

27th June, 1996

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 27th June, 1996
9:00 a.m.

PRESENT:

The Treasurer (Susan E. Elliott), Angeles, Backhouse, Carey, Carpenter-Gunn, Crowe, Curtis, DelZotto, Finkelstein, Gottlieb, Goudge, Harvey, MacKenzie, Manes, Marrocco, Millar, O'Connor, Puccini, Ross, Sachs, Sealy, Stomp, Swaye, Thom, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Mr. Michael Brown, Senior Counsel-Discipline introduced Mr. William Black who acted as Duty Counsel in the morning and advised that Mr. William McDowell would act as Duty Counsel in the afternoon.

Re: Larry Andrew ROINE - Ottawa

The Secretary placed the matter before Convocation.

Ms. Curtis did not participate.

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

Mr. Peter Lukasiewicz appeared on behalf of the Society and advised that Mr. Michael Neville, counsel for the solicitor could be reached by conference call if required. The solicitor was present.

Convocation had before it the Report of the Discipline Committee dated 13th June, 1996, together with an Affidavit of Service sworn 26th June, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 19th June, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th June, 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

Heather J. Ross, Chair
Jane Harvey
Shirley O'Connor

27th June, 1996

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

Peter Lukasiewicz
for the Society

LARRY ANDREW ROINE
of the City
of Ottawa
a barrister and solicitor

Michael J. Neville
for the solicitor

Heard: January 4, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 24, 1994 Complaint D291/94 was issued against Larry Andrew Roine alleging that he was guilty of professional misconduct.

The matter was heard in public on January 4, 1996 before this Committee comprising Heather J. Ross, Chair, Jane Harvey and Shirley O'Connor. The Solicitor attended the hearing and was represented by Michael J. Neville. Peter Lukasiewicz appeared on behalf of the Law Society.

The Report and Decision in this matter dated February 15, 1996 was placed before Convocation on April 25, 1996. At the request of Counsel for the Solicitor and for the Society Convocation referred the matter back to the Committee.

The Committee reconvened on May 24, 1996. Written submissions were received from the Society setting out a joint request of counsel that the Committee:

- 1) amend Complaint D291/94; and
- 2) modify its Recommendation as to Penalty to accept Mr. Roine's undertaking not to practise for a period of 30 days commencing April 30, 1996 and ending May 30, 1996.

DECISION

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

Complaint D291/94

2. a) Mr. Roine breached Rule 2 of the Rules of Professional Conduct by:
 - (ii) failing to advise correctly his clients Laurentian Bank, Cummings Construction, Toronto Dominion Bank and Golden Acceptance Mortgage Investment Corporation as to the priority of mortgages registered against 342 and 344 Queen Mary Street, Ottawa; and
 - (iii) failing to advise his client Laurentian Bank of his conflict of interest both as a solicitor representing more than one party in the transaction and as an investor in 342 Queen Mary St., Ottawa, contrary to the specific request of his client.

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- b) Mr. Roine breached Rule 5 of the Rules of Professional Conduct by:
- (i) in respect of the 342 Queen Mary St. transaction:
 - (A) failing to disclose to his clients Laurentian Bank and Cummings Construction that he had a personal interest in the property;
 - (C) representing both the mortgagors and mortgagees without disclosing the conflict of interest to his clients Laurentian Bank and Cummings Construction, failing to obtain his clients' written consent to act and failing to recommend that his clients obtain independent legal advice.
 - (c) in respect of the 344 Queen Mary Street transaction:
 - (i) failing to disclose to his clients Toronto Dominion Bank and Golden Acceptance that he had a personal interest in the property;
 - (iii) representing both the mortgagors and the mortgagees without disclosing the conflict of interest to his clients Toronto Dominion Bank and Golden Acceptance, failing to obtain his clients' written consent to act and failing to recommend they obtain independent legal advice.
 - (d) in respect of 14-16-18 Russell Street, Smith Falls, Ontario transaction:
 - (i) failing to disclose to his client Cummings Construction that he had a personal interest in the property;
 - (iii) representing both Morris and Cummings Construction/Robinson without disclosing the conflict of interest to Cummings Construction, failing to obtain his clients' written consent to act and failing to recommend they obtain independent legal advice.
 - (e) in respect of the transaction at 19 Fifeshire Crescent, Nepean, Ontario:
 - (i) failing to disclose his personal interest in the property to his client Mr. Cummings;
 - (iii) representing both McPherson and Cummings without disclosing the conflict of interest to his clients, failing to obtain his clients' written consent to act and failing to recommend to Cummings that he obtain independent legal advice.
 - (f) in respect of the transaction at 16 Parkridge Crescent, Gloucester:
 - (i) representing both the Butts and Cummings Construction without disclosing the conflict of interest to his Cummings Construction, failing to obtain his clients' written consent to act and failing to recommend it obtain independent legal advice.

- g) in respect of the transaction at 58 Glendale Avenue, Ottawa by:
 - (i) representing both Cross-Row and Cummings Construction without disclosing the conflict of interest to his clients, failing to obtain his clients' written consent to act and failing to recommend they obtain independent legal advice.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D291/94 and is prepared to proceed with the hearing of this matter on January 4, 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 D291/94 with his counsel Michael Neville. The Solicitor admits that he is guilty of professional misconduct on the facts as hereinafter set out.

IV. FACTS

MEMBER'S BACKGROUND

4. The Solicitor was called to the Bar of Ontario in 1969. The Solicitor was a partner with the firm Blaney, McMurtry, Stapells until 1989 when the Ottawa office of this firm was discontinued. In 1989, the Solicitor formed the firm McGovern, Roine and continues to practice law in Ottawa.

5. The Solicitor has no prior history of discipline by the Law Society of Upper Canada.

PARTICULARS OF THE MISCONDUCT

I. 342 and 344 Queen Mary Street

6. Prinvan Realty Ltd. ("Prinvan") was an investment company owned jointly by the Solicitor and John McHale (Tab 1, Document Book). In 1985, Prinvan, in trust purchased 342 and 344 Queen Mary Street, Ottawa. (Tab 2, Document Book).

7. On May 16, 1986, first mortgages, each in the amount of \$66,000.00, were prepared by the Solicitor and registered against the properties in favour of the Municipal Savings and Loan Corporation ("Municipal").

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A. 342 Queen Mary Street (Part 11 of Reference Plan 5R - 9807; Part of Lots 678 and 679)

8. The solicitors' certificate of title, given to Municipal in respect of the first mortgage on 342 Queen Mary Street and signed by one of the Solicitor's partners, certified that the property was owned by Prinvan and that the mortgage was guaranteed by the Solicitor, Eleanor A. Roine (the Solicitor's wife), John McHale and Corinne Jones-McHale. (Tab 3, Document Book).

9. On February 9, 1989, the Solicitor registered a transfer whereby Prinvan In Trust transferred 342 Queen Mary Street to John McHale. The land transfer tax affidavit sworn by the Solicitor also disclosed that Prinvan had been holding the property in trust for Mr. McHale since its purchase, contrary to the information contained in the solicitors' certificate of title delivered to Municipal. The discrepancy between the solicitor's certificate of title and the conveyancing documents was due to a mistake. Municipal was aware of the circumstances of the various transactions involving the Solicitor and Mr. McHale. (Tab 4, Document Book).

10. On May 18, 1990, the property was sold to Germain Boudria and Johanne Lacuyer. The purchase price of the property was \$104,000.00. The Solicitor represented Boudria-Lacuyer on their purchase at 342 Queen Mary Street. At the time of the purchase, the following mortgages were registered against the property:

Date	Mortgagee	Amount	Date Discharged
May 16, 1986	Municipal	\$66,000	August 24, 1990
Dec. 17, 1987	F. Welsh, In Trust	17,000	August 24, 1990
Feb. 9, 1989	Guaranty Trust In Trust for R.S.P. L.A.Roine	18,950	November 23, 1990

11. The Solicitor had a personal interest in 342 Queen Mary Street. The third mortgage in favour of Guaranty Trust was in trust for the Solicitor's self-directed RRSP. The Solicitor orally advised Boudria and Lacuyer of his interest and of their right to seek other counsel. (Tab 5, Document Book). He did not obtain written consent from them to continue representing their interests and his own interest.

12. As well, the Solicitor had guaranteed the Municipal mortgage. At the time of the sale, that mortgage was in default and a Notice of Sale Under Mortgage had been issued. The Solicitor had received a copy of the Notice of Sale as he was a guarantor of the mortgage.

13. Boudria-Lacuyer arranged mortgage financing on the property as follows:

Date	Mortgagee	Amount
May 22, 1990	Laurentian Bank (In Trust)	\$75,000
May 22, 1990	Cummings Construction	15,000
June 7, 1990	Larry Roine	14,460

14. The Solicitor acted for Laurentian Bank (In Trust) and F.E. Cummings Construction Co. Ltd. ("Cummings Construction") in respect of the mortgage financing. As well, the Solicitor loaned \$14,460.00 to Boudria-Lacuyer two weeks after the closing as they were unable to obtain financing. The loan was secured by way of a mortgage.

15. The Solicitor was instructed by Laurentian Bank in its retainer letter to disclose in writing any conflict of interest he had in respect of the transaction. (Tab 6, Document Book). The Solicitor failed to do so.

16. On May 14, 1990, the Solicitor advised Laurentian Bank in writing that upon registration of the Bank's mortgage, it would have a good and valid first charge against the property. (Tab 7, Document Book). That statement was not correct. Laurentian Bank only obtained a valid first charge when the F. Welsh, In Trust and Guaranty Trust (In Trust) mortgages were discharged on August 24, 1990 and November 23, 1990 respectively. However, at the time the Solicitor wrote the letter to the Bank, the monies required to discharge the Welsh and Guaranty Trust mortgages were in the Solicitor's trust account and were disbursed on closing in exchange for discharges of the mortgages. (Tabs 8-12, Document Book).

17. On June 26, 1990, the Solicitor reported in writing to Mr. Cummings that Cummings Construction held a good and valid second charge against the property. That statement was not

correct. Cummings Construction did not have a good and valid second charge until the F. Welsh, In Trust and Guaranty Trust (In Trust) mortgages were discharged. The mortgage discharges were not registered on title until several months after the closing. However, at the time the Solicitor wrote the letter to the client, the Solicitor had in his possession the executed discharges of the Welsh and Guaranty Trust mortgages. (Tabs 8-12, Document Book).

18. The Solicitor breached Rule 2 of the Rules of Professional Conduct by:

- (a) failing to advise his client Laurentian Bank of his conflict of interest, both as a solicitor representing more than one party in the transaction and as an investor in the property, contrary to the specific request of his client; and
- (b) failing to correctly advise his clients Laurentian Bank and Cummings Construction as to the priority of their mortgages.

19. The Solicitor breached Rule 5 of the Rules of Professional Conduct by

- (a) failing to disclose to the mortgagees (Laurentian Bank and Cummings Construction) that he had a personal interest in the property by virtue of the mortgage granted by his self-directed RRSP (Guaranty Trust);
- (b) failing to disclose to the mortgagees (Laurentian Bank and Cummings Construction) that he had a personal interest in the property by virtue of the mortgage registered by him personally upon the purchase of the property by Boudria-Lacuyer;
- (c) failing to obtain the written consent of his clients Boudria-Lacuyer, Laurentian Bank, Cummings Construction and John McHale to act given his interest in the property; and

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- (d) representing both the mortgagors (Boudria-Lacuyer) and the mortgagees (Laurentian Bank and Cummings Construction) and failing to disclose the conflict of interest in writing to his clients, Laurentian Bank and Cummings Construction, failing to recommend they obtain independent legal advice, and failing to obtain his clients' written consent to act.

B. 344 Queen Mary Street (Part 12 of Reference Plan 5R-9807; Part of Lots 679 and 680)

20. On February 9, 1989, the Solicitor registered a transfer whereby Prinvan In Trust transferred 344 Queen Mary Street to the Solicitor. The land transfer tax affidavit sworn by the Solicitor discloses that Prinvan had been holding the property in trust for the Solicitor since its purchase.

21. On May 18, 1990, the property was sold to Boudria and Lacuyer. The purchase price of the property was \$104,000.00. As with 342 Queen Mary Street, the Solicitor represented Boudria-Lacuyer on their purchase of the property.

22. At the time of the purchase, the following mortgages were registered against the property:

Date	Mortgagee	Amount	Date Discharged
May 16, 1986	Municipal	\$66,000	August 24, 1990
Dec. 16, 1986	Can. Corp. assigned to Rivington December 23, 1986	15,000	August 24, 1990

23. The Solicitor had a personal interest in the property as he had guaranteed the Municipal mortgage and/or he was the owner of the property. The Solicitor orally disclosed his interest to Boudria-Lacuyer and of their rights to seek other counsel. (Tab 5, Document Book). He did not obtain written consent from them to continue representing his own interests and their interests.

24. Boudria-Lacuyer arranged mortgage financing on the property as follows:

Date	Mortgagee	Amount
May 22, 1990	Toronto-Dominion Bank	\$78,000
May 22, 1990	Golden Acceptance Mortgage Investment Corp.	10,400
June 7, 1990	Larry Roine	15,778

25. The Solicitor represented both the Toronto Dominion Bank and Golden Acceptance Mortgage Corporation ("Golden Acceptance") in respect of the mortgage financing. As well, the Solicitor loaned \$15,778.00 to Boudria-Lacuyer, two weeks after the closing as they were unable to obtain financing. The loan was secured by way of a mortgage.

26. The Solicitor reported to the Toronto Dominion Bank after registration of its mortgage that it had a valid first mortgage against the property. The Can Corp/Rivington mortgage was not discharged until August 24, 1990. However, on or about May 23, 1990, the Solicitor received a Discharge of Mortgage executed by Rivington (Tab 13, Document Book).

27. On June 25, 1990, the Solicitor reported in writing to Golden Acceptance that it held a good and valid second charge against the property. That statement was not correct. Golden Acceptance did not have a good and valid registered second charge until the Can. Corp./Rivington mortgage was discharged on August 24, 1990. However, at the time the Solicitor wrote the letter he had in his possession the executed discharge. (Tab 13, Document Book).

28. The Solicitor breached Rule 2 of the Rules of Professional conduct by:

- (a) incorrectly advising his clients the Toronto Dominion Bank and Golden Acceptance Mortgage Investment Corporation as to the priority of their mortgages.

29. The Solicitor breached Rule 5 of the Rules of Professional Conduct by:

- (a) failing to disclose to the mortgagees (Toronto Dominion Bank and Golden Acceptance) that he had a personal interest in the property by virtue of the mortgage registered by him personally upon the purchase of the property by Boudria-Lacuyer; and
- (b) failing to obtain the written consent of his clients Boudria-Lacuyer, Toronto Dominion Bank, and Golden Acceptance to act given his interest in the property; and
- (c) representing both the buyers and mortgagors (Boudria-Lacuyer) and the mortgagees (Toronto Dominion Bank and Golden Acceptance) and failing to disclose the conflict of interest to his clients (Toronto Dominion Bank and Golden Acceptance), failing to obtain his clients' written consent to act and failing to recommend they obtain independent legal advice.

II. MORRIS AND CUMMINGS CONSTRUCTION / LILIAN ROBINSON MORTGAGE

30. The Solicitor represented Steven Morris on the purchase of 14-16-18 Russell Street, Smith Falls, Ontario. The transaction closed on November 16, 1989. The Solicitor loaned Mr. Morris \$25,000.00 in connection with the transaction and on closing the Solicitor registered a second mortgage in his own name against the property.

31. Subsequently, the Solicitor arranged for his second mortgage to be discharged and replaced with a new second mortgage in the amount of \$50,000.00. (Tab 14, Document Book). The new second mortgage was a syndicated mortgage held by Cummings Construction as to a 60% interest and Lilian Robinson as to a 40% interest. Ms. Robinson is the Solicitor's mother-in-law.

32. In this transaction, the Solicitor represented his own interest, the interest of the mortgagor (Mr. Morris) and the interest of the mortgagees (Cummings Construction and Robinson). The Solicitor did not advise his clients of the conflict of interest nor did he obtain written consent to act for all parties. Moreover, the Solicitor did not disclose to Cummings Construction his personal interest in the property.

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33. Mr. Morris was unable to maintain the first mortgage and it went into default in October, 1991. As a result a foreclosure action was initiated by the first mortgagees with the result that Cummings Construction suffered a loss on its investment. The loss was partially recovered as the result of a negligence action commenced by Cummings Construction against the Solicitor and defended by LPIC.

