Irwin Toys had agreed to continue medical and dental insurance for a period of 3 1/2 months from the date of termination;
- (c) Irwin Toys had agreed to pay the employer contributions to the pension plan for a period of 3 1/2 months;
- (d) Irwin Toys had an obligation to deduct income tax at source at the rate of 30%;
- (e) there was no claim for lost stock options; and

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- (f) Irwin Toy was prepared to issue the appropriate funds.

The Solicitor further confirmed that the Unemployment Insurance Office had sent to Mr. Laird a Notice of Overpayment in the amount of \$12,672.00, and requested a copy of same.

112. By letter dated March 10, 1992 (Document Book "B", Tab 4), the Solicitor confirmed with Employment and Immigration Canada that "[Mr. Laird's]" repayment obligation shall be reduced by the fees and disbursements [which Mr. Laird had] incurred to date".

113. By facsimile transmission on March 11, 1992 (Document Book "B", Tab 5), Mr. Laird asked the Solicitor to address the following issues:

- (a) he required the name of a contact person at Irwin Toy with respect to his medical, dental and pension plan;
- (b) he wished the Solicitor to obtain approval for him to exercise his remaining stock options;
- (c) he inquired as to the amount of the final unemployment insurance refund once the "legal costs were deducted";
- (d) due to the delay in obtaining payment from Irwin Toy, Mr. Laird instructed the Solicitor to seek interest at 12%;
- (e) he inquired as to the amount of fees which would still be owing to the Solicitor from the settlement funds.

The Solicitor did not reply.

114. By letter dated April 3, 1992 (Document Book "B", Tab 6), the Solicitor asked Employment and Immigration Canada to confirm that the legal fees incurred by Mr. Laird would be offset against his repayment obligation.

115. By letter dated April 14, 1992 (Document Book "B", Tab 7), Employment and Immigration Canada advised the Solicitor that taking into consideration the settlement and deducting the legal fees, there was still an overpayment for the period January 13, 1991 to April 5, 1992 of \$12,672.00.

116. Between March and May, 1992, Mr. Laird left at least twenty telephone messages for the Solicitor requesting a report on the status of his matter. The Solicitor did not return the calls. (Document Book "B", Tab 8),

117. By letter dated May 28, 1992 (Document Book "B", Tab 9), Mr. Laird requested that the Solicitor respond to the following issues:

- (a) in respect of the Solicitor's account and settlement cheque dated April 9, 1992, why was the account in the amount of \$14,266.20 when the Solicitor had agreed upon a fee of \$6,000;
- (b) why had the Solicitor advised him that he would instruct the Unemployment Insurance Commission to deduct the legal fees from the refund when it appeared that the Solicitor had instructed counsel for Irwin Toys to repay the full amount of the refund from the settlement funds;
- (c) why the settlement funds were released to Mr. Laird on May 27, 1992, when the funds were received by the Solicitor from Irwin Toys on March 30, 1992;

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- (d) although his facsimile transmission to the Solicitor dated March 11, 1992 requested the Solicitor to provide him with the name of a contact person at Irwin Toys the Solicitor had failed to do so;
- (e) why had the Solicitor failed to obtain a decision from Irwin Toys with respect to Mr. Laird's request that he be allowed to exercise his outstanding stock options; and
- (f) why had the Solicitor failed to return twenty-one of Mr. Laird's telephone calls.

The Solicitor did not respond to Mr. Laird's letter.

118. By letter dated June 23, 1992 (Document Book "B", Tab 10), Mr. Laird asked the Solicitor to respond to his May 28, 1992 letter. The Solicitor did not respond.

119. By letter dated July 6, 1992 (Document Book "B", Tab 11), the Solicitor asked Mr. Laird to make an appointment with his office to discuss the concerns set out in his letters of May 28, 1992 and June 23, 1992.

120. Mr. Laird states that he attempted to speak to the Solicitor prior to arranging a meeting with him, but the Solicitor failed to return numerous telephone messages left by Mr. Laird at the Solicitor's office.

121. By letter dated October 27, 1992 (Document Book "B", Tab 12), Mr. Laird advised the Law Society of the Solicitor's continued failure to answer the concerns raised in his May 28, 1992 letter.

- Particular 2.II (b) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by his client, Douglas Laird, in respect of which he agreed by letter dated July 19, 1993 to provide a further response to the Law Society.

122. By letter dated December 14, 1992 (Document Book "B", Tab 13), the Law Society forwarded to the Solicitor a copy of Mr. Laird's October 27, 1992 letter. The Solicitor was requested to provide a written response within two weeks. The Solicitor did not reply.

123. A Law Society staff employee left telephone messages for the Solicitor at his office on each of January 13 and 14, 1993 requesting that he return the calls. A copy of the Law Society's handwritten notes dated each of January 13 and 14, 1993 are contained in the Document Book "B" at Tab 14. The Solicitor did not return the calls.

124. By registered mail dated January 18, 1993 (Document Book "B", Tab 15), the Law Society sent to the Solicitor a copy of its December 14, 1992 letter. The Solicitor was reminded of his obligation to reply to the Law Society and advised that should he fail to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's January 18, 1993 letter was signed for and delivered on January 25, 1993.

125. On January 25, 1993, the Solicitor's secretary, Ilona, advised the Law Society by telephone that the Solicitor would "definitely provide" his response by the end of the week. A copy of the Law Society's handwritten note dated January 25, 1993 is contained in the Document Book "B" at Tab 16.

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126. By letter dated February 1, 1993 (Document Book "B", Tab 17) the Solicitor responded to the Law Society as follows:

- (a) Mr. Laird had applied for an assessment of the account. The Solicitor denied that he advised Mr. Laird that the fee charged would be a flat rate;
- (b) he had advised Mr. Laird that it was the practice of the Unemployment Insurance Commission to allow for a deduction of legal fees from the obligation to repay (the Solicitor enclosed his letter of January 14, 1992 to Mr. Laird) and there was no error made with respect to the unemployment insurance over payment;
- (c) he had written to Mr. Laird by letter dated March 10, 1992 advising that there was no claim with respect to the lost stock options; and
- (d) it is the Solicitor's practice to docket all incoming telephone calls and he did not record any calls by Mr. Laird that had not been properly answered.

127. By letter dated February 11, 1993 (Document Book "B", Tab 18), the Law Society advised the Solicitor that a copy of his February 1, 1993 had been forwarded to Mr. Laird for his comments.

128. By letter dated June 1, 1993 (Document Book "B", Tab 19), the Law Society advised the Solicitor that it was concerned with his apparent pattern of failing to communicate with clients. The Solicitor was requested to advise why there was no communication with his client since April, 1992. The Solicitor was requested to provide his response within two weeks. The Solicitor did not reply.

129. By letter dated June 28, 1993 (Document Book "B", Tab 20) Mr. Laird advised the Law Society that he had attempted to arrange an appointment with the Solicitor on numerous occasions, however, each time the Solicitor did not return his calls. Mr. Laird also denied the Solicitor's version of his advice regarding the repayment of the unemployment insurance benefits.

130. A Law Society staff employee spoke with the Solicitor's secretary by telephone on July 9, 1993. She advised that the Solicitor would respond to the Law Society on Monday, July 12, 1993. A copy of the Law Society's handwritten notes, dated July 9, 1993 are contained in the Document Book "B" at Tab 21. The Solicitor did not respond.

131. By a second registered letter, this dated July 15, 1993 (Document Book "B", Tab 22), the Law Society forwarded to the Solicitor a copy of its June 1, 1993 letter. The Solicitor was reminded of his obligation to reply to the Law Society and advised that should he fail to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's July 15, 1993 letter was signed for and delivered on July 23, 1993.

132. By letter dated July 19, 1993 (Document Book "B", Tab 23), the Solicitor advised the Law Society that he was attempting to obtain full details of the telephone messages received by his office within the time period noted in the Law Society's correspondence. The Solicitor advised that the file had been closed and that he should be able to provide an answer to the Law Society upon his return from a two vacation commencing July 19, 1993.

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133. A Law Society staff employee left a telephone message for the Solicitor at his office on July 20, 1993 advising that his response was expected with twenty-four hours of his return from vacation. A copy of the Law Society's handwritten note is contained in the Document Book "B" at Tab 24. The Solicitor did not reply until September 29, 1995, twenty-six months after the July 20, 1993 telephone message and six-teen months after the within Complaint was sworn by the Law Society.

JOSEPHINE O'BRIEN

Particular 2.II (c) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by his client, Josephine O'Brien.

134. Josephine O'Brien retained the Solicitor to represent her in a wrongful dismissal action.

135. By letter dated April 26, 1993 (Document Book "B", Tab 28), Ms. O'Brien advised the Law Society of the Solicitor's failure to answer her letters to him dated March 19, 1993, April 2, 1993 and April 26, 1993. (Document Book "B", Tabs 25, 26 & 27)

136. By letter dated May 12, 1993 (Document Book "B", Tab 29), the Law Society sent the Solicitor a copy of Ms. O'Brien's April 26, 1993 letter. The Solicitor was requested to provide his written comments within two weeks. The Solicitor did not reply.

137. A Law Society staff employee left telephone messages for the Solicitor at his office on June 21, 1993 and July 21, 1993 requesting he return the calls. A copy of the Law Society's handwritten notes dated June 21, 1993 and July 21, 1993 are contained in the Document Book "B" at Tab 30. The Solicitor did not reply until September 29, 1995, twenty-eight months after the Law Society first requested a reply and sixteen months after the within Complaint was sworn by the Law Society.

SONDRA J. SCHNEIDER

Particular 2.III (a) He failed to provide a prompt response to communications from the Law Society in respect of the investigation of a complaint by his client, Sondra Schneider.

138. Sondra J. Schneider, a United States resident, retained the Solicitor to represent her with respect to a wrongful dismissal action. In May, 1993, the defendants brought a motion for an order for security for costs. The motion was returnable June 1, 1993.

139. In May, 1993, Ms. Schneider instructed the Solicitor to oppose the motion. The Solicitor advised Ms. Schneider that he would contact her again prior to June to discuss the matter further.

140. By letter dated May 28, 1993 (Document Book "B", Tab 31), Ms. Schneider advised the Solicitor that in light of his lack of responsiveness to her inquiries, she was concerned about her response to the motion for security of costs which had been served several weeks earlier and which was returnable on June 1, 1993. Ms. Schneider requested that the Solicitor contact her. That day, the Solicitor spoke with Ms. Schneider.

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141. By letter dated June 4, 1994 (received on June 16, 1993), the Solicitor enclosed his account for services rendered, and requested that Ms. Schneider forward to him \$15,000.00 in payment of the Order for security for costs.

142. By letter dated June 14, 1993 (Document Book "B", Tab 32), Ms. Schneider acknowledged receipt of the Solicitor's June 4, 1993 letter and confirmed the following:

- (a) the Solicitor had proceeded with the motion without her instructions;
- (b) the Solicitor had ignored her numerous attempts to contact him;
- (c) she had no knowledge as to how the motion was disposed of;
- (d) the Solicitor must forward to her, by facsimile transmission, a copy of the Order and responding material which had been filed on her behalf;
- (e) she was instructing the Solicitor to appeal the Order; and
- (f) the Solicitor ought to contact his insurer.

Ms. Schneider also requested that the Solicitor forward to her by facsimile transmission a copy of the Order and responding material which she understood had been filed on her behalf. Ms. Schneider requested the Solicitor to respond within twenty-four hours.

143. By letter dated June 16, 1993 (Document Book "B", Tab 33), the Solicitor forwarded to Ms. Schneider his account for services rendered in the amount of \$6,485.30 and advised Ms. Schneider that the security for costs must be paid by the end of June, 1993. The Solicitor asked Ms. Schneider to forward the appropriate funds. The Solicitor did not enclose a copy of the Order or respond to the substance of Ms. Schneider's letter of June 14, 1993.

144. By letter dated June 28, 1993 (Document Book "B", Tab 34), Ms. Schneider confirmed her concerns that the matter had proceeded without her instructions and that the Solicitor had not provided her with a copy of the Order. Ms. Schneider instructed the Solicitor to request of the Court an extension of the time for payment of the cost order, and further advised the Solicitor that she had called him, by telephone, five times since June 1, 1993 and that he had not returned her calls. Ms. Schneider asked the Solicitor to respond immediately by facsimile transmission. The Solicitor did not respond.

145. By letter dated July 12, 1993 (Document Book "B", Tab 35), Ms. Schneider advised the Law Society of the aforesaid and of her concerns respecting the Solicitor's carriage of her matter.

146. By letter dated July 29, 1993 (Document Book "B", Tab 36), the Law Society forwarded to the Solicitor a copy of Ms. Schneider's July 12, 1993 letter. The Solicitor was asked to provide his written comments within two weeks. The Solicitor did not reply.

147. A Law Society staff employee left telephone messages for the Solicitor at his office on each of August 20 and 25, 1993 requesting that he return the calls. A copy of the Law Society's handwritten notes dated August 20, 1993 and August 25, 1993 are contained in the Document Book "B" at Tab 37. The calls were not returned.

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148. By registered mail dated August 30, 1993 (Document Book "B", Tab 38), the Law Society forwarded to the Solicitor a copy of its August 30, 1993 letter. The Solicitor was reminded of his obligation to reply to the Law Society and advised that should he failed to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's August 30, 1993 letter was signed for and delivered on September 3, 1993. The Solicitor did not reply.

149. The Solicitor replied to the Law Society by letter dated November 8, 1993.

ROBERT SHEARER/PETER DREIFELDS

Particular 2.II (f) He failed to provide a prompt, full and complete response to the Law Society in respect of the investigation of a complaint by a fellow solicitor, Alfred Kwinter, regarding a default judgment obtained against former clients, Robert Shearer and Peter Dreifelds.

150. In 1989, the Solicitor was retained by Robert Shearer and Peter Dreifelds to defend them in an action commenced by George Wimpey Canada Limited. Default judgment was obtained in the amount of \$220,661.94.

151. By letter dated February 12, 1992 (Document Book "B", Tab 40), Messrs. Shearer's and Dreifelds' new solicitor, Alfred Kwinter, wrote to the Law Society to advise of the default judgment, the reason judgment was granted, and that extensive and costly proceedings were required to have the default judgment set aside. Mr. Kwinter further advised that he had written to the Solicitor on September 13, 1990 and July 9, 1991 regarding this matter, but that he had not received a reply.

152. By letter dated February 28, 1992 (Document Book "B", Tab 41), the Law Society sent to the Solicitor a copy of Mr. Kwinter's February 12, 1992 letter. The Solicitor was asked to provide his comments within two weeks.