34. The Solicitor breached Rule 5 of the Rules of Professional Conduct by:

- (a) representing Cummings Construction and Robinson and failing to disclose to Cummings Construction that he had a personal interest in the property by virtue of his second mortgage and failing to recommend that his clients obtain independent legal advice; and
- (b) representing both Morris and Cummings Construction and Robinson and failing to disclose the conflict of interest to Cummings Construction and failing to obtain his clients' written consent to act.

III. McPHERSON - CUMMINGS MORTGAGE

35. The Solicitor's client June McPherson purchased 19 Fifeshire Crescent, Nepean, Ontario on November 4, 1987. Over the next several years, the following mortgages were registered against the property:

Date	Amount	Mortgagee
November 4, 1987	\$207,000	Financial Trust
November 4, 1987	30,000	724535 Ontario Ltd.
January 27, 1988	33,000	Can Corp Financial Ltd. Trustee
January 29, 1988	19,447	Larry Roine, In Trust
October 28, 1988	25,000	Guarantee Trust Co. as Trustee
February 2, 1990	16,000	Eleanor Roine, In Trust

36. The mortgage to the Solicitor, In Trust was discharged on June 15, 1988, leaving the property encumbered by three mortgages. In or about February, 1990, the Solicitor approached his client Mr. Cummings to determine if he would be interested in investing in Ms. McPherson's property. Mr. Cummings agreed, and on February 2, 1990, the Can Corp Financial Services Ltd., Trustee, mortgage was assigned to Mr. Cummings for \$16,072.00. (Tab 15, Document Book) Mr. Cummings advanced the said sum on terms that it would be repaid with interest of 16.5% per annum. The Assignment of Mortgage was registered on February 5, 1990. Payments were made until August 1, 1990, when the mortgage went into default. The property was sold under Power of Sale. No payments were received by Mr. Cummings after August 1, 1990. The loss suffered by Mr. Cummings was partially recovered as the result of a negligence action commenced by Cummings Construction against the Solicitor and defended by LPIC.

37. Three days prior, on February 2, 1990, the Solicitor caused to be registered a fifth mortgage in favour of Eleanor Roine, In Trust. (Tab 16, Document Book). This mortgage was in trust for the Solicitor's wife and his mother. Consequently, the Solicitor had a personal interest in this mortgage.

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38. The Solicitor did not disclose to Mr. Cummings that he was acting for Eleanor Roine, In Trust, or that he had a personal interest, through his spouse and mother, in their mortgage. The Solicitor's reporting letter to Mr. Cummings did not disclose these facts. (Tab 17, Document Book). Furthermore, the Solicitor did not advise Mr. Cummings to seek independent legal advice regarding the transaction.

39. The Solicitor breached Rule 5 of the Rules of Professional Conduct by:

- (a) representing Cummings and failing to disclose that he had personal interest in the property by virtue of his wife's and mother's mortgage and failing to recommend that Cummings receive independent legal advice; and
- (b) representing both McPherson and Cummings and failing to disclose the conflict of interest to his clients and failing to obtain his clients' written consent to act.

IV. NEGLIGENCE ACTION RE: MORRIS AND CUMMINGS CONSTRUCTION/LILIAN ROBINSON MORTGAGE AND MCPHERSON - CUMMINGS MORTGAGE

40. On July 22, 1993, Cummings and Cummings Construction issued an Amended Statement of Claim against the Solicitor, Blaney, McMurtry, Stapells, W. Ormond Murphy and William A. Gary. Cummings claimed the sum of \$20,290 with respect to the McPherson mortgage. Cummings Construction claimed the sum of \$33,100 with respect to the Morris mortgage.

41. The action was settled for \$60,000 all inclusive of interest and costs. The Solicitor advanced the sum of \$25,000. LPIC advanced the remainder of the settlement funds.

V. BUTT - CUMMINGS CONSTRUCTION / DROUGH MORTGAGE

42. John and Sandra Butt were the Solicitor's clients. In or about late 1989 or early 1990, the Solicitor arranged mortgage financing on the Butt home at 16 Parkridge Crescent, Gloucester. The mortgage was syndicated between Cummings Construction as to a 50% interest and Jack Drough, In Trust as to a 50% interest. Mr. Drough's interest in the mortgage was half in trust for himself and his wife and half in trust for his daughter, Margaret Lilico. Margaret Lilico was the Solicitor's secretary.

43. The Solicitor acted for both the Butts (mortgagors) and Cummings Construction/Drough (mortgagees). The Solicitor did not advise Cummings Construction of the conflict of interest nor did he obtain its written consent to act in the transaction.

44. The mortgage was fully repaid and discharged without incident.

45. The Solicitor breached Rule 5 of the Rules of Conduct by representing both the Butts and Cummings Construction and failing to disclose the conflict of interest to Cummings Construction, failing to recommend that his client obtain independent legal advice and failing to obtain his client's written consent to act.

VI. CROSS-ROWE AND CUMMINGS CONSTRUCTION MORTGAGE

46. The Solicitor acted for Steven Cross and Cynthia Rowe on their purchase of 58 Glendale Avenue, Ottawa. In order to finance the purchase of the property, the Solicitor arranged for a second mortgage loan of \$10,000.00 from Cummings Construction.

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47. The Solicitor acted for both the mortgagors and the mortgagee. The Solicitor did not advise his clients of the conflict of interest nor did he obtain their written consent to act for all parties in the transaction. (Tabs 18 and 19, Document Book).

48. The Cummings Construction mortgage was paid out and discharged without incident.

49. The Solicitor breached Rule 5 of the Rules of Professional Conduct by representing both Cross-Rowe and Cummings Construction and failing to disclose the conflict of interest to his clients, failing to recommend that they obtain independent legal advice and failing to obtain his clients' written consent to act.

Dated at Toronto this 4th day of January, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the Solicitor's undertaking (Attachment A), not to practise for a period of 30 days commencing on April 30, 1996 and ending on May 30, 1996 be accepted as fulfilling the requirement of a thirty day suspension. The Committee further recommends that the Solicitor pay Law Society costs in the amount of \$6,000 with twelve months to pay.

REASONS FOR RECOMMENDATION

The Solicitor admitted that the facts contained in the Agreed Statement of Facts were true and constituted professional misconduct and the Committee so found.

At the hearing of this matter on January 4, 1996 the Committee accepted the joint submission as to penalty, that the Solicitor be suspended for thirty days and that he pay the Law Society's costs fixed in the sum of \$6,000 with twelve months to pay those costs.

When the matter came before the Committee again on May 24, 1996, pursuant to the direction of Convocation, there was a further joint submission that the Committee modify its Recommendation as to Penalty. Counsel for the Society noted that the discrepancy between the Complaint and the findings of professional misconduct in the Report were noticed only several days before the matter was to be considered by Convocation and by that time, Mr. Roine had already made arrangements to cease practising for 30 days in accordance with the Committee's recommendation as to penalty. Consequently, the Society advised Mr. Roine that it would ask the Committee to modify the recommended penalty from that of a suspension to acceptance of Mr. Roine's undertaking not to practise for a period of thirty days commencing on April 30, 1996 and ending on May 30, 1996. The Committee accepted this joint submission and recommends that the Solicitor's undertaking dated April 25, 1996 be accepted.

There were five transactions over a period of five years that gave rise to the breaches as admitted by the Solicitor of Rule 5 of the Rules of Professional Conduct and in particular failing to disclose to clients that the Solicitor had a personal interest in property that was the subject matter of the transactions, failing to ensure that his clients received independent legal advice and representing clients without disclosing the conflict of interest to his clients, failing to obtain his clients' written consent to act and failing to recommend that his clients obtain independent legal advice.

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The transactions involving 342 and 344 Queen Mary Street, the Butt-Cummings Construction/Drough Mortgage and the Cross-Rowe and Cummings Construction mortgage did not result in a loss to any client. The Butt-Cummings Construction/Drough mortgage and the Cross-Rowe and Cummings Construction mortgage were both fully repaid and discharged without incident.

Losses were suffered by clients in the Morris and Cummings Construction/Lillian Robinson mortgage and the MacPherson-Cummings mortgage transaction, when each of the mortgagors defaulted on their mortgage in those transactions.

On July 22, 1993 Cummings and Cummings Construction issued an amended Statement of Claim against the Solicitor. Cummings claimed the sum of \$20,290 with respect to the MacPherson mortgage and Cummings Construction claimed the sum of \$33,100 with respect to the Morris mortgage. The action was settled for \$60,000 inclusive of interest and costs. The Solicitor advanced the sum of \$25,000 consisting of two \$5,000 L.P.I.C deductibles for each claim, and a further \$15,000. LPIC advanced the remainder of the Settlement Funds in the sum of \$35,000.

In the Morris and Cummings Construction/Lillian Robinson mortgage, Cummings Construction initial investment in the syndicated mortgage was as to a 60% interest the mortgage of \$50,000 for a total investment of \$30,000. Cummings total initial investment in the MacPherson-Cummings mortgage was in the sum of \$16,072, for a total initial investment of \$46,072. Cummings and Cummings Construction recovered a total sum of \$60,000 from the Solicitor and LPIC.

The Solicitor and members of his family including his mother-in-law, Lillian Robinson had also advanced mortgage funds, in particular with respect to the Morris and Cummings Construction/Lillian Robinson mortgage regarding 14-16-18 Russell St., Smith Falls, Ontario. As a result of the default the Solicitor and his mother-in-law sustained a loss of approximately \$50,000 which was never recovered. With respect to the MacPherson-Cummings mortgage the Solicitor through his wife Eleanor Roine advanced mortgage funds totalling \$16,000 which funds were also lost. In addition the Solicitor paid \$25,000 as his contribution to the settlement of the negligence claim by Cummings and Cummings Construction Ltd.

Factors in mitigation considered by the Committee included the \$25,000 paid by the Solicitor, the fact that the complaints refer to five transactions over a five year period which, based on information from Mr. Roine's former partner, constituted a tiny fraction of a very successful practice during the relevant time. The Committee also took note of the fact that the Solicitor had co-operated fully with the Society, had entered into an Agreed Statement of Fact thereby saving the time and expense of a hearing, that he has no prior discipline history over a legal career spanning 27 years. The Committee was also presented with extensive character reference letters including letters from a number of the clients involved in the transactions forming the subject matter of the complaints. The Committee also took note of the fact that all of the clients involved in the transactions were verbally aware of the conflict of interest and the Solicitor's personal interest in certain of the properties save and except possibly Mr. Cummings.

The Solicitor has enjoyed an unblemished legal career and stands high in the eyes of his colleagues in the profession. In addition the Committee was presented with information that the Solicitor spent a considerable period of time outside of his office during the relevant time and often outside Ontario in connection with the legal affairs of unions, Indian Bands and other similar groups. Quite a substantial amount of this work outside his office was performed on a pro bono basis. The Committee also heard submissions that the Solicitor has taught law both at the university level and in the Bar Admission Course for the Law Society of Upper Canada. Some of the character information was emphatic that the Solicitor was a person who put his own interests behind those of his clients

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and other colleagues and further that the Solicitor was not motivated by greed. Overall, the character letters presented the Solicitor as a highly competent lawyer, a humanitarian and a person possessed with the highest honesty, charity and integrity.

The Committee was also presented with information that the Solicitor is now a sole practitioner who has experienced a dramatic drop in income compared to that which he had previously enjoyed during the time the transactions giving rise to this complaint occurred. Based on the information provided to the Committee they were of the view that the Solicitor should be given a reasonable time within which to pay the agreed upon costs and accordingly recommends that the Solicitor be granted 12 months within which to pay the Law Society's costs.

Larry Andrew Roine was called to the Bar on the 21st day of March, 1969.

ALL OF WHICH is respectfully submitted

DATED this 13th day of June, 1996

Heather J. Ross
Chair

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

The recommended penalty of the Discipline Committee was that solicitor's undertaking not to practise for a period of 30 days commencing April 30 to May 30, 1996 be accepted as the requirement of a 30 day suspension and costs in the amount of \$6,000 be paid within 12 months.

Counsel for the Society advised that the Report had previously been referred back to the Committee who heard this matter for amendment.

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

Carried

Re: Alexandre BROOKS - Burlington

The Secretary placed the matter before Convocation.

Messrs. Wilson, Crowe and Carey and Ms. Sealy withdrew for this matter.

Ms. Curtis did not participate.

Mr. Neil Perrier appeared for the Society and Mr. Brian Greenspan appeared for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 18th June, 1996, together with an Affidavit of Service sworn 26th June, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th June, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th June, 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

Thomas J. P. Carey, Chair
W. Michael Adams
Hope Sealy

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

Neil Perrier
for the Society

ALEXANDRE BROOKS
of the City
of Burlington
a barrister and solicitor

Brian Greenspan
for the solicitor

Heard: May 14, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 13, 1995 Complaint D44/95 was issued against Alexandre Brooks alleging that he was guilty of professional misconduct.

The matter was heard in public on May 14, 1996 before this Committee comprising Thomas Carey, Chair, Michael Adams and Hope Sealy. The Solicitor attended the hearing and was represented by Brian Greenspan. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D44/95

2. a) In December of 1983, while representing his client, Alexander Karpuchin, he completed the transfer of a property municipally known as 717 Kipling Avenue, Etobicoke, to Walari and Nina Bill (Purchasers) knowing that his client was the actual Purchaser and with a view to concealing his client's interest from Jenny Arrenegado, his client's spouse.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D44/95 and is prepared to proceed with a hearing of this matter on May 14 and 15, 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 D44/95 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 in March, 1977. He has been a sole practitioner since June, 1990 and carries on a practice in the City of Burlington.

5. The complainant, Ms. Jenny Arrenegado, was the spouse of Mr. Alexander Karpuchin.

6. In February, 1983, Mr. Karpuchin entered into a lease to own agreement with Waffles Electric Limited ("Waffles"), with respect to a property located at 717 Kipling Ave., Etobicoke (the "Property"). The scheduled closing date was December 23, 1983.

7. In May, 1983, pursuant to the lease to own agreement, Mr. Karpuchin became a tenant at the Property.

8. On September 2, 1983, Mr. Karpuchin and Ms. Arrenegado separated.

9. Jenny Arrenegado met with her then solicitor, Mr. Carl Van Houten, at 11:00 a.m. on October 5, 1983 regarding the initiation of separation proceedings.

10. On October 6, 1983, a meeting occurred between 4:00 p.m. and 9:00 p.m. at Mr. Van Houten's office. In attendance were also Jenny Arrenegado, Mr. Karpuchin and his solicitor at the time, Mr. Kettner, to discuss a separation agreement. Negotiations continued and upon leaving Mr. Van Houten's office at 9:00 p.m., Ms. Arrenegado was under the impression that an agreement had been reached. However, upon her return to her house, she was informed that Mr. Karpuchin had terminated Mr. Kettner's retainer.

11. Sometime between October 6, 1983 and December, 1983, Mr. Karpuchin retained Mr. Brooks as his solicitor with respect to the separation proceedings. The Solicitor acted as counsel for Mr. Karpuchin at all subsequent material times.

12. By Deed dated December 23, 1983, Walari and Nina Bill purchased the Property from the Waffles for the sum of \$232,000. The Deed was registered on title to the Property on December 30, 1983 (Document Book, Tab 1).

13. The Solicitor drafted a Deed dated December 29, 1983 wherein the Property was sold by Walari and Nina Bill to Mr. Karpuchin for the sum of \$1.00 and "other valuable consideration" (Document Book, Tab 2). This Deed was not registered until April 8, 1987 by another solicitor.

14. The result of the above two transactions was that the Bills would purchase the Property from the Waffles and hold it in trust for Mr. Karpuchin, so that Ms. Arrenegado would not get interest in the Property through the separation proceedings. Both Deeds were prepared by the Solicitor and executed at his office in December, 1983.

15. On January 11, 1984, Mr. Karpuchin offered to settle the separation by a lump sum payment to Ms. Arrenegado in the amount of \$18,500.00. On January 19, 1984, Ms. Arrenegado advised her counsel that the offer was unacceptable.

16. On May 1, 1987, a Deed of Purchase and Sale from Mr. Karpuchin to Tempo Vending Limited in the sum of approximately \$720,000 was registered on title to the Property.

17. In November, 1987 a Petition for Divorce was issued by Jenny Arrenegado naming Mr. Alexander Karpuchin and Alexander Karpuchin Limited ("Karpuchin Ltd.") as Respondents in Ontario Court (General Division), Action No. ND149705/87.