153. By letter dated March 12, 1992 (Document Book "B", Tab 42), the Solicitor advised the Law Society that he had reviewed the claim with the insurance adjuster and had provided his file to the adjuster. The Solicitor advised that he was unsure as to what information was being sought, and asked that further particulars be provided.

154. By letter dated April 1, 1992 (Document Book "B", Tab 43), the Law Society advised the Solicitor that:

- (a) the Errors and Omissions Department dealt with allegations of negligence, while the Complaints Department dealt with matters of a solicitor's conduct;
- (b) the specific area of concern to the Complaints Department arising out of Mr. Kwinter's letter was the allegation that the Solicitor had failed to reply to communications from Mr. Kwinter's letter dated September 13, 1995 on behalf of the Solicitor's former clients.

The Solicitor was requested to provide his full and complete response within two weeks. The Solicitor did not reply.

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155. A Law Society staff employee left telephone messages for the Solicitor at his office on each of April 21 and 22, 1992, asking him to return the calls. A copy of the Law Society's handwritten notes are contained in the Document Book "B" at Tab 44. The Solicitor did not return the telephone calls.

156. By registered mail dated April 27, 1992 (Document Book "B", Tab 45), the Law Society sent the Solicitor a copy of its April 1, 1992 letter. The Solicitor was reminded of his obligation to reply to communications from the Law Society and advised that should he fail to provide his written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's April 27, 1992 letter was signed for and delivered on April 29, 1992.

157. By letter dated May 7, 1992 (Document Book "B", Tab 46), the Solicitor advised the Law Society that he had provided the complete file to the insurance adjuster and was therefore unable to respond to the Law Society's requests for information. The Solicitor asked the Law Society to contact the adjuster for the purpose of having the file returned to him so that he could provide a response.

158. The Solicitor's file was returned to him by the adjuster on September 3, 1992. Nevertheless, the Solicitor did not provide a response to the Law Society.

159. By letter dated November 9, 1992 (Document Book "B", Tab 478), the Law Society wrote to the Solicitor to advise that, in spite of the fact that the adjuster had returned his file to him on September 3, 1992, the Solicitor had not yet provided a response to the Law Society's April 1, 1992 letter, a copy of which was enclosed. The Solicitor was asked to provide his response within two weeks. The Solicitor did not reply.

160. On November 26, 1992 and November 27, 1992, a Law Society staff employee left telephone messages for the Solicitor at his office requesting he return the calls. The Solicitor did not return the calls.

161. By a second registered letter, this dated December 2, 1992 (Document Book "B", Tab 48), the Law Society asked the Solicitor reply to its November 9, 1992 letter. The Solicitor was reminded of his obligation to respond to communications from the Law Society and advised that should he fail to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's December 2, 1992 letter was signed for and delivered on December 8, 1992.

162. By letter dated December 8, 1992 (Document Book "B", Tab 49), the Solicitor advised the Law Society that during a recent office move the file in question was improperly placed in storage. The Solicitor advised that he would endeavour to provide a response as soon as possible and requested an extension to Monday, December 14, 1992.

163. By letter dated December 22, 1992 (Document Book "B", Tab 50), three months after his file was returned to him by the insurer, the Solicitor responded to the Law Society. The Solicitor advised that he had not received Mr. Kwinter's letter of September 13, 1990 and that, had he received it, he would have been in a position to properly respond to it.

JIM VELLA

Particular 2.II (g) He failed to provide a prompt, full and complete response to communications from the Law Society regarding a complaint by a client, Jim Vella, in respect of which the Law Society wrote the Solicitor on July 30, 1993 without response.

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164. By letter dated June 7, 1993 (Document Book "B", Tab 51), Jim Vella, President of Advisor-X Personnel Services (Global Ltd), advised the Law Society that he had retained the Solicitor to bring an action on behalf of his company against Guardian Capital Corporation. Mr. Vella advised that the Solicitor had not responded to his written communications or telephone messages for some two months, and that he was concerned that the Solicitor's failure to reply might be due to hospitalization, and that this could result in his failing to file an appeal before the expiry of the limitation period. Mr. Vella requested the Law Society's assistance in determining the status of his matter.

165. A Law Society staff employee left a telephone message for the Solicitor at his office on June 18, 1993 requesting he return the call. A copy of the Law Society's handwritten notes is contained in the Document Book "B" at Tab 52. The call was not returned.

166. By letter dated June 21, 1993 (Document Book "B", Tab 53), the Law Society sent to the Solicitor a copy of Mr. Vella's June 7, 1993 letter. The Solicitor was asked to provide his written comments within two weeks.

167. By letter dated July 5, 1995 (Document Book "B", Tab 54), the Solicitor advised a. that he had no health related absences nor had Mr. Vella left telephone messages for him. The Solicitor advised that Mr. Vella had left one message, in or around late May, 1993, which the Solicitor answered by leaving a return telephone message.

168. By letter dated July 13, 1993 (Document Book "B", Tab 55), Mr. Vella advised the Law Society that he had attempted to contact the Solicitor by telephone on each of June 28, July 6, and July 8, 1993. The Solicitor had not responded.

169. By letter dated July 30, 1993 (Document Book "B", Tab 56), the Law Society sent to the Solicitor a copy of Mr. Vella's July 13, 1993 letter. The Solicitor was asked to comment on Mr. Vella's allegation that his inquiries gone unanswered. The Solicitor did not reply until September 29, 1995, twenty-seven months after the Law Society first requested a reply from the Solicitor and sixteen months after the Law Society swore the within Complaint.

TED WAFFLE

Particular 2.I (e) He failed to serve his client, Ted Waffle, in a conscientious, diligent and efficient manner in that he has failed to report to and keep his client informed regarding the client's request that the Solicitor return certain client documents which the Solicitor undertook to return in July, 1993.

170. By letters dated October 23, December 18 and December 31, 1992, and January 19 and April 19, 1993, Mr. Waffle requested the Solicitor return to him all documentation, including a number of company shares which had been provided to the Solicitor some years earlier.

171. By letter dated April 22, 1993, six months after Mr. Waffle's initial request, the Solicitor advised Mr. Waffle that he would endeavour to return the shares as soon as possible. As at June 1, 1993, however, the shares had not been returned.

172. By letter dated June 1, 1993, Mr. Waffle lodged a complaint with the Law Society. (Document Book "A", Tab 57)

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173. By letter dated June 24, 1993 (Document Book "B", Tab 58), the Law Society sent the Solicitor a copy of Mr. Waffle's June 1, 1993 letter. The Solicitor was asked to provide his written comments within two weeks.

174. By letter dated July 8, 1993 (Document Book "B", Tab 59), the Solicitor advised the Law Society that he had not taken action on Mr. Waffle's matter because Mr. Waffle had refused to provide an appropriate monetary retainer. The Solicitor further stated that he had previously advised Mr. Waffle that his file and the shares were in the Solicitor's storage facility and that due to a recent move, the Solicitor's office was having difficulty obtaining the complete file. The Solicitor undertook to forward the shares to Mr. Waffle as soon as possible.

175. By letter dated September 29, 1995, the Solicitor advised the Law Society that he is not nor has he ever been in a position return the shares because of his understanding of the terms of an escrow agreement entered into by the parties in the course of settling the dispute some five years prior, and because it was his understanding that he was not in possession of the shares. Copies of the relevant escrow agreements were provided to Mr. Waffle in or about 1986.

V. DISCIPLINE HISTORY

176. On May 29, 1984, the Solicitor was found guilty of professional misconduct and reprimanded in committee as a result of his failure to serve clients in a conscientious, diligent and efficient manner.

177. On May 5, 1992, the Solicitor was found guilty of professional misconduct with respect to his failure to serve his client in a conscientious, diligent and efficient manner; failure to co-operate with the Law Society's investigation, and; failure to provide prompt and full replies to Law Society communications. The Solicitor was reprimanded in convocation and ordered to pay costs of \$12,500.00 on June 25, 1992.

DATED at Toronto this 10th day of January, 1996."

With respect to Complaint D78a/95;

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D78/95 and is prepared to proceed with a hearing of this matter on January 10, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D78/95 with his Counsel, Morris Manning, and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 21, 1975. He practices as a partner in a law firm of Harris & Partners, specializing in the field of employment law.

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BRIAN BOYLE

Particular 2.I (a) He failed to serve his client, Bryan Boyle, in a conscientious, diligent and efficient manner in that he:

- (i) failed to answer reasonable requests from his client for information;
- (ii) failed to answer within a reasonable time communications from his client which required replies;
- (iii) failed to report to his client and to keep his client informed and advised as to the status of his wrongful dismissal matter following the receipt of settlement funds; and
- (iv) failed to take diligent steps to determine on behalf of his client, the amount of repayment due from his client to the Unemployment Insurance Commission.

5. Bryan Boyle retained the Solicitor to act on his behalf in respect of an action against his former employer, W.A. Whitney of Canada Ltd. (the "Defendant")

6. By letter dated January 31, 1994 (Document Book, Tab 1), the Solicitor acknowledged receipt of Mr. Boyle's advice to accept an offer of settlement from the Defendant, and enclosed a copy of his correspondence to the Defendant's solicitor dated January 31, 1994, confirming the settlement terms (Document Book, Tab 2). The Solicitor also advised Mr. Boyle that he would forward a release shortly.

7. In or about February, 1994, the Solicitor received in trust for Mr. Boyle the settlement funds in the amount of approximately \$12,000.00.

8. By letter dated April 14, 1994 (Document Book, Tab 3), the Defendant's solicitor asked the Solicitor to confirm that Mr. Boyle had satisfied an outstanding unemployment insurance obligation (i.e. repayment by Mr. Boyle to the Unemployment Insurance Commission).

9. By facsimile transmission dated April 25, 1994 (Document Book, Tab 4), Mr. Boyle wrote to the Solicitor to:

- (a) advise that he had made numerous telephone calls to the Solicitor which calls had not been returned;
- (b) advise that the Solicitor's secretary had confirmed that the Solicitor had been in receipt of the settlement funds for over six weeks; and
- (c) request that the Solicitor report on the status of the settlement funds within five days, failing which, the matter would be referred to the Law Society.

10. By letter dated May 5, 1994 (Document Book, Tab 5), the Solicitor asked Mr. Boyle to confirm the amount of unemployment insurance benefits he had received and the name of the individual at the unemployment office with whom he had been in contact.

11. By facsimile transmission dated May 18, 1994 (Document Book, Tab 6), Mr. Boyle advised the Solicitor that the unemployment insurance office had indicated that it could not determine the amount of Mr. Boyle's unemployment insurance repayment until the amount of settlement was known. Mr. Boyle asked the Solicitor to provide to him, by facsimile transmission that same day, a breakdown of the amount of the settlement, and in particular the amount allocated to each of salary and out of pocket expenses. The Solicitor did not reply.

12. By letter dated June 27, 1994 (Document Book, Tab 7), Mr. Boyle advised the Law Society of the Solicitor's failure to report to him on the status of his matter.

13. To date, nearly two years after he received the settlement funds, the Solicitor has taken no further steps on behalf of Mr. Boyle to resolve the matter with Mr. Boyle's new solicitor and has not responded or reported to Mr. Boyle since May, 1994.

Particular 2.II (a) He failed to provide a prompt, full and complete response to communication from the Law Society in respect of the investigation of a complaint by his client, Bryan Boyle, regarding the matter referred to in particular 2.I(a) above.

14. By letter dated July 6, 1994 (Document Book, Tab 8), the Law Society sent the Solicitor a copy of Mr. Boyle's June 27, 1994 letter. The Solicitor was reminded of his obligation to promptly reply to communications from the Law Society. The Solicitor was requested to provide his written comments within two weeks. The Solicitor did not reply.

15. A Law Society staff employee left telephone messages for the Solicitor at his office on each of July 26 and 28, 1994 requesting that he return the calls. A copy of the Law Society's verbal transaction forms dated July 26, 1994 and July 28, 1994, are contained in the (Document Book at Tab 9). The Solicitor did not return the calls.

16. By registered mail dated August 2, 1994 (Document Book, Tab 10), the Law Society sent to the Solicitor a copy of its July 6, 1994 letter. The Solicitor was reminded of his obligation to reply to communications from the Law Society, and advised that should he fail to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's August 2, 1994 letter was signed for and delivered on August 3, 1994.

17. By letter dated August 15, 1994 (Document Book, Tab 11), the Solicitor advised the Law Society that the issue of Mr. Boyle's repayment to the Unemployment Insurance Commission had not been resolved, and that he had requested the Commission to respond. The Solicitor further advised that he could not complete the settlement until the Commission's position was confirmed. The Solicitor stated that he expected the matter to be resolved shortly.

18. By letter dated September 20, 1994 (Document Book, Tab 12), the Law Society asked the Solicitor to provide to it a copy of his letter to the Unemployment Insurance Commission in which he had asked the Commission to respond. The Law Society further asked the Solicitor to advise of the steps he had taken to follow-up with the Commission on behalf of Mr. Boyle. The Solicitor was asked to provide his response within two weeks. The Solicitor did not reply.

19. By letter received by the Law Society on October 6, 1994 (Document Book, Tab 13), Mr. Boyle advised the Law Society that as at that date he had received neither a verbal nor written response or report from the Solicitor.

20. A Law Society staff employee spoke with the Solicitor by telephone on October 12, 1994. The Solicitor advised that he would provide his response by October 14, 1994. A copy of the Law Society's verbal transaction form dated October 12, 1994, is contained in the Document Book at Tab 14. The Solicitor did not respond.

21. A Law Society staff employee left a telephone message for the Solicitor at his office on October 18, 1994 requesting he return the call. A copy of the Law Society's verbal transaction form, dated October 18, 1994, is contained in the Document Book at Tab 15. The Solicitor did not return the call.

22. By a second registered letter, this dated October 19, 1994 (Document Book, Tab 16), the Law Society reminded the Solicitor of his obligation to reply to communications from the Law Society. The Solicitor was also advised that should he fail to provide his written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's October 19, 1994 letter was signed for and delivered on October 20, 1994.

23. By letter dated November 8, 1994 (Document Book, Tab 17), the Solicitor advised the Law Society that he had encountered difficulties dealing with the Unemployment Insurance Commission and that he had made several telephone calls to the Commission requesting information. The Solicitor further confirmed his understanding of a general practice that it is the employer which writes to the Commission to confirm the terms of a settlement, and that the Commission then advises the employer of the amount of the settlement funds to be withheld on account of a repayment obligation. The Solicitor advised that he did not have a record of his calls to the Commission and would immediately follow up to determine the status of this matter.

24. By letter dated November 14, 1994 (Document Book, Tab 18), the Solicitor asked the Defendant's solicitor to provide his view as to the amount to be withheld on account of the overpayment of unemployment insurance benefits. The Solicitor also asked that he be provided with copies of any communications between the Defendant and the Unemployment Insurance Commission.

25. As at December, 1994, the Solicitor had yet to reply to the Law Society. Accordingly, by letter dated December 14, 1994 (Document Book, Tab 19), the Law Society asked the Solicitor to provide a full explanation of exactly what information he was waiting for, the amount of money in dispute, how the amount was calculated, and the amount which he predicted the Unemployment Insurance Commission would require as repayment. The Solicitor was requested to provide a full and complete response within two weeks. The Solicitor did not reply.

26. A Law Society staff employee left telephone messages for the Solicitor at his office on each of January 3 and 5, 1995 requesting that he return the calls. A copy of the Law Society's verbal transaction form is contained in the Document Book at Tab 20. The calls were not returned.

27. By a third registered letter, this dated January 6, 1995 (Document Book, Tab 21), the Law Society reminded the Solicitor of his obligation to respond to communications from the Law Society. The Solicitor was also advised that should he fail to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's January 6, 1995 letter was signed for and delivered on January 9, 1995.

28. By letter dated March 13, 1995 (Document Book, Tab 22), the Solicitor advised the Law Society that he would provide a response as soon as possible. The Solicitor did not provide a response to the Law Society until September 29, 1995, fourteen months after the Law Society first requested a response and four months after the Law Society swore the within Complaint.

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MICHAEL SILVER

Particular 2.II(b) He failed to provide a prompt, full and complete response to communications from the Law Society in respect of the investigation of a complaint by a fellow solicitor, Michael Silver.

29. Mr. Lucido DiBello had retained the Solicitor to act on his behalf to issue a claim for a wrongful dismissal action against the Town of Richmond Hill. The claim was commenced on December 22, 1992.

30. By letter dated June 8, 1994 (Document Book, Tab 23), Mr. Michael Silver, a fellow solicitor, advised the Law Society that he had been retained by Lucido DiBello to assume carriage of the matter, and raised two issues of complaint against the Solicitor:

- (i) Mr. DiBello was extremely dissatisfied with the Solicitor's carriage of the file, namely that there had been lack of activity for some two years; and
- (ii) Mr. Silver had written and left telephone messages for the Solicitor requesting that he release Mr. DiBello's file, but the Solicitor had not responded. Mr. Silver asked for the Law Society's assistance in obtaining Mr. DiBello's file.

31. By letter dated June 28, 1994 (Document Book, Tab 24), the Law Society forwarded to the Solicitor a copy of Mr. Silver's June 8, 1994 letter and asked that he comment on the allegations therein. The Solicitor was reminded of his obligation to reply to communications from the Law Society and requested to provide his written response within two weeks. The Solicitor did not respond.

32. By letter dated July 5, 1994 (Document Book, Tab 25), Mr. Silver advised the Law Society that he had received Mr. DiBello's file from the Solicitor on June 23, 1994.

33. A Law Society staff employee left telephone messages for the Solicitor on each of July 20 and 25, 1994 requesting that he return the calls. A copy of the Law Society's verbal transaction form dated each of July 20 and 25, 1994, is contained in the Document Book, at Tab 26. The Solicitor did not return the calls.

34. By registered mail dated July 27, 1994 (Document Book, Tab 27), the Law Society forwarded to the Solicitor a second copy of Mr. Silver's letter dated June 8, 1994 and reiterated its request that the Solicitor comment on the allegations therein. The Solicitor was reminded of his obligation to reply to communications from the Law Society and advised that should he fail to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's July 27, 1994 letter was signed for and delivered on July 29, 1994.

35. By letter dated August 16, 1994 (Document Book, Tab 28), the Solicitor advised the Law Society, among other things, that:

- (i) in respect of the delivery of Mr. DiBello's file to Mr. Silver, the file was delivered "without difficulty";

and
- (ii) in respect of his carriage of Mr. DiBello's file, the Solicitor provided the Law Society a brief synopsis of his opinion of Mr. DiBello's legal position in the action.

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36. By letter dated September 20, 1994 (Document Book, Tab 29), the Law Society confirmed receipt of this Solicitor's letter dated August 16, 1994, and requested, among other things, the following further information:

- (a) a chronology of all steps taken on behalf of Mr. DiBello;
- (b) copies of his correspondence to Mr. DiBello indicating his advice and opinion with regard to the merits of the civil suit;
- (c) copies of Mr. DiBello's responses and instructions;
- (d) a detail response with respect to his delay in providing Mr. DiBello's file to Mr. Silver; and
- (e) the Solicitor's attempts to schedule a review of the file with Mr. Silver's office.

The Solicitor was requested to respond within seven days of September 20, 1994. The Solicitor did not respond.

37. A Law Society staff employee left a telephone message for the Solicitor on September 27, 1994 requesting that he return the call. A copy of the Law Society's verbal transaction form dated September 27, 1994 is contained in the Document Book at Tab 30.

38. A Law Society staff employee spoke with the Solicitor by telephone on September 29, 1994. The Solicitor advised that he could not provide a detailed response to the Law Society without first reviewing his file and that Mr. Silver had the file. The Solicitor further advised that he had not, as of that date, attempted to retrieve the file from Mr. Silver and undertook to contact Mr. Silver by telephone that same day. The Law Society asked the Solicitor to advise, in writing, of his attempts to contact Mr. Silver. A copy of the Law Society's verbal transaction form dated September 29, 1994, is contained in the Document Book at Tab 31. The Solicitor did not respond.

39. A Law Society staff employee left a telephone message for the Solicitor at his office on October 11, 1994, requesting that he return the call. A copy of the Law Society's verbal transaction form dated October 11, 1994 is contained in the Document Book at Tab 32.

40. A Law Society staff employee spoke with the Solicitor's secretary by telephone on October 11, 1994. The Solicitor's secretary advised, among other things, that the Solicitor had contacted Mr. Silver by telephone, and that a response would be forwarded to the Law Society by facsimile transmission that afternoon. However, when the Law Society staff employee inquired as to Mr. Silver's new telephone number (Mr. Silver had recently joined a new firm) the Solicitor's secretary confirmed that she did not have the new telephone number and the Solicitor had not yet sought to contact Mr. Silver. A copy of the Law Society's verbal transaction form, dated October 11, 1994 is contained in the Document Book at Tab 33. No response was received by the Law Society.

41. By letter dated October 11, 1994 (Document Book, Tab 34), the Solicitor asked Mr. Silver to forward Mr. DiBello's file to him as soon as possible in order that he may respond to the Law Society's inquiries. Also, by letter dated October 11, 1994 (Document Book, Tab 35), the Solicitor advised the Law Society that he had requested that Mr. Silver provide to him Mr. DiBello's file. The Solicitor advised that upon receipt of the file he would contact the Law Society.

42. A Law Society staff employee spoke with the Solicitor by telephone on October 12, 1994. The Solicitor was given Mr. Silver's new telephone number and asked to contact Mr. Silver directly. The Solicitor advised that he would. A copy of the Law Society's verbal transaction form dated October 12, 1994, is contained in the Document Book at Tab 36.

43. By letter dated November 8, 1994 (Document Book, Tab 37), the Solicitor confirmed with the Law Society that Mr. Silver had moved his practice to another firm, and that the Solicitor had asked Mr. Silver's former law firm to provide him with Mr. DiBello's file. The Solicitor advised that upon receipt of the file he would provide his response to the Law Society as soon as possible.

44. By letter dated November 22, 1994 (Document Book, Tab 38), Peter Henderson, a lawyer with Mr. Silver's former firm, advised the Solicitor that Mr. DiBello's file was available for his inspection. Mr. Henderson asked the Solicitor to contact him in this regard.

45. By letter dated November 25, 1994 (Document Book, Tab 39), the Law Society forwarded to the Solicitor a copy of its September 20, 1994 letter. The Solicitor was requested to make an appointment with Mr. Henderson's firm, review the file and reply to the Law Society within two weeks. The Solicitor did not reply.

46. A Law Society staff employee left telephone messages for the Solicitor at his office on each of December 9 and 12, 1994, requesting that he return the calls. A copy of the Law Society's verbal transaction forms dated each of December 9 and 12, 1994, are contained in the Document Book at Tab 40. The Solicitor did not return the calls.

47. By a second registered letter, this dated December 13, 1994 (Document Book, Tab 41), the Law Society reminded the Solicitor of his obligation to reply to communications from the Law Society. The Solicitor was advised that should he fail to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's December 13, 1994 letter was signed for and delivered on December 15, 1994. The Solicitor did not reply to the Law Society, until September 18, 1995, nine months after the Law Society's December 13th letter and four and a half months after the within Complaint was sworn by the Law Society.

MARK ABBOTT

- Particular 2.I (b) He failed to serve his client, Mark Abbott, in a conscientious, diligent and efficient manner in that he:
- (i) failed to answer reasonable requests from his client for information;
 - (ii) failed to answer within a reasonable time communications from his client which required replies;
 - (iii) failed to report to this client and to keep this client informed and advised as to the status of settlement funds received by the Solicitor; and
 - (iv) failed to proceed in a timely fashion with a motion to ascertain his client's income tax liability to Revenue Canada.

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48. Mark Abbott retained the Solicitor on November 15, 1990 to represent him with respect to a claim against the Government of Ontario and the Ontario Science Centre for wrongful dismissal and against the Minister of Consumer and Corporate Relations (the "Ministry") for libel.

49. The claims were settled in June, 1993, in consideration of a payment to the Solicitor, in trust for Mr. Abbott, in the amount of \$292,000.00.

50. On November 16, 1993, \$7,500.00 of the settlement funds were deposited into Mr. Abbott's RRSP account.

51. On December 14, 1993, Mr. Abbott received from the Solicitor a further payment of settlement funds in the amount of \$124,989.50, leaving a remainder of \$159,510.50 in the Solicitor's trust account.

52. Mr. Abbott and the Solicitor met on February 10, 1994. At that time, the Solicitor advised that he would continue to hold Mr. Abbott's release in favour of the defendants until such time as the Ministry provided written confirmation of the settlement breakdown which information was necessary for the purposes of determining Mr. Abbott's tax liability. Mr. Abbott instructed the Solicitor to commence proceedings against the Ministry to compel it to disclose the necessary information.

53. Thereafter, Mr. Abbott made various attempts to contact the Solicitor. The Solicitor did not respond.

54. By letter dated February 24, 1994 (Document Book, Tab 42), Mr. Abbott advised the Law Society that his matter had been settled in June, 1994, that the Solicitor continued to hold the remainder of the settlement funds, and that Mr. Abbott was having difficulty making contact with the Solicitor.

55. Three months later, by letter dated May 12, 1994 (Document Book, Tab 43), Mr. Abbott wrote to the Solicitor to confirm the following facts:

- (a) notwithstanding various written correspondence to and telephone messages left for the Solicitor, he had not communicated with or reported to Mr. Abbott since February 10, 1994;
- (b) the Solicitor had been holding the remainder of the settlement funds in trust for some six months without interest;
- (c) Mr. Abbott had not received a T4 slip or been advised by the Solicitor of his tax liability to Revenue Canada;
- (d) the Solicitor had estimated his legal fees to be \$10,000.00;
- (e) at a meeting held on February 10, 1994, the Solicitor advised that he would continue to hold Mr. Abbott's release pending written confirmation from the Ministry as to the breakdown of the settlement funds, and Mr. Abbott instructed the Solicitor to commence proceedings to require the Ministry to provide this information;
- (f) as a result of the Solicitor's inaction, Mr. Abbott intended to lodge a complaint against the Solicitor with the Law Society.

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56. On June 3, 1994, Mr. Abbott received from the Solicitor a cheque in the amount of \$74,989.50 attached to a handwritten note stating "Letter and Account to follow". That same day, Mr. Abbott wrote to the Solicitor that it appeared that he had withheld \$37,000 more than the \$10,000 which Mr. Abbott understood was owing for fees. Mr. Abbott requested that the Solicitor respond within one week (Document Book, Tab 44). The Solicitor did not respond.

57. On June 24, 1994, the Solicitor forwarded to Mr. Abbott a cheque in the amount of \$6,198.75, together with an account for services rendered (Document Book, Tab 45) in the amount of \$42,800.00 for fees and \$1,001.25 for disbursements. Although the account purports to be for the period ended June 1994, the account narrative ceases as of June, 1993. The Solicitor did not include a reporting letter, nor did he provide to Mr. Abbott a breakdown of the settlement, the disposition of income tax paid, a reconciliation of the legal services provided by the Solicitor's junior, Mr. Chenoweth (which had been billed separately), confirmation of the amount of interest earned on the funds while held in trust or an account receipt for tax purposes.

58. By letter dated June 29, 1994 (Document Book, Tab 46), Mr. Abbott advised the Law Society that he had received the Solicitor's June account, but that he had yet to receive the documents and information set out above.

59. By letter dated August 5, 1994 (Document Book, Tab 47), the Solicitor wrote to the Law Society responding to Mr. Abbott's letter of May 12, 1994. Among other things, the Solicitor stated as follows:

- (a) the balance of the settlement funds had been paid out to Mr. Abbott;
- (b) Mr. Abbott's assertions of lack of communication were not appropriate;
- (c) the outstanding issue was the Ministry's failure to provide a proper accounting to Mr. Abbott;
- (d) although the Solicitor had advised Mr. Abbott that perhaps the best course of action to obtain an accounting was to bring an application against the Ministry to compel same, the Solicitor was involved in a lengthy trial in February, March, April and May, 1994 "which delayed [his] bringing on the required motion as [he] explained to Mr. Abbott"; and
- (e) Mr. Abbott's letters in May, 1994, arrived at a time when the Solicitor was involved in a "major trial".

60. By letter dated September 29, 1994 (Document Book, Tab 48), the Law Society requested that the Solicitor:

- (a) confirm that the amount of the settlement funds being held back by the Solicitor was \$6,200.00;
- (b) advise of the reason why he, or someone from his office, had not advised Mr. Abbott of the reason for the Solicitor's delay in bringing the motion against the Ministry; and
- (c) provide to the Law Society and to Mr. Abbott copies of his correspondence with the Ministry regarding his allegation that the Ministry had not provided a proper accounting.