18. On January 25, 1991, the Solicitor was examined for discovery in the another action involving the Bills (Document Book, Tab 3). In the course of the examination for discovery, the Solicitor stated the following:

"While we were going through the matrimonial litigation, I guess, we discussed -- or I suggested that maybe that property should be purchased by somebody that he knows, or close to him, in trust, so that, for whatever reason, Jennie [the Complainant] -- I forget her last name -- could not, in any way, shape or form, try to get some interest, or grab some interest in this property."

Further:

"Well, once we discussed the situation about having somebody to hold the property in trust, or to hold the property for him [Karpuchin] until the matrimonial storm blew over."

Further:

"The only thing that was discussed was the trust arrangement, to protect Mr. Karpuchin from Jennie. And that's all we talked about: how do we protect this property from Jennie. And they [the Bills] were there strictly -- all the discussions that I had with them were strictly on the basis that they were going to hold this property in trust for Mr. Karpuchin, until the problems between Alexander Karpuchin and Jennie were resolved."

Further:

"I thanked them [the Bills] very much for helping out Alex -- Alex Karpuchin, that is -- and Mrs. Bill, who was the more talkative of the two, said, 'You know, we've got to protect Alex -- that's Alex Karpuchin -- from Jennie. She's a bad girl. Look what she's doing to Alex.' And I really thanked her for helping Alex Karpuchin."

Further:

"At that time, I thought I was acting for the Bills to help and assist Mr. Karpuchin in resolving this situation."

27th June, 1996

19. On June 14, 1993, Ms. Arrenegado prepared a Motion for an Order amending her Petition so as to add the Solicitor as a Respondent and to request a declaration that the Separation Agreement between the parties of January 25, 1984 was not valid, binding or enforceable and that it be set aside. A copy of the Notice of Motion is contained at Document Book, Tab 4.

20. On August 27, 1993, the Honourable Justice E. McDonald ordered that Ms. Arrenegado's motion be adjourned until after the final disposition of the Bills' action. The Order further restrained Mr. Karpuchin and any companies which he owned or controlled from disposing of or encumbering any property in his or their control. A copy of the Order is contained at Document Book, Tab 5.

V. PRIOR DISCIPLINE

21. A complaint of professional misconduct was issued against the Solicitor in September, 1993 (Document Book, Tab 6). That complaint was heard before a Discipline Committee in December, 1995 at which time the Committee, upon joint recommendation of counsel, indicated that it would recommend to Convocation that the Solicitor be suspended for six months, commencing December 13, 1995, and ordered to pay \$3,500 in costs to the Law Society. We are awaiting a written Report and Decision of the Discipline Committee in this matter.

DATED at Toronto, this 14th day of May, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Alexandre Brooks be reprimanded in Convocation and pay Law Society costs in the amount of \$500.

REASONS FOR RECOMMENDATION

There is really no greater rule in the Rules of Professional Conduct than that of Integrity, found in Rule 1. In many ways, it can be said that all the other rules flow naturally from that rule, and it is the view of the Committee that notwithstanding that the Solicitor was six years out of practice at the time, clearly the Solicitor should have known that what was being undertaken was an attempt, (and it turned out to be a fairly successful attempt), to hide the true state of the client's assets, albeit business assets, from his spouse. Notwithstanding the law at that time, it was clearly thought to be in the best interest of the client or the transfer of title would never have been undertaken.

It is noted by the Committee that the Solicitor had no personal interest in this transaction. We were told that there was not a close personal relationship between he and the client, and we accept that he did not personally profit. It may very well be a case of the Solicitor blinding himself to his obligations by being overly influenced by a client, but it is clearly a serious breach.

This is the kind of improper conduct that tends to bring the profession into disrepute, tends to give ammunition to the argument that many lawyers are mere hand maidens for the misdeeds of their clients or ammunition for clients' weaponry. Especially in family matters, where there is often a real sense of hostility and animosity between the parties, solicitors particularly have to be on guard against being enveloped by that atmosphere.

27th June, 1996

Having said that, it is noteworthy that this was the first matter where the Solicitor found himself in difficulty with the Law Society. The Solicitor was young at the time, and the matter did not come to the attention of the Society until 1993, some ten years after the event. It apparently came to the attention of the complainant before that, perhaps as long as two and a half years before that. That does not take away from the necessity that there be a public reprimand and a public indication of the seriousness with which the Society regards this type of behaviour.

We also note that the matter essentially came to the public attention by the Solicitor's own admission in a lawsuit involving the trustees of the property and his original client. It was the Solicitor's forthrightness in admitting those facts that brings him before a Discipline Committee. He should be commended for his candour and his honesty at that time.

For all those reasons, we recommend that the reprimand be carried out at Convocation, and that the Solicitor pay the Society's costs in the amount of \$500.

Alexandre Brooks was called to the Bar on March 29, 1977.

ALL OF WHICH is respectfully submitted

DATED this 18th day of June, 1996

Thomas J.P. Carey
Chair

Counsel made submissions on the issue of timeliness of the June 18th Report.

Counsel, the reporter and the public withdrew.

After brief deliberations it was agreed that the matter would proceed.

Counsel, the reporter and the public were recalled and advised that the matter would proceed.

There were no submissions on the findings of Complaint D44/95 and the Report was adopted.

The recommended penalty of the Discipline Committee of the June 18th Report was that the solicitor be reprimanded in Convocation and pay costs in the amount of \$500.

There were joint submissions by counsel in support of the recommended penalty.

Counsel, the reporter and the public withdrew.

It was moved by Ms. Ross, seconded by Ms. Stomp that the last sentence in the first paragraph under the heading Reasons, be deleted, that is "Notwithstanding the law at that time, it was clearly thought to be in the best interest of the client or the transfer of title would never have been undertaken."

27th June, 1996

It was moved by Ms. Curtis, seconded by Ms. Ross that the solicitor be suspended for a period of 3 months.

It was moved by Mr. Gottlieb but failed for want of a seconder that the solicitor be suspended for a period of 6 months.

It was moved by Ms. Puccini, seconded by Ms. Stomp that the solicitor be suspended for a period of 1 month.

Counsel, the reporter and the public were recalled and informed of the motions for a higher penalty.

Counsel for the solicitor requested an adjournment to the Discipline Convocation in September and waived the seised committee requirement. He advised that the solicitor would continue his undertaking not to practise and asked Convocation to take into account that by the September Convocation the solicitor will have been out of practice for a period of 9 months.

Counsel, the reporter and the public withdrew to deliberate.

Convocation voted to grant the adjournment.

Counsel, the reporter and the public were recalled and informed of Convocation's decision to grant the adjournment to the September Discipline Convocation.

Re: Sheldon Israel HOWARD - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Finkelstein and Ms. Carpenter-Gunn withdrew for this matter.

Ms. Curtis did not participate.

Mr. Allan Maclure appeared for the Society and Mr. William Black, Duty Counsel appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 22nd March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th March, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th June, 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

Philip M. Epstein, Q.C., Chair
Kim A. Carpenter-Gunn
Neil Finkelstein

27th June, 1996

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

Allan Maclure
for the Society

SHELDON ISRAEL HOWARD
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 6, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

THE DISCIPLINE COMMITTEE

REPORT AND DECISION

Philip M. Epstein, Q.C., Chair
Kim A. Carpenter-Gunn
Neil Finkelstein

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

Allan Maclure
for the Society

SHELDON ISRAEL HOWARD
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 6, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 14, 1995 Complaint D149/95 was issued against Sheldon Israel Howard alleging that he was guilty of professional misconduct.

The matter was heard in public on December 6, 1995 before this Committee composed of Philip M. Epstein, Q.C., Chair, Kim A. Carpenter-Gunn and Neil Finkelstein. The Solicitor was not present at the hearing nor was he represented. Allan Maclure appeared on behalf of the Law Society.

DECISION

Complaint D149/95

2. a) he failed to file with the Society on or before November 30, 1993 and November 30, 1994, a certificate in the form prescribed by the Rules, the Rules thereby contravening Section 16(3) of Regulation 708 pursuant to the Law Society Act.

27th June, 1996

Finding of the Committee

The solicitor did not appear. Ms. Cado, an employee of the Law Society gave evidence of attempts to serve the solicitor by registered mail, by ordinary mail and by courier. She gave further evidence of her attempts to locate the current address and telephone number of the solicitor. It appears that the documents sent by registered mail were not picked up, but the documents sent by courier were accepted but by a person other than the solicitor.

There has been no communication from the solicitor either to the filing department or Law Society counsel. The Society has made attempts to locate the solicitor through the telephone book and through driver's licence searches but to no avail. The filings remain outstanding.

Based on the evidence of Ms. Andrighetti and the documents filed as exhibits and absent any explanation by the solicitor, we find the complaint of professional misconduct has been made out.

Accordingly, and again, in the absence of any explanation, the committee has no alternative but to find the solicitor guilty of professional misconduct.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Sheldon Israel Howard be suspended for a period of one month and thereafter until his filings have been made, such suspension to commence at the conclusion of his current administrative suspension.

REASONS FOR RECOMMENDATION

The solicitor has no discipline record, but on the other hand, appears to have been under administrative suspension since 1993 for failing to pay annual fees and has failed to respond to the Law Society in connection with their request for the annual filings. It is important for the protection of the public that these filings be made and accordingly, the committee has no alternative but to recommend to Convocation that the solicitor be suspended until such filings are brought up to date.

Accordingly, in the circumstances, we recommend that the solicitor be suspended for a period of one month following the conclusion of his administrative suspension and from month to month thereafter until the filings are brought up to date to the satisfaction of the Society.

Sheldon Israel Howard was called to the Bar on April 1, 1986.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1996

Philip M. Epstein, Q.C.
Chair

27th June, 1996

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

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month and thereafter until his filings have been made, such suspension to commence at the conclusion of his current administrative suspension.

Both Counsel made submissions in support of a reprimand in Committee.

It was moved by Mr. Swaye, seconded by Mr. Carey that the penalty be reduced to an Invitation to Attend.

It was moved by Mr. Gottlieb, seconded by Ms. Backhouse that there be no penalty and the finding be set aside.

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

The Swaye/Carey motion was withdrawn.

The Gottlieb/Backhouse motion was voted on and adopted.

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

Re: Sean Leo Kevin DALEY - Woodbridge

The Secretary placed the matter before Convocation.

Messrs. Topp, Swaye and MacKenzie and Ms. Sealy withdrew for this matter.

Ms. Curtis did not participate.

Mr. Glenn Stuart appeared for the Society and Mr. Douglas Crane appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 25th April, 1996, together with an Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd May, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th June, 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

Gerald A. Swaye, Q.C., Chair
Gavin MacKenzie
Hope Sealy

27th June, 1996

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

Lesley Cameron
for the Society

SEAN LEO KEVIN DALEY
Of the Town
of Woodbridge
a barrister and solicitor

Douglas Crane, Q.C.
for the solicitor

Heard: January 30, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 31, 1995 Complaint D43/95 was issued against Sean Leo Kevin Daley alleging that he was guilty of professional misconduct.

The matter was heard in public on January 30, 1996 before this Committee comprising Gerald A. Swaye, Q.C., Chair, Gavin MacKenzie and Hope Sealy. The Solicitor attended the hearing and was represented by Douglas Crane, Q.C. Lesley Cameron appeared on behalf of the Law Society.

DECISION

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

Complaint D43/95

2. a) He failed to reply to communications from the Law Society requesting a response to a Law Society report regarding deficiencies of his practice's books and records, despite letters dated September 16, 1994, October 25, 1994, and November 29, 1994;
- b) He failed to maintain sufficient balances on deposit in his trust account to meet all his obligations with respect to moneys held in trust for clients contrary to section 14(12) of Regulation 708 made pursuant to the Law Society Act;
- d) He failed to maintain his books and records in accordance with Section 15 of Regulation 708 made pursuant to the Law Society Act;
- e) He failed to co-operate with a Law Society representative by failing to reply to communications from the Law Society despite:
 - i) the Society's letter of November 18th, 1994;
 - ii) the Society's telephone calls of November 15th and 16th 1994;

27th June, 1996

- g) He failed to respond to communications from the Law Society, despite letters dated July 8, August 19, November 2 and December 8, 1994, and telephone requests on August 5, 9, 15, 18, 1994.

Evidence

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

"AGREED STATEMENT OF FACTS

1. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint 43/95 and is prepared to proceed with a hearing of this matter on January 16 and 17, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D43/95 and admits: particular (a) when amended to delete the words "November 18, 1994" and "and telephone messages on November 15, 1994, November 16, 1994 and December 14, 1994"; particulars (b), (d) and (e); and particular (g) when amended to delete the words "and 26," and "and October 31, 1994". The Solicitor further admits that these particulars as supported by the facts set out below constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 22, 1991. He practices as a sole practitioner in Woodbridge, Ontario.

Particulars 2(b) He failed to maintain sufficient balances on deposit in his trust account to meet all his obligations with respect to moneys held in trust for clients contrary to section 14(12) of Regulation 708 made pursuant to the Law Society Act;

2(d) He failed to maintain his books and records in accordance with Section 15 of Regulation 708 made pursuant to the Law Society Act;

5. On or about October 29, 1993, a Law Society Examiner attended at the Solicitor's office and conducted an investigation of his books and records.

6. The audit revealed that, as at February 1993, there was a shortage in the Solicitor's trust account of approximately \$16,695.71. The table attached as Tab 1 of the Document Book outlines all of the client trust ledger accounts that were overdrawn during the period from December 1992 to December 1993. These trust shortages were replaced in December of 1993.

7. The audit gave rise to concerns that the Solicitor had used his trust account for personal transactions. Attached as Tab 2 of the Document Book is the client trust ledger account for the "S. Daley Adjustment Account" showing transactions from September 30, 1992 to December 31, 1993.

27th June, 1996

8. The Solicitor's explanation for the personal transactions through his trust account was that when the firm ran out of general account cheques, it used trust cheques with the account number whited out and the general account number written over the whited-out area. However, the bank relied on the computer coding on the cheques with the result that they were processed through the trust account rather than the general account, thereby creating a debit balance in the "S. Daley Adjustment Account". Attached as Tab 3 of the Document Book is the Law Society examiner's handwritten notes re discussion with Solicitor dated December 10, 1993 and January 4, 1994.

9. On August 15, 1994, the Law Society examiner attended at the Solicitor's office to obtain copies of the cheques that had been whited out, but was advised that the accounting records could not be located and that the records would be faxed to the Law Society. A copy of the Law Society examiner's notes is at Tab 4 of the Document Book.

10. On August 19, 1994, the Law Society examiner spoke with Sandra of the Solicitor's office who indicated that the Trustee in Bankruptcy had all the books and records and that she would be sending someone to pick up the cheques that day. A copy of the telephone transaction memo is attached as Tab 5 of the Document Book.

11. By letter dated September 28, 1994, the Society examiner asked that she be advised as to when she would be in receipt of the cheques. A copy of the September 28, 1994 letter is attached as Tab 6 of the Document Book.

12. Copies of all but two of the whited out cheques were provided at a pre-hearing on December 4, 1995 and the originals shown to the Law Society examiner during her attendance at the Solicitor's office on December 11, 1995. The cheques support the Solicitor's explanation for the transactions through the S. Daley Adjustment trust account. The Solicitor states that the fact that these cheques were passing through trust did not come to his attention because of the problems with his books and records, as set out below.

13. The Solicitor failed to maintain his books and records in that:

- (i) trust receipts and disbursements journals, client ledger accounts, general receipts and disbursements journals were 8 months in arrears;
- (ii) trust comparisons were 7 months in arrears;
- (iii) trust cash receipts and disbursement records did not always indicate full particulars of money received and disbursed;
- (iv) trust and general bank account deposit slips did not detail source and client reference for money deposited;
- (v) trust bank reconciliations were not detailed; and
- (vi) there were inactive trust ledger accounts.

The Solicitor signed a Questionnaire and an Acknowledgement of the deficiencies contained in his books and records on December 10, 1993, copies of which are attached as Tabs 7 and 8 of the Document Book.

14. As a result of the trust deficiencies noted above, the Law Society examiner placed co-signing controls on the Solicitor's trust account on October 29, 1993. Co-signing was removed on December 10, 1993 as the Solicitor's books and records had been brought up to date and the trust shortage was replaced.

27th June, 1996

Particular 2(a) He failed to reply to communications from the Law Society requesting a response to a Law Society report regarding deficiencies of his practice's books and records, despite letters dated September 16, 1994, October 25, 1994 and November 29, 1994.

15. By letter dated January 24, 1994, a copy of which is attached as Tab 9 of the Document Book, the Law Society reminded the Solicitor of the deficiencies contained in his books and records and requested that he acknowledge receipt of the letter and confirm that his books and records had been brought into compliance with sections 14 and 15 of Regulation 708.