61. The Solicitor responded by letter dated November 8, 1994 as follows:

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- (a) on June 24, 1994 a cheque was issued to Mr. Abbott in the amount of \$6,198.75; no other moneys were being held in trust; and
- (b) it would not have been feasible to instruct another lawyer in his office to deal with the motion against the Ministry, and in any event, if another lawyer had been instructed "the delay would have been as extent as it ultimately was". (Document Book, Tab 48A)

The Solicitor did not provide to the Law Society or to Mr. Abbott copies of his correspondence with the Ministry regarding the required accounting.

62. As at December 15, 1994:

- (a) Mr. Abbott had not yet received a breakdown of his monetary award for tax purposes;
- (b) Mr. Abbott had not yet received a T-4 slip for his 1994 tax return;
- (c) the Solicitor had not yet commenced proceedings against the Ministry despite instructions that he do so in February, 1994.

63. The Law Society conveyed the above facts to the Solicitor by letter dated December 15, 1994 (Document Book, Tab 49) and further confirmed that:

- (a) Mr. Abbott's still wished the Solicitor to proceed with the motion and understood that he would be charged a fee; and
- (b) the Law Society would not become further involved as a conduit for information between the Solicitor and Mr. Abbott, and the Solicitor ought to communicate directly with Mr. Abbott.

64. The Solicitor did not contact Mr. Abbott.

65. In or about early January, 1995, Mr. Abbott received a reassessment Notice from Revenue Canada for 1993 taxes due in which he was given twenty days to pay \$67,592.03 which included \$3,640.23 for interest on arrears.

66. By letter dated January 16, 1995 (Document Book, Tab 50), Mr. Abbott advised the Solicitor that he had received the Notice from Revenue Canada and further that:

- (a) unbeknownst to Mr. Abbott, it appeared that the Ministry had submitted a T-4 slip for 1993 in March of 1994; and
- (b) by his calculation, based on the settlement of the claim, the taxes due had been overstated.

Mr. Abbott also confirmed his instructions of almost one year prior that the Solicitor proceed with a motion to compel the Ministry to provide the requisite information.

67. Notwithstanding Mr. Abbott's instructions to the Solicitor that he proceed against the Ministry, the Solicitor has failed to do so.

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68. By letter dated January 24, 1995 (Document Book, Tab 51), the Law Society asked the Solicitor to respond to Mr. Abbott's January 16, 1995, letter and reiterated its request that the Solicitor respond to the Law Society's letter dated December 15, 1994. The Solicitor was requested to respond within seven days. The Solicitor did not reply.

69. By letter dated March 13, 1995 (Document Book, Tab 52), the Solicitor advised the Law Society that:

- (a) to the best of his knowledge, Mr. Abbott had retained new counsel and did not wish the Solicitor to proceed with the motion;
- (b) should (a) not be the case, the Solicitor would like to hear from Mr. Abbott;
- (c) the Solicitor had delivered Mr. Abbott's Release in satisfaction of the completed settlement and believed that Mr. Abbott had received a report regarding the conclusion of the litigation.

In any event, the Solicitor stated that would provide Mr. Abbott with a full report upon his return from a two week vacation. He did not.

70. Mr. Abbott served the Solicitor with a Notice of Assessment in respect of the Solicitor's account for services rendered returnable October 23, 1995. The Solicitor did not attend on the return date due to illness and the matter has been adjourned.

V. DISCIPLINE HISTORY

71. On May 29, 1984, the Solicitor was found guilty of professional misconduct and Reprimanded in Committee for his failure to serve clients in a conscientious, diligent and efficient manner.

72. On May 5, 1992, the Solicitor was found guilty of professional misconduct for failure to serve his client in a conscientious, diligent and efficient manner; failure to co-operate with the Law Society's investigation, and; failure to provide prompt and full replies to Law Society communications. The Solicitor was Reprimanded in Convocation and ordered to pay costs of \$12,500.00 on June 25, 1992.

DATED at Toronto this 10th day of January, 1996."

RECOMMENDATION AS TO PENALTY

The majority of the Committee recommends that David Harris:

- 1. be suspended for a period of 8 months;
- 2. be required to enrol in the Practice Review Programme of the Professional Standards Department;
- 3. pay costs to the Law Society in the sum of \$5,000.00 prior to resuming the practice of law;
- 4. attend for medical treatment pursuant to the undertaking given on the in-camera hearing before the discipline committee.

REASONS FOR RECOMMENDATION

A joint submission was made between the Law Society of Upper Canada and the solicitor whereby a five month suspension was urged upon this Committee. Regretfully, although the majority of the Committee shows deference to joint submissions, the majority of the Committee is of the view that it would not be proper, under the circumstances, to accede to the joint submission herein.

The majority of the Committee recognizes that if a joint submission is within reason, and does not offend public policy, it should not be lightly disturbed.

However, in this case, considering the previous discipline history, for similar matters, and the serious breaches by the solicitor in regard to his clients and the Law Society, and also considering the repeated type of behaviour, the joint submission should not be followed.

The solicitor was before the discipline committee on June 12, 1984. At that time the complaints against him were similar to the present complaints 308a/93 and D78a/95.

At that time the solicitor outlined for the Committee that steps were being taken to ensure that the problems that he had at that time would not occur. At that time he indicated the following:

1. His problems were due to the fact that he had been receiving an unanticipated large volume of work;
2. That he did not have enough staff;
3. That he hired two new lawyers to join him;
4. He moved to larger offices;
5. He hired an administrative assistant whose sole function was to look after his communication with the clients;
6. He set aside one day to answer outstanding telephone calls and letters.

At that time he was given a reprimand in Committee.

Further, a complaint was filed against the Solicitor in 1991. Among other things, once again he was charged with failing to serve clients, failing to reply to many telephone calls, failing to fully co-operate with the Law Society's investigations and failing to properly communicate with the Law Society. The Discipline Committee at that time recommended that he be reprimanded in Convocation. When this matter proceeded in Convocation he was reprimanded in Convocation and ordered to pay the sum of \$12,500.00 for the Society's costs.

Once again he was charged with professional misconduct in that he failed to serve a number of his clients. The charges included, amongst others, the following:

1. Failing to answer reasonable requests from clients for information;
2. Failing to answer within reasonable time communications from clients;
3. Failing to keep his clients informed of the status of various actions;
4. Failing to do various things on behalf of his clients as required;
5. Failing to prosecute clients' actions in a timely fashion;
6. Failing to answer reasonable requests from clients for information;

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7. Withholding information from a client about the status of action in order to avoid disclosure of neglect;
8. Failing to communicate with the Law Society within a reasonable period of time in respect to complaints from clients and fellow solicitors.

By way of examples, the majority of the Committee considered the following as being particularly important:

1. In the case of David Hatcher, Mr. Hatcher left over 70 telephone messages for the Solicitor. The Solicitor did not respond to him.
2. In the case of Mr. Hatcher, his actions were dismissed and the Solicitor failed to report the same to the client.
3. He advised a client that he had filed a Notice of Appeal and the same was never filed.
4. He did not respond to the Law Society until significant periods of time had elapsed.
5. In the case of Mr. Laird, Mr. Laird left at least 20 telephone messages for the solicitor requesting a report on the status of his matter. The Solicitor failed to communicate with him.
6. On numerous occasions he failed to reply promptly to communications from the Law Society and this was the rule, rather than the exception.

The Committee is satisfied that from 1984 up to the present time, the Solicitor has had a regular pattern of failing to respond to certain clients as well as to the Law Society and in fact, according to the Agreed Statement of Facts, his failure to respond to the Law Society has been as long as up to 28 months.

By way of mitigation on the other hand, the Committee considered the following:

1. The Solicitor has undertaken to seek medical assistance for his problem;
2. He is a senior person in the legal profession;
3. His partners are prepared to monitor him when he returns to practice;
4. He has agreed to participate in the Practice Review Programme;
5. He has had marital difficulties in 1992 and 1993;
6. He suffered depression in 1992;
7. He produced a series of 10 letters from colleagues indicating that:
 - a) He practised primarily in the field of employment law;
 - b) He is courteous, fair and never condescending;
 - c) He acts in the best interests of his clients;
 - d) He is one of the most knowledgeable practitioners in the wrongful dismissal field;
 - e) He is a "man of his word". His integrity has never been doubted;
 - f) He is an author of a book on wrongful dismissal.

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RE: LAW

The Committee has considered Bolton v. The Law Society 1993 1 W.L.R. 512 that states:

"The reputation of the profession is more important than the fortunes of any individual member"

To paraphrase Bolton, the essential issue is the need to maintain among members of the public, a well founded confidence in the profession.

The committee has considered a decision of Convocation in the matter of Lee Edward Ward that came before Convocation on January 26, 1995.

In the Ward case, the facts are fairly similar to the matter under consideration, including prior discipline history. In the Ward case Convocation ordered a 12 month suspension with conditions, together with costs in the sum of \$5,000.00.

The majority of the Committee is mindful that a significant suspension of the solicitor shall cause significant turmoil in the life of the solicitor, to his future prospects and practice and to his clients and partners.

David Harris was called to the Bar on March 21st, 1975.

ALL OF WHICH is respectfully submitted

DATED this 14th day of March, 1996

Gerald A. Swaye, Q.C.
Chair

DISSENT

RECOMMENDATION AS TO PENALTY

The minority of the Committee recommends that the joint submission of counsel for the Law Society and counsel for the Solicitor be accepted:

- a) that the Solicitor be suspended for a period of five months; and
- b) pay Law Society costs in the amount of \$5,000 forthwith.

REASONS FOR RECOMMENDATION

Agreed Statements of Fact and joint submissions are to be encouraged and joint submissions should not be lightly disturbed if they are within reason and do not offend public policy.

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I have considered the nature of the professional misconduct and the medical evidence explaining why it occurred. The undertakings agreed to by the lawyer put proper controls in place and while the period of suspension may be on the light side, I am not convinced it is unreasonable and should be disturbed.

ALL OF WHICH is respectfully submitted

DATED this 14th day of March, 1996

Gary Gottlieb, Q.C.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 8 months, enroll in the Practice Review Programme of the Professional Standards Department, pay costs in the amount of \$5,000 prior to resuming the practice of law and attend for medical treatment pursuant to the undertaking given on the in-camera hearing before the Discipline Committee.

Both counsel made submissions in support of the recommended penalty.

Counsel for the solicitor requested the suspension commence May 15th to allow the solicitor to attend a trial commitment.

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

It was moved by Ms. Stomp, seconded by Mr. DelZotto that the solicitor be suspended for a period of 8 months together with the conditions set out in the Report.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 8 months effective May 15th and to satisfy the conditions set out in the Report.

The Treasurer advised that the material that was sent to the Benchers by a group of complainants formed no part of Convocation's decision.

Counsel and solicitor retired.

Re: George Thomas GARDINER - Scarborough

The Secretary placed the matter before Convocation.

Ms. Angeles withdrew for this matter.

Ms. Cameron appeared for the Society and Ms. Janet Leiper, Duty Counsel, appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 12th February, 1996, together with an Affidavit of Service sworn 13th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 11th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th April, 1996 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby, Chair
Eleanore A. Cronk
Nora Angeles

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

Lesley Cameron
For the Society

GEORGE THOMAS GARDINER
of the City
of Scarborough
a barrister and solicitor

David M. Midanik
for the solicitor

Heard: October 3, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 15, 1993, Complaint D162/93 was issued, on May 9, 1995, Complaint D79/95 was issued and on June 1, 1995, Complaint D141/95 was issued against George Thomas Gardiner alleging that he was guilty of professional misconduct.

These matters were heard in public on October 3, 1995 before this Committee comprising Clayton Ruby, Chair, Eleanore Cronk and Nora Angeles. The Solicitor attended the hearing and was represented by David M. Midanik. Lesley Cameron appeared on behalf of the Law Society.

DECISION

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

Complaint D162/93

2. a) He practised law from December 1, 1992 to December 8, 1992 while his rights and privileges as a member were suspended for failure to pay his Errors and Omissions levy;
- b) He failed to maintain proper books and records;
- c) He failed to reply to letters from the Law Society on January 4, 1993, February 2, 1993 and February 18, 1993 respecting the status of his books and records; and

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- d) He failed to file with the Society within six months of the termination of his fiscal year ending June 30, 1992, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation made pursuant to the Law Society Act.

Complaint D79/95

2. a) He had insufficient trust balances in the amount of \$6,787.06, more or less, of which \$6,078.92 was improperly removed from trust by the Solicitor for his own personal use and benefit;
- b) He practised law while his rights and privileges as a member of the Law Society were suspended from June 5, 1992 to October 9, 1992 for non-payment of his Errors and Omissions insurance levy;
- c) he practised law while his rights and privileges as a member of the Law Society were suspended from November 29, 1991 to December 11, 1991 and from February 28, 1992 to April 6, 1992 for non-payment of his Errors and Omissions insurance levy.

Complaint D141/95

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending June 30, 1994, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D162/93, D79/95 and D141/95 and is prepared to proceed with a hearing of these matters on October 3, 1995.

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 and admits the particulars of Complaints D162/93, D79/95 and D141/95 and admits that these particulars together with the facts set out below constitute professional misconduct.

IV. FACTS

Background

4. The Solicitor was called to the bar on April 6, 1983 and practised as a sole practitioner to November, 1983. From November 1983 to April 1985, he was employed by Tan & Mah, Barristers and Solicitors in Toronto and from April 1985 to February 1993 he practised as a sole practitioner.

5. The Solicitor was administratively suspended on May 1, 1993 for non-payment of his annual fees.

6. Complaint D162/93 was sworn on June 15, 1993. It was scheduled to proceed on July 20, 1993, adjourned to October 13, 1993, adjourned to January 18, 1994, and then adjourned sine die in order to allow the Solicitor to put together his books and records for the Society's review. Of concern was whether there had been other periods of practising while suspended.

7. As a condition of the adjournment, the Solicitor undertook not to practise pending the completion of the discipline proceeding in Complaint D162/93. The undertaking was executed on January 12, 1994. The Solicitor states that he has not practised since February 1993.

8. The Solicitor delivered his books and records to the Society on August 30, 1994.

9. The Solicitor reported the majority of the trust shortages enumerated in Complaint D79/95 in his letter of September 5, 1994.

10. Complaint D79/95 was sworn on May 9, 1995 as a result of the information which emerged from the Society's review of the Solicitor's books and records.

11. Complaint D141/95 was sworn on June 1, 1995 as a result of the Solicitor's failure to file the required forms for his fiscal year ending June 30, 1994.

Complaint D162/93

Particular 2(a) Practising under suspension, December 1 to 8, 1992

12. By letter dated November 26, 1992, the Solicitor was advised that \$10.00 of his 1992 Errors and Omissions levy due on November 2, 1992 remained outstanding.

13. On December 1, 1992, the Solicitor's rights and privileges as a member of the Society were suspended by order of Convocation for failure to pay the \$10.00 outstanding on his Errors and Omissions levy.

14. By registered letter dated December 2, 1992, the Solicitor was notified that he was suspended as of December 1, 1992.

15. The Solicitor paid the outstanding \$10.00 of his Errors and Omissions levy on December 10, 1992 and was reinstated.

16. Between December 1, 1992 and December 8, 1992, the Solicitor engaged in the practise of law.

Particular 2(b) Failure to maintain proper books and records

17. On December 8, 1992, a Society examiner attended at the Solicitor's office and instituted co-signing controls on the Solicitor's trust account.

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18. On December 8, 1992, the Solicitor's books and records had not been entered or reconciled since June 30, 1992. Other deficiencies in the records included the following:

- (i) Trust receipts journal from June 30, 1991 to December 31, 1992 not completed;
- (ii) General receipts and disbursements journals entered only to December 31, 1991;
- (iii) Bank of Nova Scotia Trust Account 677-17 - bank statements missing from January 1, 1991 to November 30, 1991; and
- (iv) Bank of Montreal Trust Account 1011-483 - cancelled cheques missing for September, October and November, 1992.

19. The examiner gave the Solicitor one month to update his books and records.

Particular 2(c) Failure to reply

20. By registered letter dated January 4, 1993, the Society's examiner asked the Solicitor to contact her in order to arrange a date to begin her audit. An acknowledgement of receipt indicates that the letter was picked up on January 12, 1993.

21. Follow-up letters dated February 2 and 18, 1993 were sent to the Solicitor requesting he reply.

22. No reply was received until after issuance of Complaint D162/93 on June 15, 1993.

Particular 2(d) Failure to file for fiscal year ending June 30, 1992

23. The Solicitor did not file his Forms 2/3 within six months of his fiscal year ending June 30, 1992, as required by Section 16(2) of Regulation 708 under the *Law Society Act*.

24. A Notice of Default in Annual Filing dated January 6, 1993, was forwarded to the Solicitor by the Society.

25. By registered mail, the Society forwarded to the Solicitor a second Notice of Default in Annual Filing dated February 11, 1993. The Solicitor was advised that he had not taken the necessary steps to bring his filings up to date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filing to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the *Law Society Act*. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him of the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's second notice was signed for and delivered on February 18, 1993.

26. 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 the Solicitor's practice thereby substantially increasing the Society's costs.

27. On August 31, 1994, the Solicitor submitted his annual filing for his fiscal years ending June 30, 1992 and 1993.

Complaint D79/95

Particular 2(a) Insufficient trust balances and improper removal of trust funds

28. The member's books and records delivered to the Society on August 30, 1994 indicated a trust shortage in the sum of \$6,786.06 of which \$6,078.92 was improperly removed from trust by Mr. Gardiner for his personal use.

29. By letter dated November 23, 1994, the Society requested that the Solicitor replace what the Society then thought to be a trust shortage of \$6,421.06.

30. By letter dated January 25, 1995 to the Society, the Solicitor indicated that he had replaced \$6,000.00 of the \$6,787.06 shortage.

31. By letter dated June 28, 1995 and enclosed deposit slips to the Society, the Solicitor indicated that he had replaced the remaining \$787.06.

32. Set out below is a summary of the amounts improperly removed from trust by the Solicitor and the circumstances, to the extent it was possible to reconstruct events from the Solicitor's records.

33. By letter dated September 5, 1994, the Solicitor outlined his explanations for the improper removals from trust.

34. The Society has not received any complaints concerning the trust shortages.

Allen - Withdrawal of \$120.00

35. The Solicitor represented the purchaser Allen on a real estate transaction which closed on July 19, 1988. The Solicitor rendered a Statement of Account dated July 19, 1988 which reflects the receipts and disbursements shown on the Allen file. Although a nil balance remained on the Allen client trust ledger account, on September 10, 1992 the Solicitor withdrew \$120.00 from this ledger causing a corresponding overdraft.

Chan - Withdrawal of \$20.00

36. The Solicitor was unable to produce the Chan file. The Chan client trust ledger indicates that there was an overdraft of \$20.00 as a result of the Solicitor drawing fees for \$20.00 when there were no trust funds held on behalf of the client Chan.

Correia - Withdrawal of \$238.11

37. The Solicitor represented the purchasers Correia on a real estate transaction which closed on July 17, 1989. The Solicitor rendered a Statement of Account dated July 14, 1989 which appears to correctly reflect the receipts and disbursements made. Although a nil balance remained on the Correia client trust ledger account, on August 22, 1992, the Solicitor drew \$238.11 from this ledger causing a corresponding overdraft.

French - Withdrawal of \$1,000

38. The Solicitor represented the vendors French on a real estate transaction which closed on July 15, 1991. The Solicitor rendered a Statement of Account dated July 15, 1991 which reflects the receipts and disbursements made. This account indicates that \$500.00 was being held in trust as utility holdback.

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39. On June 4, 1992, the Solicitor withdrew the \$500.00 utility holdback by trust cheque but did not pay the utility bills. On August 15, 1992, the Solicitor again withdrew \$500.00 by trust cheque causing a \$500.00 overdraft in the French client trust ledger.

40. The client paid the utility bills and is owed \$500.00.

George Gardiner Suspense - Withdrawal of \$120.00

41. The Solicitor created a George Gardiner Suspense trust ledger for himself and withdrew \$120.00 from it. There is no associated file.

Rampaul - Withdrawal of \$1,184.13

42. The Solicitor represented the purchasers Rampaul on a real estate transaction which closed on May 6, 1991. The Solicitor rendered a Statement of Account/trust ledger statement dated April 30, 1991. The Rampaul client trust ledger contained insufficient funds to cover the disbursements on the transaction resulting in a shortfall of \$1,184.13.

43. The Solicitor states that he discovered this error subsequent to the rendering of his account and that the shortfall arose because the CIBC delivered \$1,184.13 less than expected to the Rampauls.

44. The Solicitor's fees for this transaction were \$800.69. The Solicitor did not return these fees upon discovering the shortfall. The Solicitor tried to recover the entire shortage from his clients and did in fact collect \$500.00 of the \$1,184.13 shortage. The Solicitor did not deposit this amount to trust and until the Solicitor replaced trust funds as described above, the entire amount of the shortage was outstanding.

Suspense - Withdrawal of \$225.27

45. The Solicitor created a Suspense trust ledger and wrote a cheque to himself for \$225.27 and attributed it to this file. There was no file to review.

G. Gardiner Suspense - Withdrawal of \$1,626.30

46. The client trust listing indicates that the Solicitor created a G. Gardiner Suspense trust ledger (not available) and wrote a cheque to himself for \$1,626.30 and attributed it to this file. There was no ledger or file to review.

Rikkerink - Withdrawal of \$1,107.28

47. The Solicitor represented the purchasers Rikkerink on a real estate transaction which closed August 8, 1989. The Solicitor rendered a Statement of Account dated August 3, 1989 which reflects the receipts and disbursements made and indicates a nil balance remained in the Rikkerink client trust ledger account (not available) as of August 3, 1989. On an unknown date, the Solicitor withdrew \$1,107.28 causing a corresponding overdraft.

Smith - Withdrawal of \$383.80

48. The Solicitor acted for the purchasers Smith on a real estate transaction which closed July 13, 1990. The Solicitor rendered a Statement of Account dated July 12, 1990 which reflects the receipts and disbursements made on the Smith purchase. The client trust listing indicates that on an unknown date, the Solicitor withdrew \$383.80 from the Smith client trust ledger account (not available) causing a corresponding overdraft.

Sutait - Withdrawal of \$49.50

49. Neither the file or the client trust ledger for this matter were available. The December 1992 client trust listing indicates that the Solicitor improperly removed from trust \$49.50.

Speirs - Withdrawal of \$4.45

50. The Solicitor acted for Speirs on a matrimonial matter. The December 1992 client trust listing indicates that the Solicitor withdrew \$4.45.

Particular 2(b) Practising under suspension, June 5 to October 9, 1992

51. The Solicitor received notices that his Errors and Omissions insurance levy was due on December 5, 1991, February 8, April 14 and June 3, 1992.

52. By letter dated June 1, 1992, the Solicitor was advised that he would be suspended on June 5, 1992 for non-payment of his Errors and Omissions insurance levy.

53. The Solicitor was reinstated on October 9, 1992 when he paid the Errors and Omissions levy.

54. The Solicitor did practise law while under suspension during the period June 5, 1992 to October 9, 1992 as indicated by the following documents:

(a) Solicitor's trust deposit slips, trust bank statements, cancelled trust cheques and client trust ledgers from June 25, 1992 to September 24, 1992 listed below which indicate that the Solicitor was accepting and disbursing client trust monies during this period, as follows:

- trust deposit slip dated June 25, 1992 listing cheque from David Rate
- trust deposit slip dated June 25, 1992 listing cheque from Barracks
- trust deposit slip dated July 31, 1992 listing cheque from Chan/Ho
- trust deposit slip dated September 14, 1992 listing cheques from Burrows/2155 Banks and CIBC
- trust deposit slip dated September 17, 1992 listing cheque from Avanes
- trust deposit slip dated September 22, 1992 listing cheque from Labella
- trust deposit slip dated September 24, 1992 listing cheques from Labella and Canada Trustco
- trust account statement for June, 1992
- trust account cheques dated June 29, 1992 re Rate and Barracks
- trust account statement for July, 1992
- trust account cheques dated June 30, 1992 re Barracks

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- trust account cheques dated July 2, 1992 re Scott, Krajcarski, Rate/Daniel and Rate
- trust account cheques dated July 31, 1992 re Chan/Ho (3) and Shaw
- trust account statement for August 1992
- trust account cheques dated August 12, 1992 re French, Plu (?), DeSouza and Rate
- trust account cheques dated August 24, 1992 re Chan, Correia, Alvi and Klein
- trust account statement for September, 1992
- trust account statement for October, 1992
- client trust ledgers for Rate/Daniel, Barracks, Burrows/Burrows/Banks, Avanes and Labella

(b) fee billings for some of the transactions occurring during the suspension period, listed below:

- fee billing re Labella mortgage to Canada Trustco
- fee billing re Burrows and Banks mortgage to CIBC
- fee billing re Barracks sale to Johnson
- statement of account re purchase of 124 Generation Blvd., dated July 31, 1992

(c) documents obtained from real estate files maintained on behalf of his clients Chan and Ho, listed below:

- duplicate registered mortgage prepared by Solicitor and registered on behalf of Chan/Ho on July 31, 1992
- reporting letter to Chan/Ho dated August 30, 1992

Particular 2(c) Practising under suspension, November 29, 1991 to December 11, 1991 and February 28, 1992 to April 6, 1992

55. On June 4, August 15, October 10 and November 5, 1991, the Solicitor received notices from the Society that his Errors and Omissions Levy was due.

56. By registered letter dated December 2, 1991, the Solicitor was advised by the Society that he was suspended as of November 29, 1991.

57. The Solicitor gave the Society a cheque in payment of his Errors and Omissions insurance levy on December 10, 1991 and was reinstated on December 11, 1991.

58. The Solicitor's cheque was returned to the Society because of insufficient funds and by registered letter dated March 3, 1992, the Solicitor was advised by the Society that he had been suspended as of February 28, 1992.

59. On April 6, 1992, the Solicitor paid his Errors and Omissions levy and was reinstated.

60. The Solicitor practised law while under suspension from November 29 to December 11, 1991 and from February 28 to April 6, 1992, as indicated by the following documents:

- (a) trust deposit slips, trust bank statements, cancelled trust cheques and client trust ledgers listed below which indicate that client trust funds were being received and disbursed during the period of suspension:
- trust deposit slip dated November 29, 1991 listing cheques from Priestman (3), Central Guar. T. and Confirmed Invest.

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- trust deposit slip dated December 3, 1991 listing cheques from Krajcarski (2) and Firstline Trust
- trust deposit slip dated December 6, 1991 listing cheques from Woodcock and CIBC
- trust deposit slip dated March 6, 1992 listing cheques from Mutual Trust, Laflamme and Duncan Phillips
- trust deposit slip dated March 10, 1992 listing cheques from Sajo and TD Bank
- trust deposit slip dated March 13, 1992 listing cheques from Canada Trust and Glasford
- trust deposit slip dated March 30, 1992 listing two cheques from Glasford
- trust deposit slip dated April 2, 1992 listing cheques from Warriar and Bank of Montreal
- trust deposit slip dated April 3, 1992 listing cheque from Warriar
- trust bank statement for November, 1991
- trust cheques (3) dated November 29, 1991 re Priestman
- trust bank statement for December, 1991
- trust cheques (6) dated December 3, 1991 re Krajcarski
- trust cheques (4) dated December 6, 1991 re Woodcock
- trust bank statement for March, 1992
- trust cheques (2) dated March 2 and 3, 1992 re Smith
- trust cheques (8) dated March 6 and 9, 1992 re Laflamme
- trust cheques (5) dated March 10, 1992 re Sajo
- trust cheques (3) dated March 13, 1992 re Glasford
- trust bank statement for April, 1992
- trust cheques (7) dated April 2, 1992 re Warriar
- trust ledgers for Priestman, Krajcarski, Woodcock, Sajo, Laflamme and Warriar

(b) fee billings listed below for some of the transactions which occurred during this period of suspension:

- fee billing dated November 29, 1991 re 50 Guthrie Cres., Whitby
- fee billing dated December 6, 1991 re 115 Hillcrest Ave., #2011, Miss.
- fee billing dated March 10, 1992 re 360 Ridelle Ave., #2112, North York
- fee billing dated March 6, 1992 re 7 Balaclava Dr., Scarborough
- fee billing dated April 2, 1992 re 10 Lockridge Street, Whitby

(c) documents listed below obtained from real estate files maintained for clients Krajcarski and Glasford:

- statement of account dated December 3, 1991 which indicates that the Krajcarski closing occurred on December 3, 1991;
- Statutory Declaration executed by the Krajcarskis and commissioned by the Solicitor on December 2, 1991;
- mortgage prepared by the Solicitor and registered on behalf of the Glasfords on March 17, 1992; and
- statement of account of David Glasford dated March 13, 1992.