16. On or about February 14, 1994, the Law Society received a message from "Sandy" of the Solicitor's office, advising that the Solicitor was on vacation until February 27, 1994 and would respond to the Society's letter of January 24, 1994 upon his return. A copy of the Law Society's telephone transaction memo dated February 14, 1994 is attached at Tab 10 of the Document Book.

17. By letter dated March 24, 1994, a copy of which is attached at Tab 11 of the Document Book, the Law Society requested a response to its letter dated January 24, 1994. The Solicitor did not respond.

18. By letter dated May 5, 1994, a copy of which is attached at Tab 12 of the Document Book, the Law Society enclosed copies of its letters dated January 24, 1994 and March 24, 1994 and requested that the Solicitor respond in writing within 15 days, failing which the matter would be referred to the Chair and Vice-Chair of the Discipline Committee for authorization of a formal complaint. The Solicitor was reminded of his professional obligation to respond promptly to any communication from the Society.

19. On or about May 27, 1994, "Sandy" of the Solicitor's office left a message with the Law Society that the Solicitor would be delivering his response by June 1, 1994 at the latest. Attached at Tab 13 of the Document Book is a copy of the telephone transaction memo.

20. On May 30, 1994, Sandy of the Solicitor's office left a message with the Law Society that he would respond by the end of that week. Attached at Tab 14 of the Document Book is a copy of the telephone transaction memo.

21. By letter dated August 15, 1994, a copy of which is attached at Tab 15 Document Book to this Agreed Statement of Facts, the Solicitor provided a partial response to the Society's letter dated January 24, 1994.

22. By letter dated September 16, 1994, a copy of which is attached as Tab 16 of the Document Book, the Law Society acknowledged receipt of the Solicitor's letter dated August 15, 1994 and requested that the Solicitor respond to sections 1, 10, 11 and the last paragraph of its letter dated January 24, 1994. The Solicitor did not respond.

23. By letter dated October 25, 1994, a copy of which is attached at Tab 17 Document Book, the Law Society requested a response to its letter dated September 16, 1994. The Solicitor did not respond.

24. By registered letter dated November 29, 1994, a copy of which is attached at Tab 18 of the Document Book, the Law Society enclosed copies of its letters dated September 16, 1994 and October 25, 1994 and requested a written response to same within 15 days, failing which the matter would be referred to the Chair and Vice-Chair of the Discipline Committee for authorization of a formal complaint. The Solicitor was also reminded of his professional obligation to respond promptly to any communication from the Law Society.

27th June, 1996

25. On or about December 14, 1994, "Sandra" of the Solicitor's office left a message with the Law Society Examiner that "due to bankruptcy etc., [the Solicitor] has been having trouble getting his books from the accountant and the trustee" and that he would be meeting with his accountant that Saturday and would respond to the Law Society by Monday, December 19, 1994. Attached at Tab 19 of the Document Book is a copy of the telephone transaction memo. The Solicitor did not provide his response by that date.

26. The Solicitor did not provide any response to the Law Society's letters dated September 16, 1994, October 25, 1994 and November 29, 1994 until two letters dated March 23, 1995, which were not received by the Society until March 30, 1995.

27. The March 23, 1995 letters from the Solicitor indicated that the Solicitor's discharge hearing would be held on April 7, 1995 and that within one week of receipt of his books and records, he would forward copies of all cheques requested and respond to the outstanding books and records matters. Attached at Tab 20 of the Document Book are copies of the March 23, 1995 letters.

28. By letter dated April 19, 1995 (Tab 21, Document Book) the Law Society wrote to the Solicitor indicating that despite his letter dated March 23, 1995, the Society still had received no reply to the outstanding matters.

29. By facsimile transmission dated May 5, 1995 (Tab 22, Document Book) and received by the Law Society on May 26, 1995, the Solicitor advised that his discharge hearing had been opposed and had been adjourned to October 11, 1995 and that he would forward a copy of his current trust funds, held by another firm, upon receipt of a current statement.

30. By letter dated October 18, 1995 (Tab 23, Document Book) received by the Law Society on November 8, 1995, the Solicitor provided a partial response to the outstanding matters concerning his books and records and indicating that he had forwarded a copy of the Law Society's correspondence of January 24, 1994 to his accountant.

31. By letter dated October 19, 1995 (Tab 24, Document Book), received by the Law Society on November 10, 1995, the Solicitor's accountant provided a partial response to the outstanding matters concerning the Solicitor's books and records.

32. By letter dated November 16, 1995 (Tab 25, Document Book), the Law Society wrote to the Solicitor responding to his letter of October 18, 1995 and his accountant's letter of October 19, 1995. The Law Society outlined the missing information and unanswered questions and requested a response prior to December 1, 1995. It did not receive a response prior to December 1, 1995.

33. On December 11, 1995, the Law Society examiner attended at the Solicitor's office and reviewed the outstanding information outlined in the Society's letter of November 16, 1995. This attendance was arranged at a pre-hearing held December 4, 1995 and the complaints were adjourned from the dates previously scheduled, being December 5 and 6, 1995, to allow the missing information to be produced.

Particular 2(e) He failed to cooperate with a Law Society representative by failing to reply to communications from the Law Society despite:

- i) the Society's letter of November 18th 1994;
- ii) the Society's telephone calls of November 15th and 16th 1994.

34. On November 15, 1994, the Society called the Solicitor's office to arrange an appointment to meet with the Law Society's examiner. Attached at Tab 26 of the Document Book is a copy of the telephone transaction memo dated November 15, 1994.

35. On November 16, 1994, Sandra of the Solicitor's office left the Society a voice mail message. The Society returned Sandra's call and again left a message asking that the call be returned. A copy of the telephone transaction memo of November 16, 1994 is attached at Tab 27 of the Document Book.

36. By letter dated November 18, 1994 (Tab 28, Document Book), the Law Society wrote to the Solicitor asking him to contact the Society prior to December 2, 1994 to arrange an appointment to review the issue of whether the Solicitor had practised under suspension.

37. The Society received no response until the Solicitor's attendance at the pre-hearing on December 4, 1996. The arrangements made at the pre-hearing for the attendance of the Law Society examiner at the Solicitor's office on December 11, 1995 and the adjournment of the December 5 and 6, 1995 hearing dates were also made on the understanding that the examiner would be given an opportunity to review the files relevant to the practising under suspension concern. On December 4, 1995, the Society examiner wrote to the Solicitor, outlining the files she wished to review. During her attendance on December 11, 1995, 16 of the 30 files she wished to review were available. Further information was provided over the phone on December 19, 1995 and in late January, 1996. To date, one file remains outstanding.

Note: Amendment, see page 295

Particular 2(g) He failed to respond to communications from the Law Society, despite letters dated July 8, August 19, November 2 and December 8, 1994, and telephone requests on August 5, 9, 15 and 18, 1994.

38. By letter dated May 26, 1994 (Tab 32, Document Book), the Law Society received a complaint from Luis Zamora.

39. By letter dated July 8, 1994, a copy of which is attached at Tab 33 of the Document Book, the Law Society requested that the Solicitor respond to Mr. Zamora's letter of complaint.

40. On or about July 14, 1994, the Solicitor's secretary telephoned the Law Society and advised that the Solicitor would be away from the office until first week of August (Tab 34, Document Book).

41. On or about August 5, 1994, the Law Society telephoned the Solicitor's office and was advised that he would not be returning to the office until August 8, 1994. The Society's Complaints Officer left a message for the Solicitor to return her call (Tab 35, Document Book).

42. On or about August 9, 1994, the Law Society telephoned the Solicitor's office and left a message for him to return the call (Tab 35, Document Book). The Solicitor did not respond.

43. On or about August 15, 1994, the Law Society telephoned the Solicitor's office and left a message for him to return the call (Tab 35, Document Book). The Solicitor did not respond.

44. On or about August 18, 1994, the Law Society telephoned the Solicitor's office and left a message for him to return the call (Tab 35, Document Book). The Solicitor did not respond.

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45. By letter dated August 19, 1994, a copy of which is attached as Tab 36 of the Document Book, the Law Society requested that the Solicitor respond to its letter dated July 8, 1994 within 7 days, failing which the matter would be referred to the Chair of the Discipline Committee.

46. On or about August 26, 1994, "Sandra" of the Solicitor's office telephoned the Society and advised that the Solicitor would provide his response by September 20, 1994. A copy of the telephone transaction memo is at Tab 37 of the Document Book.

47. On or about October 31, 1994, the Society was advised by "Sandy" of the Solicitor's office that they were attempting to get accounting information but the bookkeeper had an operation recently and was expected back tomorrow and that he would be providing his response "as soon as possible" (Tab 38, Document Book).

48. By letter dated November 2, 1994 (Tab 39, Document Book), the Society advised the Solicitor that if it had not received a response from him by November 7, 1994, the matter would be presented to the Discipline Committee.

49. On or about November 8, 1994 "Sandra" of the Solicitor's office left a message with the Law Society that the Solicitor would be delivering his response that day (Tab 40, Document Book). The Solicitor did not deliver his response.

50. By registered letter dated December 8, 1994 (Tab 41, Document Book), the Law Society advised that it had received "Sandra's" message of November 8, 1994 and therefore extended the time for the Solicitor to respond to December 21, 1994, failing which the matter would be referred to the Discipline Committee.

51. By facsimile transmission dated March 23, 1995, (Tab 42, Document Book), the Solicitor referred to his earlier correspondence of December 23, 1994 and indicated that his discharge hearing would be heard on April 7, 1995, that upon receipt of his discharge all books and records would be returned to him and that within one week of his books and records, the Society would receive a full response to Mr. Zamora's complaint.

52. By letter dated March 30, 1995 (Tab 43, Document Book), Kate Wootton, then Discipline Counsel, wrote to the Solicitor advising him of the authorization of a complaint against him, one of the particulars of which would be his failure to reply to the Society. She also advised the Solicitor that the Society did not receive the correspondence of December 23, 1994.

53. In May of 1995, the Society received a copy of the Solicitor's fax dated December 23, 1994, without cover page or transmission confirmation (Tab 44, Document Book). The Solicitor intends to lead evidence as to the date of delivery of this facsimile transmission to the Society.

V. PRIOR DISCIPLINE

54. On February 1, 1994, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$500 for failing to reply to the Law Society and failing to comply with his personal Undertaking to a fellow solicitor. Attached at Tab 45 of the Document Book are copies of Complaints D200/93 and D5/94, including the endorsements.

DATED at Toronto, this 30th day of January, 1996"

RECOMMENDATION AS TO PENALTY

The Committee recommends that Sean Leo Kevin Daley be Reprimanded in Convocation and pay Law Society costs in the amount of \$2,000.

REASONS FOR RECOMMENDATION

Originally Complaint D397/94 was presented to the Committee, however this was withdrawn. In its place Complaint D43/95 was presented. Complaint D43/95 was further amended as follows:

Note: Amendment, see page 295

1. Paragraph 2(c) was withdrawn.
2. Paragraph 2(f) was ultimately withdrawn.
3. Paragraph 2 of Complaint D43/95 was amended pursuant to Paragraph 3 of the agreed Statement of Facts.

Re: Prior Discipline

On February 1, 1994 the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$500.00 for failing to reply to the Law Society and failing to comply with his personal undertaking to a fellow solicitor.

The Solicitor presently has admitted to the following misconduct as set out in the complaint as follows:

1. Failed to reply to various communications from the Law Society;
2. Failed to maintain sufficient balances on deposit in his trust account to meet all of his obligations;
3. Failed to maintain his books and records;
4. Failed to co-operate with the Law Society representative.

The complaints, as heard by the Committee, in some respects are very similar to the varied complaints that the Solicitor was previously disciplined for, and for which he was previously reprimanded in Committee and ordered to pay costs in the amount of \$500.00.

By way of mitigation, the Solicitor indicated the following:

1. He is 31 years of age;
2. He was graduated from Dalhousie University in the spring of 1989 and came to Ontario to do his articles;
3. He went into bankruptcy in November of 1993. He had little co-operation from his accountant because of non payment of the account;
4. He had difficulties examining his books and records due to the fact the same were in the hands of the trustee in bankruptcy;
5. He has been involved in the Practice Review Programme of the Law Society commencing 1 1/2 years ago;
6. He has a specific tickler system together with a computer list setting out various dates and deadlines that have to be honoured;
7. At the time of the complaints he had a degree of inexperience;
8. He received his call to the Bar in 1991.

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Taking everything into consideration in regard to this matter, and particularly considering his previous charge, it is the view of this Committee that the Solicitor should be reprimanded in Convocation in order to bring the message home both to this Solicitor and to the profession that this type of conduct will not be tolerated in our profession. In our view, this penalty would be fair and reasonable under all the circumstances. In addition, the Solicitor should pay costs to the Law Society in the sum of \$2,000 to offset the time spent in regard to the investigation and prosecution of this matter.

ALL OF WHICH is respectfully submitted

DATED this 25th day of April, 1996

Gerald A. Swaye, Q.C.
Chair

Counsel for the Society asked that the Report be amended as follows:

- page 9., paragraph 37., 1st sentence - date should be December 4, "1995" not 1996
- page 13, 1st paragraph, 2nd sentence under heading Reasons - delete the words "In its place"

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

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation and pay costs in the amount of \$2,000.

Mr. Stuart advised that the solicitor had paid the Society's costs.

Both counsel made brief submissions in support of the recommended penalty.

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

Carried

The Treasurer administered the reprimand.

Re: Lee Edward WARD - Carlton Place

The Secretary placed the matter before Convocation.

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

Ms. Curtis did not participate.

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

27th June, 1996

Convocation had before it the Report of the Discipline Committee dated 29th February, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th 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

Nancy L. Backhouse, Chair
Thomas Carey
Shirley O'Connor

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

Elizabeth Cowie
for the Society

LEE EDWARD WARD
of the Town
of Carlton Place
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 16, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 30, 1995 Complaint D139/95 was issued, and on November 16, 1995 Complaint D348/95 was issued against Lee Edward Ward alleging that he was guilty of professional misconduct.

The matter was heard in public on January 16, 1996 before this Committee comprising Nancy Backhouse, Chair, Thomas Carey and Shirley O'Connor. The Solicitor did not attend the hearing nor was he represented. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D139/95

2. a) He failed to comply with his written Undertaking dated May 5, 1993, by failing to restrict his practise of law, to that of criminal defence litigation, uncontested divorces and residential real estate, by continuing to act on a personal injury claim for his clients, Michael Robillard and Lynn Robillard;

- b) He failed to provide a reply to the Law Society regarding a complaint by Michael Robillard and Lyn Robillard despite letters dated February 10, 1995 and March 14, 1995, and telephone requests on February 28, 1995, March 3, 1995, March 10, 1995 and March 13, 1995.

Complaint D348/95

- 2. a) He failed to serve his clients, Mr. and Mrs. Robillard in a conscientious, diligent and efficient manner, in that he failed to file before the end of the relevant limitation period their claim resulting from a motor vehicle accident;
- b) He misled his clients, Mr. and Mrs. Robillard, as to the status of the claim;
- c) He misled his clients, Mr. and Mrs. Robillard, as to the source of funds which he claimed were part of a settlement from the defendant's insurer;
- d) He failed to advise his clients, Mr. and Mrs. Robillard, of his negligence described in (a) above and to report the matter to his insurer; and
- e) He misled the Law Society during its investigation into the status of the Robillard file.

Service

At the August, 1995 Hearings Assignment Tribunal this matter was set to proceed on September 19th and 20th, 1995. The Solicitor did not attend the Hearing Assignment Tribunal. By letter dated September 8th, 1995, the Solicitor was advised that the Law Society would oppose any further adjournment. A further letter dated September 14th, 1995 confirmed this to the Solicitor. The parties then agreed that at the Solicitor's request, the hearing would be adjourned to October 17th and 18th, 1995, peremptory to the Solicitor. On October 17th, 1995, the Solicitor was hospitalized for food poisoning and the hearing did not proceed. Regrettably, four witnesses from the Ottawa area were in attendance that day, two of whom were former clients of the Solicitor. On December 11th, 1995, the hearing was rescheduled for January 16th and 17th, 1996. On January 3rd, 1996, the Solicitor contacted the Law Society to advise that he had a longstanding ticket to go to British Columbia on January 8th, 1996. He was advised by counsel for the Law Society that if he faxed to her a letter, a copy of his airline ticket and supporting documents, she would place the matter before the Hearings Assignment Tribunal on January 8th, 1996, and indicate he was seeking an adjournment but that absent such materials, the matter would remain set for hearing on January 16th and 17th, 1996. The Solicitor did not send the requested documentation. The matter appeared on the Hearings Assignment Tribunal list to be spoken to on January 8th, 1996. The Solicitor, on that morning left a message for counsel for the Law Society indicating that he was not flying to British Columbia because his son had chicken pox but that he would be going later that week. The transcript of the proceedings before the Hearings Assignment Tribunal was available for the Committee and was marked as Exhibit 4. The matter was ordered to proceed on January 16th and 17th, 1996. The Solicitor was advised of this by letter dated January 8th, 1996. He was aware that the Law Society was seeking disbarment if there was a finding of professional misconduct. The Solicitor made no contact with the Law Society after January 8th, 1996.