Complaint D141/95

Particular 2(a) Failure to file for fiscal year ending June 30, 1994

61. The Solicitor did not file his Forms 2/3 within six months of his fiscal

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year ending June 30, 1993, as required by Section 16(2) of Regulation 708 under the *Law Society Act*.

62. A Notice of Default in Annual Filing dated January 12, 1994, was forwarded to the Solicitor by the Society.

63. By registered mail, the Society forwarded to the Solicitor a second Notice of Default in Annual Filing dated February 14, 1994. The Solicitor was advised that he had not taken the necessary steps to bring his filings up to date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filing to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the *Law Society Act*. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him of the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's second notice was signed for and delivered on February 18, 1994.

64. A Third Notice of Default in Annual Filing dated June 6, 1994 was forwarded to the Solicitor by the Society.

65. On September 28, 1995, the Solicitor attempted to file his Forms 2/3 for his fiscal year ending June 30, 1994 and June 30, 1995. The Society returned the forms to the Solicitor as some had not been properly executed. The Solicitor states that this was an oversight.

V. DISCIPLINE HISTORY

66. The Solicitor does not have a discipline history.

DATED at Toronto this 3rd day of October, 1995."

FINDING OF THE COMMITTEE

It would not appear that any of these activities reflect a knowing and willful attempt to deprive or defraud any client. In many cases, the Solicitor thought it was his money and in at least one, Rampaul, an account was rendered but more money was taken than was in the trust account. This was an error. As it turned out, in that case the solicitor in that case collected part of the shortfall, some \$500, but never managed to replace that into the trust account. In part, this is because by this time he had lost his house and was in bankruptcy.

What we see is a pattern of incompetent handling of funds and books. It is important to note that there have been no complaints from any client.

RECOMMENDATION AS TO PENALTY

The Committee recommends that George Thomas Gardiner be suspended for a period of one year, and that he be permitted to return to the practice of law after the expiry of that year provided the conditions, as set out in the following Reasons, can be met.

REASONS FOR RECOMMENDATION

The Solicitor does not have a discipline history and material has been placed before us is writing which reflects upon his ordinary good character.

25th April, 1996

The key to understanding this Solicitor and the appropriate disposition of this case is found, in our view, in the report of Dr. Ben - Aron, a psychiatrist practising in Toronto in the forensic field, who has been treating the Solicitor since December 7, 1993 for depression. It appears that Mr. Gardiner, between December 1991 and December 1992, came to an emotional and psychological nadir. His practice was overwhelming him so that he was in a state of, "confusion, personal financial pressures added heavily to his psychological load. He lost his home, and his income from the legal practice dried up. His life had become a day-to-day existence of surviving moment by moment." He had to turn to his parents for help. Eventually, their resources were depleted and he finally ended up "a failure".

Dr. Ben - Aron acknowledges that he has been working on his problems and making, "some progress". His character is marked at the moment by "personal insecurity and timidity".

Dr. Ben - Aron concludes:

"He is a person, who, in the past, was quite vulnerable to being overwhelmed. Thereafter would begin a downward spiral of anxiety, depression, disorganization and disarray. In the end, he would become emotionally exhausted, immobilized and unable to function - both in his life and in his profession.

He continues to be depressed. In large part, this is a response to the limbo his life has been in since stopping his practice. He has tried to get work - but for a variety of reasons, has been unable to secure employment. The recessing times have shrunk job numbers but he also finds employers reluctant to hire him as being over qualified or unsuitable, given his having been a lawyer. He has volunteered his time in the community but is generally imbued with a sense of fear and doubt about his future. He subsists on welfare, living with his elderly parents and at times, receiving assistance from other members of his family.

He knows where he went wrong. He is working on his problems and is making progress. At this time, from a psychiatric perspective, I believe he is well enough to return to practice but would benefit from a period of professional supervision to monitor his functioning and provide timely professional guidance and correction, as and if such may be needed. For his part, Mr. Gardiner recognizes the value of this and is agreeable to such a condition of return to practice.

I would also recommend that he continue seeing me for ongoing work on his emotional problems and for further monitoring of an intervention of any mental state difficulties (depression, anxiety states). He is also amenable to this.

After an appropriate interval (as may be recommended by the Law Society), his progress could be reviewed and further conditions as required, if any, could be imposed.

I am optimistic, however, that Mr. Gardiner can make a satisfactory return to full time legal practice."

The penalty we impose is designed to have more than one purpose. We consider a period of suspension appropriate to mark the gravity of the misconduct and to make it clear to the public that such misconduct cannot be tolerated.

25th April, 1996

At the same time, we think it is important to try to create, with the assistance of both counsel, a variety of conditions that will encourage and help him to return to a functioning status within the Law Society as a member of our profession and at the same time, to protect the public from any recurrence of these events.

Accordingly, we recommend to Convocation that Mr. Gardiner be; 1) suspended for one year; 2) allowed to return to the practice of law after the expiry of that one year, provided certain conditions can be met.

1. Mr. Gardiner continue to receive treatment from Dr. M.H. Ben-Aron or another psychiatrist pre-approved by Senior Counsel - Discipline, of the Law Society of Upper Canada, and to see that psychiatrist at a frequency which the psychiatrist considers appropriate to his needs.
2. That Senior Counsel - Discipline, of the Law Society of Upper Canada receive quarterly reports from that psychiatrist indicating that the Solicitor is continuing in treatment and that there is no mental illness, that might prevent him from practising law responsibly, that has developed beyond that covered in Dr. Ben - Aron's letter. The object is to see that the Solicitor is able to practise law responsibly. If there is a problem with obtaining the concurrence of Dr. Ben-Aron to this, either Counsel may speak to me and we will arrange some alternate solution.

Note: Amendment, see page 208

3. Mr. Gardiner is to practise only in association with another lawyer and he is not to operate a general or trust bank account.
4. Mr. Gardiner is to be supervised by the member of the Law Society of Upper Canada in good standing with whom he practises and that person is to be pre-approved, as to both identity and the appropriate level of supervision, by the Senior Counsel - Discipline, of the Law Society of Upper Canada. That member must provide a letter to the Senior Counsel - Discipline stating that he is familiar with this decision, the Order of Convocation, as well as the conditions which brought about the Order and confirming his or her agreement to supervise.
5. Mr. Gardiner is to make his annual filings for the fiscal year 1994.

These conditions are to apply unless; 1) Senior Counsel - Discipline agrees to vary them; or, 2) the treating psychiatrist opines in writing to the satisfaction of Senior Counsel - Discipline that Mr. Gardiner is well enough to practise in an unsupervised or less supervised setting; or, 3) an application is made under section 147 of the Law Society Act.

Note: Amendment, see page 208

George Thomas Gardiner was called to the Bar on the 6th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 12th day of February, 1996

Clayton Ruby
Ruby

25th April, 1996

The Report was amended by changing the words at the beginning of paragraph 2. on page 19 of the Report by deleting the words "Senior Counsel - Discipline" and inserting the word "Secretary". The Report was further amended on page 20, last paragraph, last line to read section "47" not 147.

The Report as amended was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 year and that he be permitted to return to practice after the expiry of that year provided the conditions set out in the Report were met.

Ms. Cameron made submissions in support of the recommended penalty and advised that the filings had been completed.

Ms. Leiper made brief submissions in support of the recommended penalty.

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the solicitor be suspended for a period of 1 year and further to satisfy the conditions set out in the Report.

Carried

Counsel and solicitor retired.

Re: Marvin Harvey SIEGEL - Toronto

The Secretary placed the matter before Convocation.

Ms. Angeles withdrew for this matter.

Mr. Maclure appeared for the Society and Ms. Leiper, Duty Counsel, appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 13th April, 1995, together with an Affidavit of Service sworn 6th June, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th May, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 28th September, 1995 (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

Michael G. Hickey, Q.C., Chair
Nora Richardson
Julaine Palmer

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

Audrey Cado
for the Society

MARVIN HARVEY SIEGEL
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 13, 1994

25th April, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 18, 1994, Complaint D88/94 was issued against Marvin Harvey Siegel alleging that he was guilty of professional misconduct.

The matter was heard in public on December 13, 1994 before this Committee composed of Michael G. Hickey, Q.C., Chair, Nora Richardson and Julaine Palmer. The Solicitor was in attendance at the hearing and was not represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

2. a) He failed to file with the Society within six months of the termination of his fiscal years ending December 31, 1990, December 31, 1991 and December 31, 1992, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act;

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D88/94 and is prepared to proceed with a hearing of this matter on December 13 and 14, 1994.

II. IN PUBLIC/IN CAMERA

2. The Solicitor will bring a Motion that the matter be heard in camera pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D88/94 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on June 22, 1960. He practices as sole practitioner.

5. The Solicitor's fiscal year end is December 31st. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending December 31, 1990, December 31, 1991 and December 31, 1992, as required by S.16(2) of Regulation 708 under the Law Society Act.

Fiscal Year Ended December 31, 1990

6. A Notice of Default in Annual Filing, dated July, 1991 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered mail, the Law Society forwarded to the Solicitor a letter dated August 9, 1991. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A copy of the Society's August 9, 1991 letter is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

8. The late filing fee began to accrue on August 26, 1991.

Fiscal Year Ended December 31, 1991
and
Fiscal Year ended December 31, 1992

9. A Notice of Default in Annual Filing, dated July 5, 1994 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "C" to this Agreed Statement of Facts.

10. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated August 5, 1994. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was returned by the post office. A copy of the Society's Second Notice and returned envelope is attached as Exhibit "D" to this Agreed Statement of Facts.

11. The late filing fee began to accrue on August 24, 1994.

12. The Solicitor advised that he did not attend at the post office until after the registered letter was returned to the Law Society. He advised that he made inquiries at the Law Society but was unable to ascertain who had sent the registered letter.

25th April, 1996

13. 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.

14. To date, the Solicitor has not filed the required forms.

V. DISCIPLINE HISTORY

15. The Solicitor was found guilty of professional misconduct and reprimanded in committee on January 15, 1991 with respect to his failure to file for the fiscal years ended December 31, 1988 and December 31, 1989.

DATED at Toronto this 13th day of December, 1994."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Marvin Harvey Siegel be reprimanded in Committee if his filings for the years 1990, 1991 and 1992 are made by March 15th, 1995, in default of which the Solicitor to be reprimanded in Convocation and if not filed by Convocation, the Solicitor to be suspended for one month, and month to month thereafter until the filings are made.

REASONS FOR RECOMMENDATION

When this Complaint came before the Committee on December 13th, 1994 the Solicitor admitted professional misconduct and requested that the question of penalty be put over to February, 1995 which would give him sufficient time to complete his filings for the fiscal years ending December 31, 1990, 1991 and 1992 by the end of January, 1995.

The Solicitor is a sole practitioner and is presently carrying on a very limited practice from his residence. Much of his time is spent caring for his wife, who has been receiving treatment for cancer since 1987, and driving her to and from York University where she is an academic advisor at Vanier College. There is no evidence of any defalcation by the Solicitor and his trust account is subject to co-signing control.

The request for adjournment was not opposed by counsel for the Society and after making a finding of professional misconduct the Committee granted an adjournment to February 17th, 1995 to hear further submissions on penalty by telephone conference to be arranged by the Solicitor for the Society.

On February 17th, 1995 the Committee was advised that the Solicitor had not made his filings for 1990, 1991 and 1992 and after hearing submissions of the Solicitor and counsel for the Society it was the recommendation of the Committee that the Solicitor be reprimanded in Committee if his filings for the years in question were made by March 15th, 1995, in default of which the Solicitor should be reprimanded in Convocation, and if not filed by Convocation the Solicitor to be suspended for one month, and month to month thereafter until the filings are completed.

25th April, 1996

Marvin Harvey Siegel was called to the Bar and admitted as a Solicitor on the 22nd day of June, 1960.

ALL OF WHICH is respectfully submitted

DATED this 13th day of April, 1995

Michael G. Hickey, Q.C.
Chair

There were no submissions and the Report was voted on and adopted.

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

Ms. Leiper advised that the solicitor had still not completed his filings and requested an adjournment until June to complete same and further supported a reprimand in Convocation.

Mr. Maclure opposed the adjournment.

The solicitor waived the requirement that Convocation be seised of this matter if the adjournment were granted.

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

It was moved by Mr. Millar, seconded by Ms. Backhouse that the adjournment be granted.

Lost

Counsel, the solicitor, the reporter and the public were recalled and advised that the request for an adjournment was denied.

Both counsel made submissions in support of a 1 month suspension.

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the solicitor be suspended for a period of 1 month and month to month thereafter until the filings are made.

Carried

Counsel and solicitor retired.

Resumption of the John ROTHEL matter

The solicitor gave his written Undertaking not to practice law.

Re: Byron Douglas LONEY - Barry's Bay

The Secretary placed the matter before Convocation.

Ms. Angeles withdrew for this matter.

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

25th April, 1996

Ms. Ratchford advised that there was a deficiency in the service of the Report and requested that the matter be adjourned to the Assignment Tribunal so that the solicitor could be properly served.

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the matter be adjourned to the Assignment Tribunal in June for rescheduling.

Carried

Counsel retired.

Re: Howard William COHEN - Thornhill

The Secretary placed the matter before Convocation.

Mr. Swaye and Ms. Stomp withdrew for this matter.

Mr. Perrier 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 15th January, 1996, together with an Affidavit of Service sworn 20th March, 1996 by David Munro (Process Server) that he had effected service on the solicitor personally on 15th March, 1996 (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

Gerald A. Swaye, Q.C., Chair
Tamara K. Stomp
Robert B. Aaron

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

Neil J. Perrier
for the Society

HOWARD WILLIAM COHEN
of the Town
of Thornhill
a barrister and solicitor

Not Represented
for the solicitor

Heard: September 19, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 7, 1994 Complaint D193/94 was issued, on September 22, 1994 Complaint D267/94 was issued against Howard William Cohen alleging that he was guilty of professional misconduct. Complaint D267/94 was withdrawn and replaced with Complaint D267a/94 which was issued on January 6, 1995.