In view of the seriousness of this matter, the number of adjournments, the consent of the Solicitor to the matter being peremptory to him and his failure to send in the requested documentation to corroborate his intention to be in British Columbia on January 16th, 1996, the Committee is of the view that this matter should proceed. It should be noted that the first adjournment of this matter goes back to April, 1995. The Solicitor consented to service of Complaint D348/95 by ordinary mail which was confirmed by letter to him dated January 4th, 1996. The Committee was further advised that counsel for the Law Society read the contents of Complaint D348/95 on January 3rd, 1996, to the Solicitor in a telephone conversation.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

In the fall of 1986, Lynn and Michael Robillard retained the Solicitor to represent them with respect to a motor vehicle accident which occurred on August 31st, 1986. Ms. Robillard had sustained back injuries and their motor vehicle was damaged. In or about 1987, the Robillards received \$9,232.89, apparently related to the property damage to their vehicle. In approximately 1987, the Solicitor advised them that the insurance company had made an offer to settle the personal injury claim for \$15,000.00 which he advised them to and they did reject.

Note: Amendment, see page 301

The Robillards were under the impression that a lawsuit had been commenced. They testified that numerous appointments for their discovery were set up and then cancelled. On one or two occasions, the Solicitor called to say that he had to cancel. On a couple of occasions, the clients attended for the discovery only to be advised after they had travelled 45 minutes that the discovery was cancelled.

Around 1988 or 1989, the Solicitor advised the Robillards that the insurance company had offered to settle the personal injury claim in the \$70,000.00 to \$80,000.00 range and would be sending the Solicitor the necessary documentation. The Solicitor subsequently advised the clients that the party he had talked to at the insurance company had retired and that the offer had fallen through.

In 1992, the Robillards agreed to settle the claim for \$32,000.00 plus interest. In 1993, they signed a partial release and received a cheque for \$10,000.00. At the beginning of 1994, the Solicitor advised them that it was necessary to take action to freeze the insurance company's account for their failure to honour the balance of the settlement and in approximately March, 1994, he had the Robillards execute an Affidavit to that end.

On September 16, 1994, the Solicitor told the Robillards that they should have the balance of the settlement funds within 7 working days. No such funds were received. The Robillards made numerous attempts to determine the status of their lawsuit from the Solicitor. They began to keep notes in a diary which was appended to their letter of complaint to the Law Society at Tab 2 of Exhibit 2.

On October 28th, 1994, the Solicitor had the clients sign a complete release form and told them to expect the balance of the funds by November 7th, 1994. Needless to say, the funds were not received.

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On December 6th, 1994, the Robillards requested an appointment to see the Solicitor to review their file and obtain a photocopy of the same. The Solicitor first made and then cancelled the appointment through his secretary. No further communication was received from the Solicitor after December 6th, 1994, and the Solicitor moved his office without advising the Robillards.

The Robillards testified that despite several requests to review their file and obtain copies of its contents, the Solicitor always had an excuse as to why this could not happen. The Solicitor never advised them that he could not act as their lawyer due to his practice having been restricted. The Solicitor never advised them that he had missed the limitation period or that the matter should be reported to his insurance company. The Solicitor never advised them to get another lawyer or to get advice from another lawyer.

Marlene Chapman, an examiner in the audit and investigation department for the Law Society, testified that in April, 1995, she received a request to attend at the Solicitor's home at which time he advised that the Robillard file had been stolen from his car a couple of years ago. The Solicitor advised Ms. Chapman that he had responded to the Law Society regarding the Robillard complaint in March, 1995, and undertook to fax a copy of that letter the following day. The Solicitor further advised that he had missed the limitation period and had informed the Robillards of this. He said that he had explained to them that they should not bother making a claim to Errors & Omissions because he believed they would not cover him based on the Lee matter. He advised that the Robillards agreed to settle the matter with him for \$32,000.00, \$10,000.00 of which he had paid personally to them. He advised that he had been unable to pay the balance.

Karen Ormston, a secretary to the Complaints Department, testified that despite several follow-ups with the Solicitor, no response was ever received from him to the Robillard complaint.

Susan Carlyle, staff lawyer in the Complaints Department at the Law Society, confirmed Ms. Ormston's evidence. She testified that no response was ever received from the Solicitor to the Robillard complaint. She wrote the Solicitor by letter dated May 4th, 1995, (Tab 11, Exhibit 5) pointing out that a release signed by the Robillards on October 8th, 1994, could not have been stolen out of his car several years prior to this and requested production of that document along with any other documents he had relating to the matter. She further pointed out that the Lee matter was not submitted to the Insurer until September 1991, three years after the Solicitor had advised he had noticed his error in the Robillard matter. Accordingly, he would not have been aware of it at the time he discovered the Robillard mistake. The Solicitor failed to respond to this communication as well.

Note: Amendment, see page 301

Particular 2(a) of Complaint D139/95

On May 5th, 1993 the Solicitor undertook in connection with a prior complaint against him to practice only in the areas of criminal defence litigation, uncontested divorces and residential real estate. It is clear from the evidence that for the balance of 1993 and throughout 1994, the Solicitor never advised the Robillards that his practice was restricted or that they should retain new counsel. Because of this, the Robillards believed that the Solicitor continued to act for them with respect to their action. The Solicitor had them sign documents, and provided them with certain monies which the Solicitor represented and they understood to be settlement funds from the insurance company.

Particular 2(b) of Complaint D139/95

The Solicitor failed to respond to numerous letters from the Law Society with respect to this matter and deliberately misled the Law Society by advising Ms. Ormston that he had provided a response.

Particular 2(a) of Complaint D348/95

To miss a limitation period on a client's behalf is not, of itself, misconduct. To fail to report this to the clients, to fail to advise them to retain another solicitor, to mislead them as to the status of their claim, to tell them stories, to lie to them, to do them out of their rightful settlement, is misconduct. The Solicitor misled his clients, causing them to believe he had issued a claim on their behalf. He misled them with respect to the source of the settlement funds which they received. He failed to report the matter to the Insurer. Seven years later he gave an explanation to a representative from the Law Society which does not hold up. Once the matter came to the attention of the Law Society, he continued to attempt to obscure the true nature of the matter and deliberately misled the Law Society. He failed to produce the portions of his file which could not have been stolen from his car. He failed to provide any explanation as to why he could not produce these documents. He misled Ms. Ormston and through her, Susan Carlyle, that he had responded to the Robillard complaint to the Law Society.

The Committee is of the view that there should be a finding of professional misconduct with respect to both Complaint D139/95 and D348/95.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Lee Edward Ward be disbarred.

REASONS FOR RECOMMENDATION

The Solicitor has an extensive history of discipline with the Law Society as set out in Exhibit 7. In 1987, a Complaint was brought against the Solicitor for failing to serve clients in a conscientious, diligent and efficient manner in three separate instances and failing to respond to complaints made against him to the Law Society. The Complaints were upheld on the particulars and the Solicitor was reprimanded in Committee and ordered to pay costs of \$1,000.00.

In 1991, the Solicitor was suspended for one month and ordered to pay costs of \$1,750.00 for failing to respond to a complaint made against him to the Law Society and failing to cooperate with a Law Society investigation.

In 1991, two further complaints were made against the Solicitor. In 1992, he was suspended for two months for failing to respond.

In 1992, a Complaint was brought against the Solicitor for failing to serve his client in a conscientious and diligent fashion and misleading his client. The facts in that complaint closely echo the facts before this Committee. The Solicitor was found to have failed to serve and to have misled his client, Bernard Lee. Mr. Lee had suffered the tragedy of his wife being killed in a motor vehicle accident, leaving him with two infant daughters. The Solicitor was found to have lied to Mr. Lee, to have misled him with respect to the status of the claim and to have caused him to have made a number of trips from his home in Cape Breton for frivolous and vexatious reasons. Insurance coverage was denied the Solicitor, on the basis both of his late

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reporting of the claim and as a result of his failure to co-operate with the Insurer. Judgement was awarded on behalf of the Lee family of approximately \$550,000.00 and solicitor and client costs. The Law Society asked the Committee to consider disbarment. Ten years after the fatal accident of Mr. Lee's wife, he had not received one penny. He had a hollow judgement against the Solicitor. The Committee found that the Solicitor created fraudulent documents for Mr. Lee's signature. In imposing a 12 month suspension the Committee stated that the public interest demanded that the Solicitor never be permitted the opportunity to repeat his conduct in the future in relation to civil litigation matters.

It is clear from the Solicitor's discipline history that he is not going to change and that the only way in which the Law Society will be able to protect the public from him is to impose a penalty of disbarment. For the past 8 years, the Solicitor has failed to serve his clients to even a minimum standard, costing them emotionally and financially. His actions have brought discredit upon the entire profession. It is clear the Solicitor is not governable by the Law Society. For these reasons, the Committee recommends that the Solicitor be disbarred.

Lee Edward Ward was called to the Bar on April 19, 1978.

ALL OF WHICH is respectfully submitted

DATED this 29th day of February, 1996

Nancy L. Backhouse
Chair

Ms. Budweth asked that the following amendments be made to the Report:

- page 3, 1st sentence under heading Reasons for Finding of Professional Conduct - date of August 31st, 1996 should be "1986"
- page 5, last paragraph, 3rd sentence - date of October 8th, 1994 should be "October 28th".

The Report as amended was voted on and adopted.

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

Counsel for the Society made submissions in support of the recommended penalty.

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

Carried

Re: Charles Meyer ROTENBERG - Ottawa

The Secretary placed the matter before Convocation.

Messrs. Topp and Finkelstein, Ms. Sachs and Ms. Angeles withdrew for this matter.

Ms. Curtis did not participate.

27th June, 1996

Mr. Stuart appeared on behalf of the Society and Mr. Paul Webber appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 11th June, 1996, together with an Affidavit of Service sworn 13th June, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 12th June, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 13th June, 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

Harriet E. Sachs, Chair
W. Michael Adams
Nora Angeles

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

Glenn Stuart
for the Society

CHARLES MEYER ROTENBERG
Of the City
of Ottawa
a barrister and solicitor

Paul A. Webber, Q.C.
for the solicitor

Heard: April 30, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 5, 1995, Complaint D280/95 was issued against Charles Meyer Rotenberg alleging that he was guilty of professional misconduct.

The matter was heard in public on April 30, 1996, before this Committee composed of Harriet E. Sachs, Chair, W. Michael Adams and Nora Angeles. The Solicitor attended the hearing represented by Paul A. Webber. Q.C. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

2. a) he breached an Order of Convocation that he suspend his practice for failure to pay Annual Fees, by continuing to practise during the period November 1, 1994, to December 22, 1994.

E V I D E N C E

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D280/95 and is prepared to proceed with a hearing of this matter on April 30, 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 D280/95 and this agreed statement of facts with his counsel, Paul A. Webber, Q.C., and admits the facts contained therein. The Solicitor admits that these facts constitute professional misconduct.

IV. FACTS

Background

4. The Solicitor is 41 years of age and practises in Ottawa. He was called to the Bar in 1980. He is a sole practitioner in the area of tax and related corporate law.

Particular 2a)

The Solicitor breached an Order of Convocation that he suspend his practice for failure to pay Annual Fees, by continuing to practise during the period November 1, 1994 to December 22, 1994.

5. On or about June 10, 1994, the Law Society forwarded to the Solicitor a Notice of Annual Membership Fee, (Document Book, Tab 1), advising him that his annual fees were due and payable July 1, 1994. The Solicitor was further advised that payment must be made by November 1, 1994. A copy of the Explanatory Notes dated June 10, 1994 were also included with the Notice of Annual Membership Fee advising the Solicitor that if he failed to make payment by November 1, 1994, he would have his rights and privileges suspended by Convocation. The Explanatory Notes also advised the Solicitor that an application for deferral of the annual fee could be made if the payment of same would create a financial hardship, but the application had to be submitted by September 15, 1994.

6. On or about September 26, 1994, the Law Society forwarded to the Solicitor a Final Notice of Annual Membership Fee, (Document Book, Tab 2), advising him that his Annual Fees were due and payable July 1, 1994. The Solicitor was further advised that if payment was not received by November 1, 1994, he would be suspended. A copy of the Explanatory Notes for the Second and Final Notice were also included with the Final Notice of Annual Membership Fee, again, advising the Solicitor that if he failed to make payment by the due date, he would have his rights and privileges suspended by Convocation. The Explanatory Notes also advised the Solicitor that an application for deferral of the annual fee could be made if the payment of same would create a financial hardship, but the application had to be submitted by October 14, 1994. Other inquiries were to be directed to the Membership Records Department.

27th June, 1996

7. The Solicitor did not pay his annual fees which were due on July 1, 1994, by November 1, 1994, and neither the Law Society's Membership Records nor Finance Departments advised the Solicitor prior to that time that his annual fees would be deferred.

8. By registered letter dated November 2, 1994, (Document Book, Tab 3), the Solicitor was advised that his rights and privileges as a member of the Society were suspended effective November 1, 1994, for failure to pay the annual fees which were due July 1, 1994. According to the Acknowledgement of Receipt Card, this letter was signed for and delivered on November 8, 1994.

9. The following documents were obtained during the course of a Law Society audit and establish that the Solicitor practised during the period from November 1, 1994 to December 22, 1994 when he was suspended for non-payment of his Annual Fees:

- i) Solicitor's trust bank statement as at November 30, 1994 (Document Book, Tab 4);
- ii) Solicitor's trust bank statement as at December 30, 1994 (Document Book, Tab 5);
- iii) Solicitor's trust deposit slips dated November 2, 16, December 1 and 5, 1994 (Document Book, Tab 6);
- iv) Solicitor's trust cheques dated November 7, and December 1, 1994 (Document Book, Tab 7);
- v) Solicitor's Cash Receipts journals for November and December 1994 (Document Book, Tab 8);
- vi) Solicitor's Cash Disbursements journals for November and December 1994 (Document Book, Tab 9);
- vii) Certificate of Service signed December 9, 1994 (Document Book, Tab 10);
- viii) Handwritten notes by the Solicitor of a telephone conversation with Paul Dioguardi, Q.C. on behalf of his client, Nino Marte, on November 15, 1994 (Document Book, Tab 11);
- ix) Solicitor's letter, dated November 9, 1994 to Paul Dioguardi, Q.C. on behalf of his client, Nino Marte (Document Book, Tab 12);
- x) Paul Dioguardi's letter dated December 2, 1994 to the Solicitor (Document Book, Tab 13); and
- xi) Solicitor's letter dated December 14, 1994 to Paul Dioguardi (Document Book, Tab 14).

10. Between November 8 and November 10, 1994, the Solicitor spoke with David Crack of the Law Society's Finance Department. On November 10, 1994, the Solicitor faxed a letter (Document Book, Tab 15) to Mr. Crack. The Solicitor did not communicate with the Membership Records Department at that time with respect to his status as a member.

11. On November 14 and 17, 1994, the Solicitor contacted the Law Society to request a response to his fax of November 10, 1994. Copies of the facsimile of November 14, 1994, and the message recording his telephone call on November 17, 1994, are collectively at Tab 16 of the Document Book. A chronology of the Solicitor's principal contacts with the Law Society, prepared by the Law Society, is located at Tab 17 of the Document Book. The Solicitor does not admit the completeness or accuracy of all of the summary contained in the chronology.

12. Subsequent to November 17, 1994, the Solicitor had discussions with the Director of the Law Society's Finance Department regarding the payment of his fees. These discussions were confirmed by the Director of Finance in a letter dated November 30, 1994 to the Solicitor (Document Book, Tab 18). The letter was received by the Solicitor on December 2, 1994.

27th June, 1996

13. On Wednesday, November 30, 1994, Tina Perryman, a law clerk in the Law Society's Audit & Investigation Department telephoned the Solicitor's office and left a message for the Solicitor to call. The Solicitor and Ms. Perryman exchanged messages over the next couple of days. A copy of Ms. Perryman's memorandum of these calls is at Tab 19 of the Document Book. On December 2, 1994, Ms. Perryman spoke with the Solicitor. Ms. Perryman's memorandum of this conversation is at Tab 20 of the Document Book.