25th April, 1996

The matter was heard in public on September 19, 1995 before this Committee comprising Gerald A. Swaye, Q.C., Chair, Tamara K. Stomp and Robert B. Aaron. The Solicitor did not attend the hearing nor was he represented. Neil J. Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D193/94

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending April 30, 1993, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Complaint D267a/94

2. a) He forged at least fifty Charges/Mortgages of Land on purported mortgages with total principal balances exceeding \$1,000,000 resulting in a misappropriation of the approximate sum of \$862,000 from clients;
- b) He failed to properly account to clients for investments purportedly made on their behalf;
- c) He gave a personal guarantee to a client concerning the repayment of a mortgage thereby contravening Rule 23 of the Rules of Professional Conduct;
- d) He attempted to mislead the Law Society by making incorrect statements on his Form 2;
- e) He had failed to file his Forms 2 and 3 to the Law Society for his fiscal year ended April 30, 1993;
- f) He contravened Section 15 of Regulation 708 made pursuant to the Law Society Act by not maintaining the books and records required by that Section.

Evidence

The evidence before the Committee contained the following Agreed Statements of Facts.

Re: Complaint D193/94

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D193/94 and is prepared to proceed with a hearing of this matter in September of 1995.

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 D193/94 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 22, 1974. The Solicitor has been suspended for non-payment of his annual fees since May 9, 1994.

5. The Solicitor's fiscal year end is April 30th. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending April 30, 1993, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. The Solicitor received a Notice of Default in Annual Filing dated November 3, 1993 from the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered mail, the Solicitor received a Second Notice of Default in Annual Filing dated December 7, 1993. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A copy of the Society's Second Notice and the Acknowledgement Receipt card is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

8. The late filing fee began to accrue on December 22, 1993.

9. By registered mail, the Law Society forwarded to the Solicitor a Third Notice of Default in Annual Filing dated April 22, 1994. The Solicitor was advised that his name would go before Convocation on May 27, 1994 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on May 26, 1994. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. The Third Notice was returned to the Law Society as "unclaimed". A copy of the Society's Third Notice and returned envelope is attached as Exhibit "C" to this Agreed Statement of Facts.

10. 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.

11. To date, the Solicitor has not yet mailed the required forms.

V. DISCIPLINE HISTORY

12. On November 6, 1985, the Solicitor was found guilty of professional misconduct for improper borrowing. He was reprimanded in Committee.

25th April, 1996

13. On February 26, 1991, the Solicitor was found guilty of professional misconduct for failure to maintain books and records. He was reprimanded in Committee.

DATED at Toronto this 24th day of April, 1995."

Re: Complaint D267a/94

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D267a/94 and is prepared to proceed with a hearing of this matter in September of 1995.

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 D267a/94 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 22, 1974. His practice consisted mostly of criminal law. The Solicitor was arrested on April 26, 1994 and has been charged criminally on two counts of breach of trust, forty-five counts of fraud over \$1,000 and forty-two counts of uttering a fraudulent document and falsifying records. One of the Solicitor's conditions of bail is that he is prohibited from practising law.

5. He has been suspended since May 9, 1994 for non-payment of his annual fee.

6. The Solicitor's books and records have not been updated since April 30, 1992. This is the date of his fiscal year end and therefore his filing for his 1993 and 1994 year end is in default. He claimed he had provided negligible revenue generating legal services for at least 18 months, and saw no need to maintain practice or client records.

7. The Solicitor provided the clients with photocopies of what were purportedly mortgage documents at least fifty different times, but did not always retain copies for himself. Copies of all the available fraudulent mortgage documents prepared by the Solicitor are attached at (Document Book - Tab 2). According to the Solicitor, his client, Mr. Hardacre, initially requested reporting letters after providing the Solicitor with funds to be invested. A copy of two of these letters is attached at (Document Book - Tab 3). After Mr. Hardacre developed Alzheimers' Disease the reporting letters to clients ceased.

8. The four pages of the only records the Solicitor kept to assist in the production of the monthly mortgage payments are attached at (Document Book - Tab 4). Even the Solicitor had difficulty in understanding these records.

25th April, 1996

9. The Solicitor claimed to be unaware that the bank had closed his trust account in September 1992, due to inactivity and some overdrawn cheques. In any event, he did not utilise a designated trust account, but used a personal bank account for depositing mortgage principal amounts received from the clients, and for drawing cheques in favour of the clients equivalent to the monthly mortgage payments required. This bank account was not used solely for this purpose, and the uses of mortgage funds are discussed in Section (IV).

Particular 2(a) Fraudulent mortgages - misappropriation of funds - \$862,000.00

(I) SUMMARY OF FRAUDULENT MORTGAGES

10. The Solicitor arranged some genuine mortgages for Vicky and Jan Stawecki and Richard and Marie Hardacre (the "clients") in the early 1980s which were apparently repaid. Due to the lack of the Solicitor's record keeping, and some limitations in the records of the clients, it has not been possible to prepare a complete history of funds provided to the Solicitor, or to identify which mortgages were rolled over on maturity. However a listing of known fraudulent mortgages is attached as (Document Book - Tab 5). The listing was compiled using oral and written information provided by the Solicitor or his bank, and matches the clients' claims to the Lawyer's Fund for Client Compensation. The listing calculates that the Solicitor owes the clients \$862,000 in outstanding principal amounts.

(II) PROOF OF CLIENT'S INVESTMENT

11. The earliest records located of clients providing funds to the Solicitor for investment in mortgages (Document Book - Tab 6) was in November 1986. A total of fifty fraudulent mortgages with a principal value of \$1,164,744 are listed. Copies of the paid cheques themselves are attached as (Document Book - Tab 7).

12. The Staweckis have provided to the Law Society paid cheques totalling \$205,000 to support their claim of \$205,000. Of these cheques provided, only one cheque worth \$5,000 has not been specifically matched to a mortgage. This matching of mortgages to cheques is detailed in (Document Book - Tab 6), and is based on assertions made by the Staweckis and the timing of the deposits.

13. The Hardacres have provided to the Law Society paid cheques totalling \$533,900 to support their claim of \$657,000. Allocation of these cheques to specific mortgages is complicated by the higher volume of mortgages in which the Hardacres invested, and by certain mortgages being rolled into new mortgages on maturity. There is little reliable information to assist in documenting which mortgages were funded from old mortgage investment proceeds and which were funded with new funds. However as set out in Document Book - Tab 6 a total of \$232,000 has been specifically matched to mortgages.

III) FRAUDULENT MORTGAGES

14. The Solicitor has admitted that the mortgage documents he provided to his clients, were fraudulent. While the municipal addresses on the documents refer to actual houses, the legal descriptions are not for the same municipal addresses, the registration stamps are not valid, the chargors' names are fictitious and the signatures have been forged. The Solicitor would construct the documents general using a cut and paste method and send copies to his clients.

15. Title searches were carried out by the Law Society on a test basis to ensure the mortgages were/ indeed fraudulent. Attached as (Document Book - Tab 8) are abstracts of title for mortgages prepared by the Solicitor with the following municipal addresses:

25th April, 1996

73 Campbell Avenue, Toronto
200 Avenue Road, Toronto
875 Eastern Avenue, Toronto
15 Dunloe Road, Richmond Hill

Both the municipal address and the location detailed in the legal description were checked, and the purported mortgages prepared by the Solicitor had not been registered.

(IV) USE OF CLIENT'S FUNDS

16. Document Book, Tab 6 details \$432,000 of client's funds that have been traced via deposit slips to bank account #7673858-5 maintained by the Solicitor at Montreal Trust. This tracing was completed on a test sample basis, using a large sample of the clients paid cheques and confirmed that the Solicitor had received the clients funds. The Solicitor has admitted that virtually all the clients' funds were deposited to the Montreal Trust account.

17. The Law Society has obtained a complete transaction history of this account from Montreal Trust. The history is attached at (Document Book - Tab 9). Apart from a few exceptions, all source documents for deposits and withdrawals greater than \$1,000 have also been obtained and reviewed. To obtain a better understanding of funds flowing through the account, a summarized cash flow supported by an itemized listing of all transactions in the account for a sample period May 1, 1993 to December 1, 1993 is attached at (Document Book - Tab 10).

18. From an analysis of the bank account it is evident that the client's funds have been used primarily to fund the Solicitor's lifestyle, and to make the monthly mortgage payments expected by the clients as interest on their mortgage investments. None of the funds have been used to invest in mortgages.

(V) AMOUNTS OWING TO THE CLIENTS

19. The clients confronted the Solicitor with their allegations of fraud in December, 1993. Attached as Document Book - Tab 11 is a schedule of mortgage payments made by the Solicitor to the clients since September 1, 1993 according to the Montreal Trust bank account. No principal repayments were made during this time. This schedule indicates that a total principal amount of \$862,000 is owed to the clients. This amount matches the amount for mortgage principal claimed from the Lawyer's Fund for Client Compensation by the clients. Statements from three of the clients, Marie Hardacre and Victoria and Jan Stawecki, are contained at Document Book, Tab 1.

Particular 2(b) - He failed to properly account to clients for investments purportedly made on their behalf;

20. In all of the above transactions, the Solicitor did not provide reporting letters or accounting statements to his clients.

Particular 2(c) - He gave a personal guarantee to a client concerning the repayment of a mortgage thereby contravening Rule 23 of the Rules of Professional Conduct;

21. According to a copy of a mortgage document (Document Book - Tab 12) supplied to Mrs Stawecki, a mortgage registered on title to the property located at 73 Campbell Avenue, Toronto appeared to mature in May 1993. The Solicitor delayed the redemption of funds by giving his personal guarantee that the funds would be repaid. A copy of the guarantee is attached as (Document Book - Tab 13).

25th April, 1996

Particular 2(d) - He attempted to mislead the Law Society by making incorrect statements on his Form 2;

22. The Solicitor's Form 2 for his 1992 year end is at Document Book - Tab 14. At section 6, the Solicitor denied controlling mortgages in trust and administering periodic mortgage payments during a portion of the relevant time period set out in the preceding paragraphs. He therefore attempted to mislead the Law Society as to his involvement in the fraudulent mortgage investments.

Particular 2(e) - He had failed to file his Forms 2 and 3 to the Law Society for his fiscal year ended April 30, 1993;

23. Despite receiving the requisite notices by the Law Society, the Solicitor has failed to file his Forms 2/3 for his fiscal year ended April 30, 1993 and 1994.

24. Attached at Document Book, Tab 15 is a copy of the psychiatric report of Dr. Pohlman dated August 19, 1994.

PRIOR DISCIPLINE

25. On November 6, 1985, the Solicitor received a Reprimand in Committee for improper borrowing and gave the Law Society an Undertaking not to engage in estate matters.

26. On February 26, 1991, the Solicitor received a Reprimand in Committee for failing to maintain proper books and records.

DATED at Toronto this 4th day of January, 1995."

RECOMMENDATIONS AS TO PENALTY

The Committee recommends that Howard William Cohen be disbarred.

REASONS FOR RECOMMENDATION

The Solicitor did not attend the hearing in this matter, nor was he represented. The Committee was advised that the Solicitor was jailed on August 31, 1995 on a two and a half year sentence for fraud related charges that stemmed from the particulars in Complaint D267a/94 herein. Although we are advised that there is a mechanism in place for the Solicitor to personally attend the hearing, it was not taken advantage of in this case. In fact, before the Committee was an Agreed Statement of Facts originally signed by the Solicitor.

The Committee finds that disbarment is the appropriate penalty in all the circumstances of this case. The Solicitor is ungovernable and has demonstrated same by the nature and facts of the misconduct that he admits. Not only did the Solicitor fail to file appropriately, he contravened Rule 23, made incorrect statements on his Form 2, failed to file Forms 2 and 3 and contravened Section 15 of Regulation 708 made pursuant to the Law Society Act. However, the most damaging misconduct is the forgery of at least fifty Charges/Mortgages of Land resulting in the misappropriation of approximately \$862,000.00 from clients.

25th April, 1996

The fact situation of the misappropriation is fraud. Indeed, the Solicitor is presently in jail for fraud in relation to these events. The instances of same are numerous. The misconduct is of a grave nature as it was done for the personal gain of the Solicitor.

The Solicitor used the money to support his extensive gambling habit. Before the Committee was a letter dated August 19, 1994 from Dr. E. Ralph Pohlman who diagnosed the Solicitor as a pathological gambler. No evidence of rehabilitation was given.

The appropriate penalty is disbarment.

Howard William Cohen was called to the Bar on March 22nd, 1974.

ALL OF WHICH is respectfully submitted

DATED this 15th day of January, 1996

Gerald A. Swaye, Q.C.
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Mr. Perrier made submissions in support of the recommended penalty.

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the solicitor be disbarred.

Carried

Counsel retired.

Re: Derek George NAYDUK - Toronto

The Secretary placed the matter before Convocation.

Messrs. Marrocco and Crowe, Ms. O'Connor and Ms. Backhouse withdrew for this matter.

Mr. Perrier 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 29th February, 1996, together with an Affidavit of Service sworn 22nd March, 1996 by David Munro (Process Server) that he had effected service on the solicitor personally on 21 March, 1996 (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:

25th April, 1996

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Nancy L. Backhouse, Chair
Marshall Crowe
Shirley O'Connor

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

Neil J. Perrier
for the Society

DEREK GEORGE NAYDUK
of the City
of Toronto
a barrister and solicitor

Not Represented
for the Solicitor

Heard: January 17, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 4, 1995 Complaint D274/95 was issued against Derek George Nayduk alleging that he was guilty of conduct unbecoming a barrister and solicitor.

The matter was heard in public on January 17, 1996 before this Committee comprising Nancy Backhouse, Chair, Marshall Crowe and Shirley O'Connor. The Solicitor did not attend the hearing, nor was he represented. Neil J. Perrier appeared on behalf of the Law Society.

DECISION

The following particular of conduct unbecoming a barrister and solicitor was found to have been established:

Complaint D274/95

2. a) he was convicted on May 3, 1995 of the criminal offence of aggravated assault and criminal harassment contrary to the Criminal Code of Canada for which he was sentenced to a term of imprisonment totalling 7 years.

Service

Law Society counsel advised that the Solicitor was presently serving a consecutive sentence of 6 years for committing an aggravated assault on his former girlfriend by wounding her, and a 1 year sentence for engaging in conduct that caused his former girlfriend to fear for her safety. The Law Society sent a notice of this hearing to the Solicitor at the Back Institution where he is incarcerated. Counsel for the Law Society, Neil Perrier, spoke to the Solicitor's Case Manager at the Back Institution on November 9th, 1995. The Case Manager confirmed that she had forwarded the notice to the Solicitor and that he could attend a hearing any day in January, 1996, should he choose to do so.

25th April, 1996

Mr. Perrier contacted the Solicitor's Case Manager on the day of the hearing to obtain further information as to the Solicitor's knowledge of the hearing. Mr. Perrier advised that the Case Manager informed him that she had put the Law Society's notice in the Solicitor's mail slot and that prisoners have access to their mail slot on a daily basis. She had received no request from the Solicitor to attend the hearing. On that basis the Committee was prepared to proceed.