14. In a facsimile dated December 22, 1994, to the Finance Department, (Document Book, Tab 21), the Solicitor proposed a payment plan for his arrears in fees. The Solicitor states that he assumed that he had made a proposal for deferral of fees through his discussions with Mr. O'Toole. The Law Society rejects this contention and takes the position that the Solicitor had neither made any proposal for the payment of his annual fees nor applied for a deferral of those fees previously.

15. By facsimile dated December 22, 1994, (Document Book, Tab 22), the Director of Finance confirmed that the Solicitor's proposal for the payment of his overdue fees by instalment was acceptable to the Law Society.

16. Other than a thirty second telephone call of an undetermined nature on November 8, 1994, the Solicitor did not contact the Law Society's Membership Records Department in November or December 1994 to inquire as to his status as a member or as to his possible reinstatement. On November 8, 1994, the Solicitor also contacted Janet Brooks, the Discipline Counsel who formerly had carriage of the Solicitor's then-pending discipline hearing. In response to the Solicitor's advice that he had been suspended again, Ms. Brooks encouraged the Solicitor to take steps to deal with the suspension and referred him to the Discipline Counsel who had assumed carriage of the Solicitor's then-pending discipline hearing.

17. By letter dated June 28, 1995, (Document Book, Tab 23), the Law Society wrote to the Solicitor advising, among other things, that upon the Law Society's receipt of the Solicitor's first instalment on the payment plan which was approved by the manager of Membership Records, the Solicitor would be reinstated effective December 22, 1994. The Solicitor was also advised that if any of his post-dated cheques were returned NSF and not replaced within the requisite time frame, his matter would be referred to Convocation for an order to suspend his membership.

SOLICITOR'S PRIOR ADMINISTRATIVE SUSPENSIONS

18. The Solicitor's rights and privileges as a member of the Society were suspended previously from November 1, 1993 to March 17, 1994, for failure to pay his annual fee. The Solicitor continued to practice during this period. The Solicitor had been notified of this suspension by letter, dated November 2, 1993, from the Law Society.

19. On January 13, 1994, the Solicitor faxed to the Law Society a note, (Document Book, Tab 24), advising, among other things, that he proposed to send four post-dated cheques due the end of each month from January to April, 1994 in satisfaction of his outstanding arrears of membership fees and his outstanding insurance levy. He also advised that he should be able to pay in full his balance of \$2,501.25 for his Errors and Omissions Insurance levy due May 1, 1994. The Solicitor also asked to be apprised as to the status of his suspension at that time. At the time, the Solicitor was also in arrears of his Errors and Omissions Insurance Levy. The Solicitor made payment to the Law Society under cover of a letter dated March 15, 1994 (Document Book, Tab 25).

27th June, 1996

20. By letter dated March 17, 1994, (Document Book, Tab 26), the Law Society wrote to the Solicitor to advise, among other things, that the Solicitor's payment of his annual fee had been received and that the Solicitor's suspension was terminated effective March 17, 1994. The Law Society also specified how the Solicitor's payments were to be applied as against his membership fees and Errors and Omissions Insurance Levy. The Solicitor was also advised that if he did not pay his Errors and Omissions Insurance levy for the period January 1 to June 30, 1994, his membership would, again, be suspended.

21. By registered letter dated May 9, 1994, (Document Book, Tab 27), the Solicitor was advised that his rights and privileges as a member of the Society were suspended effective that same day, for failure to pay the Errors & Omissions Insurance levy for the period January 1, 1994 to June 30, 1994.

22. On June 13, 1994, the Solicitor was served with Complaint D167/94 which alleged that he had been guilty of professional misconduct by practising under suspension from November 1, 1993, to March 16, 1994 (Document Book, Tab 28).

23. On June 23, 1994, the Solicitor faxed to LPIC a memorandum attaching a form entitled "Application to Defer the Payment of the Annual Membership Fee and/or the Errors and Omissions Insurance Levy". The Solicitor's memorandum, with its attachment, are contained at Tab 29 of the Document Book.

24. By letter dated July 25, 1994, (Document Book, Tab 30), LPIC wrote to the Solicitor to advise that monthly contributions of \$400.00 towards the satisfaction of the arrears of the Errors and Omissions Insurance levy would not be sufficient to keep pace with the Solicitor's levy demands; however, the Solicitor would be reinstated and LPIC would grant a deferral of the levy on the basis that the Solicitor pay \$400 monthly in the interim until a deferral application for his current levy indebtedness was received and evaluated.

25. By letter dated October 14, 1994, (Document Book, Tab 31), LPIC wrote to the Solicitor to, among other things, provide the Solicitor with a deferral application for his Errors & Omission Levy.

26. On October 20, 1994, the Law Society provided the Solicitor with, among other material, a draft Agreed Statement of Facts and Document Book in relation to Complaint D167/94 as well as a selection of previous decisions of Convocation with respect to solicitors who had been practising under suspension. A copy of the Law Society's covering letter, dated October 20, 1994, to the Solicitor is at Tab 32 of the Document Book. The matter was initially scheduled to proceed on October 24, 1994, but was adjourned at that time to January 23, 1995.

V. DISCIPLINE HISTORY

27. On January 23, 1995, the Solicitor was found guilty of professional misconduct for practising under suspension during the period November 1, 1993 to March 16, 1994. The Solicitor received a Reprimand in Committee.

DATED at Toronto this 25th day of April, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Charles Meyer Rotenberg be suspended for a period of three weeks and that he perform one hundred hours of community service within a period of one year from the date that the suspension takes effect.

REASONS FOR RECOMMENDATION

The Committee has decided to accept the joint recommendation as to penalty, namely, a three week suspension and one hundred hours of community service.

There are facts in this case which cause this Committee some concern about the Law Society's conduct. While we accept that solicitors have a responsibility to ensure that they are not practising when they are under suspension, if the Law Society behaves in such a way as to not appear to treat these matters with any degree of urgency or seriousness, solicitors could reasonably take as the Society's message that practising under suspension, or potentially practising under suspension (if you are confused about it), may not be something that the Society is very concerned about.

The Society's conduct in this case serves as an example of giving that kind of message in this Committee's view. This solicitor was first advised that he was practising while under suspension on November 8th, 1994. Immediately upon being so advised, he contacted the Law Society of Upper Canada. He spoke to Mr. Crack, the Chair of Finance, and indicated to him that there must be some mistake given that he had entered into financial arrangements with Mr. O'Toole of LPIC to pay what he perceived to be the necessary levies.

Note: Amendment, see page 309

It is clear from the material before us that as of November the 8th, the Society knew that the solicitor was confused about whether or not the Society had made an error in issuing a notice of suspension. It is also clear that the Society admitted that this confusion might well be legitimate. In spite of this, the Society did nothing to clarify the legitimate confusion in the solicitor's mind until November 30th, 1994.

At that time, they did not do so in the most expeditious manner possible - by phone call or by fax. They mailed a letter which was not received by the solicitor until December 2nd, 1994. As a result, there was a three week period during which the Society knew that the solicitor was confused about whether or not he was practising under suspension, accepted that this confusion was legitimate and did not take any steps to notify the solicitor that he was in error or to clarify the situation for the solicitor in spite of the fact that the solicitor was making constant attempts to get the situation clarified.

What kind of message was the solicitor supposed to take from this behaviour?

Having said this, it is clear, and it has been admitted, that as of December 2nd, 1994 the solicitor knew that he was practising under suspension. This was clarified for him if not in the letter of November 30th, 1994, certainly in the telephone call that the solicitor had with an employee of the Law Society on December 2nd, 1994. The solicitor admitted that he was advised during that telephone call that if he continued to practise he would be considered to be practising under suspension.

27th June, 1996

On December 22nd, 1994, the solicitor made a proposal to pay the levies which had resulted in him being suspended. The proposal was accepted on that date. However, the solicitor was not notified until July of 1995 that he had been reinstated retroactive to December 22, 1994.

This Committee wishes to put on record its feeling that our Society owes its members more clarity than that.

The question that was addressed before us and that we addressed in our own minds was whether or not the period of suspension should include more than the period that the solicitor knowingly practised while under suspension. There was a joint submission before us that the period of suspension should be three weeks and that we should not impose the extra month that is called for in the MacGregor decision. It is clear from O'Donnell that there is no fixed and mandatory rule for periods of suspension. Our duty is to be flexible given the particular circumstances of each case.

In deciding to accept the joint submission and not to impose the extra month we have taken into account the following factors:

One, this is a joint submission in a case where there may well have been a defense. The solicitor's counsel and the Law Society's counsel have worked together to avoid a contested hearing in an effort to come up with a disposition which is fair to the solicitor and also meets the interests of the public.

Two, we are mindful of the fact that this solicitor is a sole practitioner. He is also a solicitor who is still on a slow and hard road to recovering both from financial disasters and from substance abuse addiction. To impose a suspension of seven weeks would, in our opinion, result in this solicitor potentially being driven out of practice. In effect, this could bring about the same result as a disbarment which, given the circumstances, would be inappropriately harsh by way of a penalty.

Thirdly, the penalty is not just for a three week suspension, but also calls for the solicitor to perform one hundred hours of community service. This portion of the penalty is in recognition of the fact that as a result of practising while under suspension something more needs to be done by way of penalty than just being suspended for the same period of time as one practised while under suspension.

Performing one hundred hours of community service is in effect the equivalent of approximately three weeks of time taken away from the solicitor's practise. The solicitor has indicated what he will do is continue his activities in assisting other solicitors who are experiencing substance abuse problems. Certainly, we are all aware of the fact that this is a serious concern for our profession.

The Law Society and the solicitor agreed (and we accept) that the one hundred hours of community service should be performed within a year from when the suspension takes effect.

The Law Society and counsel for the solicitor have worked out arrangements to ensure that the community service as contemplated is fulfilled within the time period that has been agreed to.

27th June, 1996

Charles Meyer Rotenberg was called to the Bar on the 16th day of April, 1980.

ALL OF WHICH is respectfully submitted

DATED this 11th day of June, 1996

Harriet E. Sachs
Chair

Counsel asked that the following amendments be made to the Report:

- the solicitor's middle name should be spelled "Myer" not Meyer
- page 9, 3rd paragraph under the heading Reasons for Recommendation - Mr. Crack's title should be "Director of Finance" not Chair of Finance.

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 3 weeks and perform 100 hours of community service within a period of 1 year from the date that the suspension takes effect.

Both counsel supported the recommended penalty with a request that the commencement of the suspension be August 26th, 1996.

It was moved by Ms. Sealy, seconded by Mr. Swaye that the solicitor be suspended for a period of 3 weeks commencing August 26th, 1996 and that the solicitor give his undertaking to perform 100 hours of community service.

Carried

Convocation took a brief morning recess.

Re: Franco PALETTA - Hamilton

The Secretary placed the matter before Convocation.

Mr. Marrocco, Ms. Backhouse and Ms. Sealy withdrew for this matter.

Ms. Curtis did not participate.

Mr. Michael Brown appeared for the Society and Mr. J. Turnbull appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 16th April, 1996, together with an Affidavit of Service sworn 8th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 25th April, 1996 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th June, 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

N. Backhouse, Chair
H. Sachs
H. Sealy

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

Michael Brown
for the Society

FRANCO PALETTA
of the City
of Hamilton
a barrister and solicitor

Not Represented
For the solicitor

Heard: March 5, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 15th, 1995, Complaint D307/95 was issued. This Complaint was withdrawn and replaced with Complaint D307a/95 issued on March 4th, 1996 alleging that Franco Paletta is guilty of professional misconduct.

The matter was heard in public on March 5th, 1996 before this Committee composed of Nancy Backhouse, Chair, Harriet Sachs, and Hope Sealy. Mr. Paletta attended the hearing unrepresented. Michael Brown appeared on behalf of the Law Society.

DECISION

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

Complaint D307a/95

2. (a) In a conversation with his former client, Giorgio Cotroneo, the Solicitor criticized the actions of a fellow solicitor, Jonathan Speigel, in a manner that was inappropriate for a barrister and solicitor by the use of anti-Semitic slurs and other offensive language.

EVIDENCE

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D307a/95, and is prepared to proceed with a hearing of this matter on March 5 and 6, 1996.

- 2 -

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 D307a/95, this Agreed Statement of Facts and the Document Book. The Solicitor admits the particular contained in Complaint D307a/95. The Solicitor also admits that the facts alleged in the Complaint, as supported by the facts in this Agreed Statement of Facts and the documents contained in the Document Book referred to herein, constitute professional misconduct or, in the alternative, conduct unbecoming a barrister and solicitor.

IV. FACTS

4. The Solicitor was called to the Bar on April 6, 1982.

5. The Solicitor carried on the practice of law as a sole practitioner in the City of Hamilton from the time of his call until December, 1994 when he ceased practising law and entered into a private business venture known as Universal Mouldings & Frames. Notwithstanding his decision to cease practising law, the Solicitor continued to be a member of the Law Society and remains so to date.

6. In 1990, while in private practice, the Solicitor acted for Giorgio C. Investments Inc. in respect of its share purchase of a company known as the Windsor Hotel (Hamilton) Limited. Giorgio Cotroneo is the president of Giorgio C. Investments Inc.

7. On July 13, 1994, Giorgio C. Investments Inc. commenced a civil action for damages relating to its purchase of the shares of the Windsor Hotel (Hamilton) Limited. The Statement of Claim named the Solicitor as one of several defendants. The Statement of Claim alleged that the Solicitor breached his retainer, or was negligent, in acting for Giorgio C. Investments Inc. on the purchase. Counsel for Giorgio C. Investments Inc. in the litigation was Jonathan Speigel. A copy of the Statement of Claim is at Tab 1 of the Document Book

8. Giorgio Cotroneo would testify that sometime between January 6, 1995 and January 25, 1995, he telephoned the Solicitor and discussed with him matters relating to the civil action referred to in paragraph 7 above. Mr. Cotroneo tape recorded this conversation.

9. On June 12, 1995, Jonathan Speigel wrote to the Law Society and advised that Mr. Cotroneo had provided him with a copy of the tape recording of the conversation between Mr. Cotroneo and the Solicitor. Mr. Speigel enclosed a copy of the tape recording with his letter.

10. A certified transcript of the tape recording of the conversation between Mr. Cotroneo and the Solicitor is found at Tab 2 of the Document Book.

27th June, 1996

11. The Solicitor has reviewed the tape recording of the conversation and the certified transcript. The Solicitor admits that the tape recording is an accurate recording of his conversation with Mr. Cotroneo. The Solicitor further admits that the statements attributed to Mr. Cotroneo and to him are accurate as certified in the transcript found at Tab 2 of the Document Book.

12. The Solicitor acknowledges that he used offensive language in his references to, and criticism of, Jonathan Speigel which was entirely improper.

V. PRIOR DISCIPLINE

13. The Solicitor does not have a discipline record.

DATED at Toronto, this 5th day of March, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Franco Paletta be reprimanded in Convocation.

REASONS FOR FINDINGS OF PROFESSIONAL MISCONDUCT

During a telephone conversation with his former client, the Solicitor made anti-semitic references to the solicitor then acting for the client as follows: "that god dam son-of-a-bitch Jew"; "let's blame the god dam Jew"; "that god dam motherfucker cocksucker "; "by being a typical fuckin' Jew" and "I know the way these Hebrews work." These remarks were tape recorded by the former client.

The Solicitor has admitted and it is the view of the Committee that the Solicitor is guilty of professional misconduct. While the Solicitor was not practicing at the time the aforesaid comments were made, they were made to a former client arising out of a transaction in which the Solicitor represented the former client which resulted in the Solicitor being named as a defendant in a lawsuit. Although the Solicitor was not giving legal advice in the conversation with his former client, there was a sufficiently strong nexus between his role as a lawyer and his professional obligations to conclude that the comments were made in the sphere of his professional conduct and constitute professional misconduct.

The Solicitor's conduct brings the following Rules of Professional Conduct into question:

Rule 1:

"The lawyer must discharge with integrity all duties owed to clients, the court, the public and other members of the profession."

Commentary 1 makes it clear that the fundamental quality of any person who seeks to practice as a member of the legal profession is integrity. Commentary 2 makes it clear that dishonourable or questionable conduct on the part of the lawyer in either private life or professional practice both reflect adversely upon the integrity of the profession and the administration of justice as a whole.

Rule 14:

"The lawyer's conduct towards other lawyers should be characterized by courtesy and good faith."

Commentary 2 states in part: "The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system".

Commentary 8 states: "The lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer."