Finding

Submitted into evidence was the certified copy of the Solicitor's conviction and sentencing, a transcript of his guilty plea and sentencing, and the victim impact statement.

Based on the evidence the Committee finds that the Solicitor is guilty of conduct unbecoming a barrister and solicitor.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Derek George Nayduk be disbarred.

REASONS FOR RECOMMENDATION

The Solicitor pleaded guilty to a particularly violent and vicious assault and criminal harassment of his former girlfriend.

The Court in sentencing the Solicitor, was asked to take into account the fact that his conviction would likely end whatever career he had in law. The evidence of the Solicitor's psychiatrist was that the possibility of violent acts in the future could not be ruled out.

Based on the above facts and in order to maintain the integrity of the profession in the eyes of the public, the Committee is of the view that the appropriate penalty is disbarment.

Derek George Nayduk was called to the Bar February 9, 1993.

ALL OF WHICH is respectfully submitted

DATED this 29th day of February, 1996

Nancy L. Backhouse
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Mr. Perrier made submissions in support of the recommended penalty.

25th April, 1996

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the solicitor be disbarred.

Carried

Counsel retired.

The Report was amended by changing the words "Back Institute" to the "Bath Institute".

Re: Laura Ann KELL - Mississauga

The Secretary placed the matter before Convocation.

Messrs. Marrocco and Bobesich and Ms. Carpenter-Gunn withdrew for this matter.

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

Mr. Stuart advised that the Society had received a request for an adjournment from the solicitor in order to file a Notice of Disagreement. Mr. Stuart further advised that the solicitor had completed her filings and supported a reprimand in Convocation.

Counsel, the reporter and the public withdrew.

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the matter be adjourned to the Assignment Tribunal for rescheduling.

Carried

It was moved by Mr. Banack, seconded by Mr. Wilson that the solicitor be permitted to file a Notice of Disagreement.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision to adjourn the matter to the Assignment Tribunal for rescheduling and that the solicitor be permitted to file a Notice of Disagreement.

Counsel retired.

Re: Gary Michael YAFFE - Toronto

The Secretary placed the matter before Convocation.

Messrs. Marrocco and Bobesich and Ms. Carpenter-Gunn withdrew for this matter.

Mr. Stuart 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 29th February, 1996, together with an Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th March, 1996 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

25th April, 1996

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Frank Marrocco, Chair
Gordon Bobesich
Kim Carpenter-Gunn

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

Glenn Stuart
for the Society

GARY MICHAEL YAFFE
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 28, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 12, 1995 Complaint D201/95 was issued against Gary Michael Yaffe alleging that he was guilty of professional misconduct.

The matter was heard in public on November 28, 1995 before this Committee comprising Frank Marrocco, Q.C., Chair, Gordon Bobesich and Kim Carpenter-Gunn. The Solicitor did not attend the hearing nor was he represented. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D201/95

2. a) he failed to file with the Society on or before November 30, 1994, a certificate in the form prescribed by the Rules, thereby contravening Section 16(3) of Regulation 708 made pursuant to the Law Society Act.

25th April, 1996

RECOMMENDATION AS TO PENALTY

The Committee recommends that Gary Michael Yaffe be Reprimanded in Convocation if the filings are made before the matter is heard in Convocation, failing which, that the Solicitor be suspended for a period of thirty days and indefinitely thereafter until the filings are made, such suspension to take effect after the conclusion of any administrative suspension.

REASONS FOR RECOMMENDATION

The Committee finds the Solicitor guilty of professional misconduct.

Mr. Yaffe is not practising law at the present time. He has no disciplinary history. He seems simply to have left the Province of Ontario, or at least left the practice of law. He has not attended to the filing requirements and thus the Society cannot be satisfied that his practice has been properly closed.

Given the workload of Convocation we might have been inclined to reprimand Mr. Yaffe in committee if he had been present at his discipline hearing and if there was some prospect that the filing requirement might be met.

Mr. Yaffe did not attend before us so the reprimand could not be administered and thus the option of a reprimand in committee was not open to us.

Accordingly we made the recommendation set out above, which we believe to be consistent with Convocation's previous decisions in this type of case.

Gary Michael Yaffe was called to the Bar on February 9, 1993.

ALL OF WHICH is respectfully submitted

DATED this 29th day of February, 1996

Frank Marrocco, Q.C.
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if his filings were made failing which, that the solicitor be suspended for a period of 30 days and indefinitely thereafter until the filings are made, such suspension to take effect after the conclusion of any administrative suspension.

Mr. Stuart advised that the solicitor had completed his filings and supported the solicitor being reprimanded in Convocation.

It was moved by Mr. Wilson, seconded by Mr. Cole that the solicitor be suspended for a period of 30 days.

Lost

25th April, 1996

It was moved by Mr. MacKenzie, seconded by Ms. Ross that Convocation accept the recommended penalty, that the matter be referred to the Assignment Tribunal for rescheduling subject to consideration of the policy that the solicitor be present for the reprimand.

Carried

It was moved by Mr. Thom, seconded by Mr. Cole that the Treasurer administer the reprimand in absentia.

Not Put

Counsel retired.

Re: Robert Douglas Laird SMITH - Brampton

The Secretary placed the matter before Convocation.

Ms. Backhouse, Ms. O'Connor and Mr. Crowe withdrew for this matter.

Ms. Cameron 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 29th February, 1996, together with an Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail at his address on Wikander Way on 20th March, 1996 (marked Exhibit 1), together with an Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail at his address on Rutherford Road North on 20th March, 1996 (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

Nancy L. Backhouse, Chair
Marshall Crowe
Shirley O'Connor

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

Lesley Cameron
for the Society

ROBERT DOUGLAS LAIRD SMITH
of the City
of Brampton
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 17, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 19, 1993 Complaint D143/93 was issued, and on August 23, 1995 Complaint D219/95 was issued against Robert Douglas Laird Smith alleging that he was guilty of professional misconduct.

The matter was heard in public on January 17, 1996 before this Committee comprising Nancy L. Backhouse, Chair, Marshall Crowe and Shirley O'Connor. The Solicitor did not attend the hearing, nor was he represented. Lesley Cameron appeared on behalf of the Law Society.

DECISION

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

Complaint D143/93

2. a) he failed to comply with his undertaking to the Law Society dated October 13, 1992, in which he undertook, among other things, to:
 - i) comply with his Undertaking dated March 14, 1988 given to fellow solicitor Ronald Flom, on behalf of Mr. Flom's clients.
- c) he failed to provide a reply to the Law Society regarding a complaint by Macincom Inc. despite letters dated January 5, 1993 and February 2, 1993.

Complaint D219/95

2. a) he failed to correct deficiencies in his 1988 annual filing and he failed to provide a Form 2/3 to cover the period from February 1, 1988 to the date his practice was closed, despite letters dated May 30, 1990, May 31, 1990, July 3, 1990, July 31, 1990, October 1, 1990, October 30, 1990, April 12, 1991, July 2, 1991, July 31, 1991, September 3, 1991 and September 30, 1991;
- b) he failed to file with the Society within six months of the termination of his fiscal year ending November 30, 1993, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act;
- c) he practised while under suspension during the period following his December 1, 1992 suspension;
- d) he failed to maintain books and records in compliance with Regulation 708 made pursuant to the Law Society Act;
- e) he failed to maintain sufficient balances on deposit in his trust account to meet all of his obligations with respect to monies held in trust for clients, contrary to section 14(12) of Regulation 708 made pursuant to the Law Society Act;

25th April, 1996

- f) he breached his undertaking to the Law Society dated September 13, 1993 by continuing to accept money into trust contrary to the terms of the said undertaking;
- g) he failed to serve his client The Dominion Trust Company in a conscientious, diligent and efficient manner, by failing to report in a timely fashion on the following two mortgage transactions:
 - i) mortgage to Arnold and Theresa Divell - 18 Flavian Crescent, Brampton; and
 - ii) mortgage to David and Susan Divell - 25 Nottingham Crescent, Brampton; and
- h) he failed to reply to communications from the Law Society of Upper Canada dated October 25, 1993 and March 7, 1994.

Service

On April 11, 1994, the Solicitor advised the Law Society that he wished to participate in the Hearing. It was apparent from this that he had notice of the Complaint. The Law Society made numerous efforts to ensure that the Solicitor was aware of this hearing as set forth in Exhibit 1, the Service Brief. Having attempted to serve the Solicitor at the last address the Law Society was provided, it was apparent that the office was uninhabited. A motor vehicle and driver's license search were conducted which turned up another address. The registered mail notifying the Solicitor of this hearing was sent to both the address the Law Society was last provided with and the address which turned up from the search. Both came back unclaimed.

Ms. Cameron, Counsel for the Law Society, then made enquiries through her secretary of David Colin Smith, the Solicitor's brother, who is also a barrister and solicitor. Mr. Smith advised that he had made the Solicitor aware of the upcoming disciplinary proceedings, that he was facing possible disbarment and that he should contact Ms. Cameron. Mr. Smith provided Ms. Cameron with an address for the Solicitor, being that of his ex-wife, which was the same address to which the registered mail had previously been sent. Ms. Cameron's secretary attempted to contact the Solicitor at that address on January 10, 1996 and was told that he was not at home but that a message would be given to him.

Based on the above, the Committee was of the view that the Solicitor had received Notice and that the hearing should proceed.

Finding of the Committee

Complaint D219/95 particulars (a) and (b)

It is clear from the evidence of Irene Andrighetti, the Supervisor of the Annual Filing Department at the Law Society and from Exhibit 5, Tabs 1 to 19, that the Solicitor failed to correct deficiencies in his filing for the period ending January 31, 1988, failed to file at all for the period from February 1, 1988 to the date his practice was closed and failed to file for the fiscal year ending November 30, 1993.

particular (c)

The evidence of Lorraine Campbell, an Examiner in the Audit Department of the Law Society and Exhibit 5, Tabs 20 - 41 established that after the Solicitor was suspended on December 1, 1992, he closed two real estate transactions in January 1993 and received and dispersed trust funds from September 1, 1992 to November, 1993. The Solicitor denied knowing of the suspension until February, 1993. However, if this were so, it would not explain his continuing to practice from February, 1993 to November, 1993.

particular (d)

Ms. Campbell's evidence and Exhibit 5, Tabs 25, 37 to 41 and 43 and 46 established that the Solicitor failed to maintain the required books and records and those that were maintained were not done correctly. The Solicitor failed to respond to Ms. Campbell's letter of March 7, 1994 (Exhibit 5, Tab 45) where he was asked for particulars with respect to transactions in his trust account.

particular (e)

The Solicitor failed to respond to a letter from North American Trust dated November 23, 1993 (Exhibit 5, Tab 36) notifying him of a \$250.00 debit in his trust account. Exhibit 5, Tabs 26 & 33 to 35 showed cheques or withdrawals on the Solicitor's trust account where there were insufficient funds. The Solicitor did not respond to the letter of March 7, 1994 (Exhibit 5, Tab 44) from the Law Society asking for an explanation.

particular (f)

The Solicitor undertook on September 13, 1993 (Exhibit 5, Tab 4) not to use his trust account without the written consent of the Law Society. The Solicitor failed to disclose to the Law Society the existence of a second trust account which he opened in June, 1993 and continued to operate after he gave the above undertaking as is apparent from Exhibit 5, Tabs 31-35 and Tab 43.

particular (g)

The Solicitor failed to serve his client, the Dominion Trust company, in a conscientious, diligent and efficient manner by failing to complete his reporting letter on two real estate transactions as is apparent from Exhibit 5, Tabs 47 to 54 and the Affidavit of Mara Rossi sworn January 12, 1996 (Exhibit 7).

particular (h)

The Solicitor failed to reply to the letters from the Law Society dated October 25, 1993 (Exhibit 5, Tab 53) and March 7, 1994 (Exhibit 5, Tab 45).

Complaint D143/93

On March 14, 1988, the Solicitor gave his personal undertaking to purchasers in a real estate transaction and their Solicitor, Ronald Flom (Exhibit A to Exhibit 6). He further undertook on October 13, 1992 to the Law Society to comply with the aforesaid undertaking (Exhibit 4, Tab 1) as a result of disciplinary proceedings in Complaint D100/92 where the Solicitor was found guilty of professional misconduct and received a reprimand in Committee on the basis of his undertaking to comply with his original undertaking to the purchasers and Mr. Flom. Despite many efforts on the part of the Law Society to follow up (Exhibit 4, Tab 3 to 8), Cathy Riches testified that he failed to respond. The Affidavit of Ronald Flom sworn January 4, 1996 established that the undertaking remains unsatisfied.

25th April, 1996

On the basis of the above evidence, the Committee finds that the Solicitor is guilty of professional misconduct with respect to each of the particulars in Complaint D219/96 (as amended) and D143/93 (as amended).

RECOMMENDATION AS TO PENALTY

The Committee recommends that Robert Douglas Laird Smith be disbarred.

REASONS FOR RECOMMENDATION

The nature of the particulars of misconduct which have been established suggest that this Solicitor has no interest or ability to comply with Law Society regulations and directives. He has breached two undertakings to the Law Society, one to fulfil the original undertaking to Mr. Flom which was the subject of a prior finding of professional misconduct and a further breach not to use his trust account. He concealed from the Law Society Examiner the existence of a second trust account and continued to receive and disburse monies from that concealed trust account. He practised while under suspension even after February, 1993 when he knew, by his own admission, that he was suspended. He has failed to reply to the Law Society. He has failed to make the requisite filings. He has failed to maintain his books and records, and he has failed to serve his client conscientiously and diligently. The nature of the particulars which have been established against this Solicitor draw a picture of someone who will not be governed by the Society for whatever reason.

The Solicitor's prior discipline record taken with the evidence to date indicate that the Solicitor is ungovernable. It is the Committee's view that it has no other choice, in the interests of protecting the public, but to recommend to Convocation that this Solicitor be disbarred.

Robert Douglas Laird Smith was called to the Bar on April 6, 1979.

ALL OF WHICH is respectfully submitted

DATED this 29th day of February, 1996

Nancy L. Backhouse
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

There were submissions by Society's counsel in support of the recommended penalty.

25th April, 1996

It was moved by Mr. DelZotto, seconded by Mr. Cole that the solicitor be
disbarred.

Carried

CONVOCATION ROSE AT 12:30 P.M.

Confirmed in Convocation this 24 day of May

L996


Treasurer