Rule 28:

The lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and specifically to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status or disability with respect to professional employment of other lawyers, articulated students or any other person or in professional dealings with other members of the profession or any other person.

It is clear from Rule 28 that there is a special responsibility upon members of the legal profession to respect human rights laws and not to discriminate. The Solicitor's comments were a form of discrimination because to criticize a lawyer based on the lawyer's ethnic origin or religious beliefs was a pejorative reference intended to discriminate.

The Role Statement of the Law Society which is designed to define its proper role declares that the Law Society is to govern the legal profession in the public interest by upholding the integrity and honour of the legal profession. Section 7.2 of the Role Statement provides: "The concepts of integrity and honour are interdependent. The reputation of the profession depends on its integrity. Without integrity there can be no honour."

REASONS FOR PENALTY

Mr. Paletta testified that he truly regretted the comments that were recorded which he described as an isolated outburst. He has apologized to the solicitor of whom the remarks were made. He cooperated with the Law Society with respect to the complaint. Notwithstanding this, the Committee is of the view that this is a serious matter requiring that there be a reprimand in Convocation.

27th June, 1996

It was the Committee's view that the penalty imposed upon the Solicitor should reflect the Law Society's repudiation of this type of conduct. We are mindful of the fact that Rule 28 is a relatively new rule. It must be clear to the profession that this kind of conduct will not be tolerated. It is important that the profession respect human rights laws, the Human Rights Code and the requirement not to discriminate. In the interests of general deterrence and the education of the profession, the reprimand of the Solicitor should be delivered in Convocation.

ALL OF WHICH is respectfully submitted

DATED this 16th day of April, 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 reprimanded in Convocation.

Both counsel made submissions in support of the recommended penalty.

There were questions from the Bench.

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

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

It was moved by Mr. Swaye, seconded by Mr. Gottlieb that the solicitor be suspended for a period of 3 months.

It was moved by Mr. Wilson, seconded by Mr. Finkelstein that the recommended penalty be adopted.

Counsel, the solicitor, the reporter and the public were recalled and informed of the motions for a higher penalty.

Mr. Turnbull requested an adjournment in order that character evidence could be produced. He advised that he would waive the seised committee requirement.

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

The main motion that the solicitor be reprimanded in Convocation was voted on and adopted with supplementary Reasons to be issued.

It was moved by Mr. DelZotto, seconded by Mr. Swaye that the adjournment be granted.

Not Put

The Topp/Crowe and Swaye/Gottlieb motions were not put.

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

The Treasurer administered the reprimand.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:30 P.M.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Angeles, Carey, Carpenter-Gunn, Crowe, Curtis, Finkelstein, Gottlieb, Harvey, MacKenzie, Marrocco, O'Connor, Puccini, Ross, Stomp, Swaye, Thom, Topp, Wilson and Wright.

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IN PUBLIC

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The Treasurer advised Convocation that the Society had received a fax from Mr. Lee Ward who asked that he be granted permission to resign rather than be disbarred.

Re: Douglas Edward ROLLO - Toronto

The Secretary placed the matter before Convocation.

Messrs. Thom, Marrocco and MacKenzie, Ms. Angeles and Ms. Puccini withdrew for this matter.

Ms. Janet Brooks appeared for the Society and Ms. Susan Davies appeared for the solicitor who was present.

Ms. Brooks reviewed the additional material provided to Convocation.

Counsel for the Society asked that the following amendments be made to the Report:

- Report dated April 18th, 1995 - page 1, 1st line - date Complaint issued should be "June 24th, 1993" not March 18, 1992
- Report dated April 18th, 1995 - page 13, 4th paragraph, last line - the word Willis should be changed to "the solicitor"
- Report dated April 18th, 1995 - page 5 of the in camera portion, 2nd line - the amount should be "\$2,325" not \$2,725.

Mr. Topp withdrew from Convocation.

Convocation had before it the Report of the Discipline Committee dated 18th April, 1995, together with the Affidavit of Service sworn 6th June, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 12th May, 1995 (marked Exhibit 1) together with Affidavit of Service sworn 19th May, 1996 by Audrey D. Cado that she had served the solicitor personally on May 16th, 1996 (marked Exhibit 1A). The Report of the Discipline Committee dated 8th November, 1995 together with an Affidavit of Service sworn 1st December, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 30th November, 1995 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

27th June, 1996

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA.

The Discipline Committee

REPORT AND DECISION

Maurice C. Cullity, Q.C., Chair
Donald H. L. Lamont, Q.C.
Stuart Thom, Q.C.

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

Stephen Foster and Janet Brooks
for the Society

DOUGLAS EDWARD ROLLO
of the City
of Toronto
a barrister and solicitor

Not represented
for the solicitor

Heard: March 2, March 17,
March 28, March 31, 1994
April 7, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Complaint D116/93 was issued on March 18, 1992 alleging that Douglas Edward Rollo was guilty of professional misconduct.

Note: Amendment, see page 315

The matter was heard on March 2, March 17, March 28 and March 31, 1994 before the Committee composed of Maurice C. Cullity, Q.C., Chair, Donald H. Lamont, Q.C. and Stuart Thom, Q.C. The Solicitor attended the hearings and was not represented by counsel. Stephen Foster appeared on behalf of the Law Society.

The Committee released its decision and reasons on the issues of professional misconduct on May 2, 1994 and heard further evidence and submissions on the question of penalty on April 7, 1995. On that occasion, Janet Brooks appeared on behalf of the Law Society. The Solicitor attended and made submissions without representation by counsel.

DECISION

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

2(a)(ii) Between April 28, 1988 and February 28, 1990 he misappropriated the sum of \$3,768.18 from Mona Benini and Giulio Benini;

27th June, 1996

2(a)(iv) Between May 31, 1990 and January 11, 1991 he misappropriated the sum of \$5,872.66 from Chris Billard and Susan Billard;

2(b)(i) He failed to serve his client, G. Earle Willis, in a conscientious, diligent and efficient manner in respect of a matrimonial matter between August 30, 1988 and July 1, 1989;

2(b)(viii) He failed to serve his clients, Chris Billard and Susan Billard, in a conscientious, diligent and efficient manner in respect of their purchase of a property at R.R. No. 9, Picton, Ontario between May 31, 1990 and January 11, 1991;

(b)(iv) He failed to serve his client, Joan Stephensen, in a conscientious, diligent and efficient manner in respect of legal services in connection with a land development project in Muskoka, Ontario, commencing in March 1986;

2(c) He issued cheques from his trust account payable other than to himself or as a legitimate disbursement for a client in contravention of section 14(8) of Regulation 573 under the Law Society Act, as follows:

Cheque No. 2101	-	June 1, 1990 Penthouse Management \$633.41
Cheque No. 2119	-	June 11, 1990 Granger and Tower \$1,132.00
Cheque No. 2125	-	August 1, 1990 Penthouse Management \$900.00

2(d) He failed to comply with the Order on Assessment confirmed on Appeal to repay \$10,623.68 together with costs of \$8,135.10 with interest, to his client, Joan Stephensen.

In addition to the above particulars which were found to have been established, the Committee found that the evidence with respect to particular 2(a)(i) established that the Solicitor had failed to serve his client, Vito Santoro, in a conscientious, diligent and efficient manner with respect to his account for amounts received on behalf of that client.

THE HEARING

There was no agreed statement of facts. The Committee heard evidence from the Solicitor's clients, Chris Billard, G. Earle Willis, Giulio Benini and Vito Santoro. Evidence was also given by Michael Vear, an Investigation Auditor for the Law Society and Denise Ashby and Heather Werry, lawyers on the staff of the Law Society.

The hearing was held in public with the exception of the evidence of Ms. Ashby in connection with the particulars relating to Joan Stephensen. This evidence was heard in camera.

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DECISION

Particulars 2(a)(i): Vito Santoro

The Law Society alleged that between July 12, 1987 and October 31, 1989 the Solicitor misappropriated \$1,316.66 from Santoro. The particulars arose out of a claim by Santoro for damages for personal injuries suffered in a motor vehicle accident in 1985. The Solicitor had previously acted for Santoro in attempting to obtain an increase in a workers' compensation award made as a consequence of an injury he had received in the course of his employment in 1969. This matter was still continuing at the time that the Solicitor was retained to assist Santoro in negotiating a settlement with the defendant's insurer in respect of the motor vehicle accident. In 1987, the Solicitor obtained a settlement in the amount of \$5,300 plus \$825 for costs and \$291.66 for prejudgment interest. A cheque dated July 3, 1987 was issued by the insurer to the Solicitor for \$6,416.66. This cheque was deposited in the Solicitor's trust account on July 12, 1987.

Santoro gave evidence that, in response to a telephone call from the Solicitor, he attended at the Solicitor's office and signed a release dated August 1, 1987. The Solicitor was not present. Santoro stated that the effect of the release was not explained to him and that no dollar amount had been inserted. However, Santoro's initials appear to have been placed opposite the amount of \$6,416.66 on the release. Santoro told the Committee that he understood that he was to receive an interim payment of \$1,555.00. The Solicitor gave evidence that he thought that his secretary, Ms. Khan, who witnessed Santoro's signature on the release, would have explained the release to him.

On September 15, 1987, the Solicitor forwarded his account to Santoro for fees of \$795 representing 15% of the settlement amount of \$5,300. A cheque for \$1,555 of the same date was also delivered to Santoro.

The Solicitor was authorized to use part of the funds from the insurance settlement for the purpose of obtaining a medical report in connection with the workers' compensation matter, for legal fees for services already rendered in that matter and for the costs of a further appeal. These amounts, together with his legal fees of \$795 with respect to the insurance claim and the amount of \$1,555 paid to Santoro amounted in the aggregate to \$5,300.

By October 15, 1987, the full amount of \$6,416.66 had been withdrawn from the Solicitor's trust account.

On January 5, 1989, Santoro, with the assistance of his daughter, wrote to the Solicitor asking for documentation with respect to the settlement of the insurance claim. He did not receive a reply and wrote another letter on July 26, 1989 asking for a final statement of account from the date of the previous statement of September 15, 1987.

On August 22, 1989, the Solicitor replied that he had just moved his office and that it might take some time to locate the old files. On August 31, 1989, Santoro wrote again and said that he would give the Solicitor until September 15, 1989 to provide a full accounting.

On October 31, 1989, the Solicitor finally provided an analysis of the receipts and disbursements in connection with the claim together with a statement of his account in the amount of \$1,500 in respect of the workers' compensation matter.

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On November 27, 1989, Santoro wrote to the Solicitor pointing out that he had not received the amount of \$291.66 representing prejudgment interest on the insurance claim or an amount of \$200 representing the excess of the amount withheld as a reserve for obtaining the medical report in the workers' compensation matter over the actual cost of the report. It appeared also that the legal costs of \$825 included in the settlement of the insurance claim had been retained by the Solicitor and that no account had been rendered to Santoro with respect to those costs.

Having received no response from the Solicitor, Santoro contacted the Law Society and, on April 24, 1990, he wrote to the Complaints Department of the Society asking for assistance and referring to the "countless telephone calls" he made to the Solicitor in an attempt to obtain the amounts owing.

Correspondence then ensued between the Society and the Solicitor and the Society and Santoro. On September 20, 1990, the Solicitor, wrote to Santoro stating that the \$200 remaining from the reserve of \$700 retained for the medical report was more than offset by an account for \$325 rendered by an orthopaedic surgeon. The letter erroneously stated that a cheque for the \$291 prejudgment interest was enclosed.

On October 22, 1990, Santoro wrote to the Society providing evidence that he had given the Solicitor a cheque for the orthopaedic surgeon's account on April 24, 1987 and stating that he had still not received the \$291 for prejudgment interest.

The Solicitor told the Committee that the amounts of \$291 for prejudgment interest and the excess \$200 on the reserve for the medical report had simply escaped his attention and that they should have been paid to Santoro. He told the Committee that it was always his understanding that the \$825 of costs did not have to be accounted for to the client. The Solicitor said he had no intention of misappropriating the amount of \$4912. He said it was simply a mistake on this part that had not been brought to his attention for two and a half years. He said he was quite prepared to resolve these matters by paying the amounts. The Law Society took the position at the conclusion of the hearing that it was alleging only a misappropriation of the amounts of \$200 and \$291 and it was not relying on the Solicitor's failure to account for the costs of \$825.

The Committee does not believe that the evidence is sufficiently strong to warrant a finding of misappropriation of the amounts of \$200 and \$291. The evidence that the Committee heard with respect to the Solicitor's lax supervision of his trust accounts and of his bookkeeping makes it more likely that these amounts had simply escaped his attention.

On the other hand, the Committee has no doubt that the Solicitor's omission to deal with these amounts, his failure to account to his client for a period of two and a half years, his withdrawals from his trust account before bills were rendered, his delays in responding to Santoro's requests for an accounting and his delay in paying the small outstanding amount of \$491 after it had come to his attention do justify a finding of professional misconduct on the ground that he failed to serve Santoro in a conscientious, diligent and efficient manner in the performance of his financial obligations to the client.

Particulars 2(a)(iv) and 2(b)(iii): Chris and Susan Billard

Misappropriation

Particular 2(a)(iv) alleges that the Solicitor misappropriated \$5,872.66 between May 31, 1990 and January 11, 1991.

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Early in 1990, the Solicitor was retained by the Billards in respect of the sale of their residence in Scarborough and the purchase of a new residence in Picton. The house in Scarborough was to be sold for \$220,000 and the Picton home was to be purchased for \$139,500. Under the agreement of purchase and sale, the closing date for each of the transactions was originally May 31, 1990. The closing of the purchase of the Picton residence was subsequently postponed until June 1, 1990.

On June 1, 1990, the Solicitor deposited an amount of \$210,090.16 in respect of the sale of the house in Scarborough in his trust account to the credit of the Billards.

Between June 1 and August 14, 1990, the Solicitor made authorized disbursements from the trust account and rendered accounts for his fees and other disbursements in connection with the transactions. His total withdrawals of funds credited to the Billards in his trust account in that period exceeded the total of the authorized disbursements and the accounts rendered by \$8,372.64. Virtually all of this excess amount represented withdrawals in favour of the Solicitor and transfers of two amounts of \$4,075 and \$3,690.16 to the credit of two other clients - McDonald and Davies Ltd. and Blue Jay Courier Service - in the Solicitor's trust account. McDonald and Davies Ltd. was owned by friends of the Solicitor and Blue Jay Courier Service was owned by the Solicitor's wife. The amounts credited to those clients were subsequently withdrawn in amounts payable, for the most part, to the Solicitor. Three of the cheques drawn on the accounts were made to discharge the Solicitor's obligations to pay rent in respect of the premises in which he conducted his practice and in respect of his family residence (see Particular (c) below). In January 1991, the Solicitor deposited \$2,500 in the trust account to the credit of Mr. and Mrs. Billard. This reduced the deficit in the account to \$5,872.64.

The Solicitor's explanation of the deficit in the account was that he had transferred the amounts of \$4,075 and \$3,690.16 to the credit of McDonald and Davies Ltd. and Blue Jay Courier Service to replace funds that had been stolen by a Mr. W. Barry who had worked for him as a paralegal and who had subsequently disappeared.

The Solicitor testified that Barry had failed to make deposits totalling approximately \$7,000 into the McDonald and Davies Ltd. and Blue Jay Courier Service accounts in June. The Solicitor admitted that he was not entitled to make the transfers from the Billards account to remedy the deficiency in the other accounts but said that he did not intent to misappropriate the funds. he stated that he was always prepared to put the money back and that only intervening litigation with the Billards that will be referred to below prevented him from doing this.

The Solicitor testified that he did not discover that the funds were missing from the McDonald and Davies Ltd. and Blue Jay Courier Service accounts until the period July 8 - July 10, 1990 when he received and reviewed the bank statements for the trust accounts for the month of June.

As the Solicitor issued a cheque to Barry on July 17, 1990 from the Billards' trust account, Barry must have been accessible at that date. The Solicitor said that he believes that he confronted Barry about the missing funds but that, at the time, he did not know "how deep" the matter was. He stated that he didn't pay attention to the problem until approximately July 20 and then he found that Barry had disappeared. He stated that he had phoned Barry's number more than once without obtaining any reply. He testified that he did not know Barry's address.

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The Solicitor made no official complaint to the police although he said that he had mentioned the matter to acquaintances in the police force. He made no report to the Law Society and did not inform his clients of the transfer of the funds or the theft by Barry. He initially told the Committee that he believed he had made a claim under a theft insurance policy by, when asked to provide documentary evidence of such claim, he subsequently told the Committee that he had previously been confused and that he had no such policy.

The Solicitor testified that he did collections for McDonald and Davids Ltd. and Blue Jay Courier Service.

The Society submitted that the Solicitor's story of the theft by Barry was not credible as his trust account ledgers showed that the money had been transferred from the Billard account to the accounts of McDonald and Davies Ltd. and Blue Jay Courier Service in June whereas the Solicitor had stated that he did not discover the thefts until July 8 - July 10. The Solicitor attempted to explain this discrepancy between the dates by saying that his bookkeeper would have done his books for July at some time after July 10 and must have back-dated the transfers to the month of June.

In challenging the Solicitor's credibility, the Society also relied upon the fact that the Solicitor did not report the theft to the Law Society or to the Billards and made no official report to the police. The Society submitted further that, even if the Solicitor's explanation were to be accepted, the transfers from the Billard trust accounts constituted misappropriations by the Solicitor.

The conclusion of the Committee is that, even if the Solicitor's testimony with respect to the theft by Barry is accepted, the evidence establishes that the Solicitor misappropriated the amounts transferred from the Billards' accounts to the accounts of McDonald and Davies Ltd. and Blue Jay Courier Service. In the view of the Committee, a Solicitor who, without authority, deliberately appropriates funds held in trust for one client to replace money allegedly stolen by a third party from another client is guilty of misappropriation, at least when, as here, the amounts are subsequently withdrawn from the trust account. As will be referred to in connection with particular (c) below, some of the amounts transferred to the credit of MacDonald and Davies Ltd. and Blue Jay Courier Service were subsequently withdrawn to discharge the Solicitor's obligations to pay rent to the landlords of his business premises and his personal residence by cheques drawn in their favour.

Failure to Serve

Particular 2(b)(iii) alleges that the Solicitor failed to serve the Billards in a conscientious, diligent and efficient manner in connection with the purchase of their new residence in Picton. The Billards moved into the Picton home the day before the closing of the purchase. Shortly thereafter they found that there were vehicles moving across the property. Chris Billard testified that he spoke to the Solicitor about this but that, as he didn't seem "too clear", Billard eventually went to the registry office and found out that the two adjoining properties had a right of way through the Billard's property. Billard testified that he subsequently spoke to the Solicitor who said that he didn't think it was "much of a problem" but agreed to see to see what could be done about it. Billard said that the Solicitor subsequently did nothing.

The Billards subsequently issued a statement of claim against the Solicitor alleging, among other things, a failure to account properly, a failure to adequately search, or conduct a subsearch of, the title, a failure to review the closing documents and, generally, a breach of his retainer, negligence, breach of fiduciary duty and breach of trust. The proceedings were settled on the basis that the Solicitor would pay \$6,500 to the Billards on receipt of a release. No release has been given and the settlement amount has not been paid.

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The Solicitor testified that, on May 2, 1990, he wrote to William M. Martin who was the solicitor for the vendor of the Picton property. In the letter he informed Martin that he was acting for the Billards and requested information that would allow him to do a search of the title. He wrote again to Martin on May 23, 1990 repeating his requests. On May 30, 1990 - the day before the original date of closing - Martin sent the Solicitor a draft deed that did not disclose the existence of any right of way.

Until May 31, the title to the Picton property was in the name of someone other than the vendor and there was an undischarged mortgage on the title. The Solicitor did not make requisitions or ask questions about these matters although he testified that he knew of the undischarged mortgage. On the morning of May 31, 1990, Martin registered the necessary documents to remove the problems with respect to the vendor of the property, to discharge the mortgage and to register the right of way on title.

At approximately 4:40 on Friday, June 1, the Solicitor arrived at Martin's office. Martin showed the Solicitor the deed for the conveyance which clearly indicated that the transfer was subject to the right of way. Martin did not draw this to the attention of the Solicitor and the Solicitor did not notice it. It was too late in the day to register the transfer of title. The Solicitor gave Martin a certified cheque for \$139,500 and a blank trust cheque for disbursements which Martin subsequently filled in on Monday, June 4, 1990 when he registered the transfer of title at the Solicitor's request. He said that the Solicitor appeared to be uninterested in the transaction and that he was surprised that he had received no requisitions with respect to the title not being in the vendor's name and the undischarged mortgage.

The Solicitor testified that Barry had told him that he had searched the title of the Picton property. He said that his journey from Toronto to Picton on the Friday afternoon had taken much longer than would normally have been the case and that he was very tired. As the land registry office was closed by the time he arrived at Martin's office, he had been unable to do a subsearch.

In the view of the Committee, the Solicitor was grossly negligent in either not searching the title or, if a title search had been made, in not making requisitions with respect to the name of the vendor and the undischarged mortgage and that he was similarly guilty of gross negligence in not carefully reviewing the deed when he attended in Martin's office and in not arranging for a subsearch. We believe that the degree of negligence was sufficient to constitute professional misconduct on the ground of a failure to serve the Billards in a conscientious, diligent and efficient manner.

Particulars 2(a)(ii) and 2(b)(i): G. Earle Willis

The Society has alleged that the Solicitor's conduct in the course of representing Willis in matrimonial proceedings involved a misappropriation of \$2,620.86 between August 30, 1988 and July 1, 1989 together with a failure to serve Willis in a conscientious, diligent and efficient manner.

The Committee is not prepared to find that the facts establish that the Solicitor was guilty of misappropriating funds belonging to Willis but it does find that the evidence established a failure to serve him in a conscientious, diligent and efficient manner.

Mr. Willis engaged the Solicitor to represent him in matrimonial proceedings. His wife had obtained an order for support and had garnisheed his wages to enforce her rights. She had enlisted the help of the Support and Custody Enforcement Branch of the Minister of the Attorney General and support payments of \$950.00 a month were to be made to the Ministry.

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Willis paid the Solicitor an amount of \$7,500.00 initially as a lump sum payment to discharge the garnishee. Between October 1988 and May 1989 he made seven payments of \$950.00 to the Solicitor who undertook to make payments tot he Ministry. The Solicitor made some payments to the Ministry of varying amounts at different times with significant delays. The Solicitor also made numerous withdrawals from the trust account, debited to Willis' ledger, in his own favour. On one occasion his cheque to the Ministry on behalf of Willis was returned NSF and a garnishee was reimposed.

The Society's Investigation Auditor, Mr. Vear, had difficulty in reconciling all of the entries in the trust accounts because the Solicitor had two clients named Willis and the entries in the accounts had become confused. However, the total amounts debited to Willis exceeded the payments made to the Ministry and the amounts covered by accounts for the Solicitor's fees that Mr. Vear examined. The difference was \$2,620.86 and the Society alleged that this amount was misappropriated by the Solicitor.

Some of the invoices the Solicitor had rendered for fees were rejected by Willis on the ground that he did not believe that the work had been done. Willis also made a number of complaints about the quality of the legal services he received from the Solicitor and statement that on two occasions the Solicitor had failed to turn up in court to Willis' detriment. Ultimately, Willis' wife received an equalizing payment under the Family Law Act and Willis terminated the Solicitor's retainer. It was agreed between them that the Solicitor was not liable to make any further payments with respect to disbursements or costs.

In order to explain the discrepancy of \$2,620.86, the Solicitor relied on additional invoices which, he stated, were sent to Willis. He stated that he treated the account as a "running account" and that Willis knew and acquiesced in, or accepted, this.

At the hearing, the Law Society ultimately accepted that the additional invoices were rendered by submitted that, whether or not the Solicitor was entitled to treat the account as a running account, there was one payment made by Willis for \$800.00 that was made specifically to pay for a valuation of his interest in a pension plan. This amount was never paid and the Law Society submitted that the Solicitor must have misappropriated it for his own purposes. The Society's submission was that, whether or not the Solicitor was entitled to operate a running account with respect to the monthly payments of \$950.00, the evidence that the amount of \$800.00 was to be paid only for the pension valuation and could not be taken by Willis in payment of his fees.

Note: Amendment, see page 315

The Society did not rely on any differences between the times that amounts were debited on Willis' ledger and the times that accounts were rendered. The Committee accepts the Solicitor's evidence that he was authorized to operate a running account and is not satisfied that any significant distinction can be drawn between the amounts of \$800 for the pension valuation and the seven amounts of \$950. As the Society ultimately accepted that invoices sufficient to cover the deficit in the account identified by Mr. Vear were rendered by the Solicitor, the Committee is not prepared to make a finding of misappropriation of amounts held in trust for Willis.

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With respect to the allegation that the Solicitor failed to serve Willis in a conscientious, diligent and efficient manner, it is clear that Willis was not satisfied with the quality of the services he received. It also appears that the Solicitor did not provide any adequate accounting to Willis with respect to the amounts received and disbursed from the trust account. The Solicitor's response was that Willis was a bad loser who had insisted on going to trial on his wife's application for an equalization payment contrary to the Solicitor's advice. At the trial the wife was successful in obtaining half of the value of Willis' pension interest.

The Law Society relied mainly on the fact that there were delays between the receipts and disbursements of the monthly payments, the fact that, because of the NSF cheque, a second garnishee was imposed upon Willis' wages and the fact that the Solicitor had not paid the fee for the pension valuation. The Solicitor's response with respect to the NSF cheque was that, on another matter, an employee had issued a larger cheque than she had been instructed to cut and the payee immediately had the cheque certified so that the subsequent cheque to the Ministry was returned NSF. The Solicitor stated that the \$800 he received to cover the fee for the pension valuation had been applied in payment of the accounts he had rendered for legal services and that, when his retainer was eventually terminated by Willis, it had been agreed that he would not be responsible for making any further payments on Willis' behalf. Willis and the Solicitor were eventually sued for the failure to pay the evaluation fee and the Solicitor was ordered to make the payment. Willis was out of pocket in an amount of \$337.42 as a consequence of these proceedings.

The Society did not specifically rely upon the advice the Solicitor had given with respect to the equalization payment; nor did the Law Society rely on Mr. Willis' statement that the Solicitor had not turned up in court on two occasions.

The Solicitor conceded that the entries in Willis' trust account ledger and that of his other client with the same name had become confused. Nor is there any doubt that there were significant delays in the Solicitor's payments to the Ministry on behalf of Willis and that his failure to supervise his bookkeeping and his employees led to the imposition of a second garnishee on Willis' wages.

Even though the Committee has concluded that Willis either agreed to, or acquiesced in, the Solicitor's treatment of the account as a "running account", Willis was entitled to expect that payments to the Ministry would be paid fully and promptly and that no deficiencies would be created in the account. He was also entitled to be kept informed as to the balance in the account and the fact that, after the payment of legal fees, there were insufficient funds to pay the pension valuation fee. The Committee accepts Willis' evidence that, to this day, he does not know how some of the funds he provided to the Solicitor were disbursed. In the Committee's view, Willis did not receive from the Solicitor the degree of conscientiousness, diligence and efficiency that he was entitled to expect in connection with the Solicitor's handling of his trust funds. On that ground, the Committee finds that particulars (b)(i) have been established and makes a finding of professional misconduct on that basis.

Particulars 2(a)(iii) and 2(b)(ii) - Mona and Giulio Benini

The Law Society's charges of misappropriation [2(a)(iii)] and a failure to serve the Beninis conscientiously, diligently and efficiently [2(b)(ii)] arise out of the Solicitor's conduct with respect to a sale of the Benini's residential condominium in Scarborough in 1988.

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Misappropriation

The Society's position with respect to the charge of misappropriation is, in essence, that, as the Solicitor's withdrawals of the proceeds of sale from his trust account exceeded the aggregate of the authorized disbursements and fees billed by him to the Beninis by an amount of \$3,768.18, he is guilty of misappropriating that amount.

The Solicitor did not challenge the evidence of the Society's Investigation Auditor, Mr. Vear, that:

- (a) on the closing of the sale on May 28, 1988, the Solicitor had received, in the aggregate, an amount of \$59, 138.84 from the Beninis and from the purchasers of the condominium;
- (b) the Solicitor had received from the Beninis a cheque dated August 17, 1988 for an additional amount of \$2,799.34;
- (c) the authorized disbursements in respect of the sale and the purchase of a new residence in Brampton amounted to \$55,688.50;
- (d) accounts for legal fees rendered by the Solicitor to the Beninis amounted to \$2,481.50; and
- (e) between April 30, 1988 and October 12, 1988, the Solicitor had withdrawn amounts of \$6,249.68 in the aggregate from the Benini account for his own purposes or for other purposes not related to the transactions in which he was representing the Beninis.

In the course of a subsequent dispute (referred to below under Failure to Serve the Clients) with the real estate agent who acted for the Beninis in respect of the sale, the Solicitor received an additional amount of \$3,200 from the Beninis by cheque dated February 26, 1990. The Law Society accepted that this amount was covered a payment of \$1,700 made by the Solicitor on behalf of the Beninis and legal fees in the amount of \$1,500 properly charged by, or allowed to, the Solicitor in connection with the dispute.

The Solicitor did not deny that there was a discrepancy of \$3,768.18 between the legitimate disbursements from the accounts and fees billed, on the one hand, and his actual withdrawals from the accounts. He testified that he had no intention to misappropriate funds, that he did not feel indebted to the Beninis and that, if he was so indebted, he would pay what was owing. His position, was in general terms, that he had done sufficient work and undertaken sufficient personal liability on behalf of the Beninis in the course of the transactions and the subsequent dispute to more than justify his withdrawals from the trust account. He relied, in particular, upon a personal undertaking he had given to indemnify the purchasers with respect to the cost of any work required to comply with "applicable municipal and provincial regulations" relating to the condominium, an interim account of August 1988 in the amount of \$1,250, an account to Mrs. Benini in the amount of \$750 and his personal cheque for \$2,000 that he had drawn up in favour of the purchaser of the condominium. The Solicitor admitted that he could find no evidence that the interim account or the account addressed to Mrs. Benini had ever been delivered to the clients and he stated that the cheque for \$2,000 had never been collected from his office by the purchaser's solicitor.

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The position of the Law Society was that, whether or not the Solicitor's explanations were accepted, the facts in and by themselves constitute misappropriation. By June 16, 1988, all amounts credited to the trust account from or on behalf of the Beninis had been withdrawn. When the additional amount of \$2,799.34 was received by cheque dated August 17, 1988 and credited to the account, this amount was withdrawn completely by October 12, 1988 by cheques payable to the Solicitor transfers for his benefit. The Solicitor admitted that he had been paid twice for his legal fees of \$2,481.50 which had been withdrawn from the account prior to his receipt of the additional cheque for \$2,799.34 and then withdrawn again. He stated that this was a mistake of inadvertence. At all times mentioned above, including the times when there were no remaining funds credited to the Benini's in the trust account, the real estate agent's commission in connection with the sale of the condominium had not been paid.

The Society's counsel also challenged the genuineness of the interim account in the amount of \$1,250 which wrongly referred to Mr. Benini as "Guido" Benini and was wrongly addressed. Counsel also pointed out that the private account addressed to Mrs. Benini in the amount of \$750 appeared to have been typed on two different machines and the top part was slanted away from the horizontal. The Solicitor was asked to look for any supporting documentation with respect to this account. The Solicitor subsequently reported that he could find nothing to confirm the genuineness of the account.

In the view of the Committee, the evidence, as in the case of the Billard's indicates a gross disregard of the Solicitor's obligations with respect to amounts held in trust rather than a dishonest taking of those amounts. The issue is whether his conduct should be characterized as reckless or wilful blindness to those obligations and, on that basis, as misappropriation. The Committee believes that a finding of misappropriation is justified on the evidence. In a reporting letter of June 24, 1988 to the Beninis, the Solicitor indicated that there were insufficient funds in the account to cover all of the legitimate disbursements including the payment of the real estate commission of \$3,710. It was clearly implicit in the letter and an account that accompanied it that, if an additional amount of \$2,899.34 was paid, there would be sufficient in the trust account to cover all of the disbursements including the real estate commission. When the Solicitor accepted Mrs. Benini's cheque for \$2,799.34, the Beninis were entitled to expect that funds sufficient to pay the real estate commission would be retained in the account. Instead, all of the additional funds were withdrawn for the Solicitor's purposes within two months.

The Committee does not accept the Solicitor's suggestion that the deficit in the account was more than covered by the interim account for \$1,250, the private account addressed to Mrs. Benini of \$750 and the cheque for \$2,000 that had been made out in favour of the purchaser of the condominium. The Committee does not believe that either of the accounts were rendered to the Beninis or that they were ever intended to be rendered to them. Similarly, the fact that the Solicitor may have drawn a personal cheque for \$2,000 in favour of the purchaser of the condominium and the fact that he gave a personal undertaking, which he has not been called upon to honour, with respect to problems that had arisen on the closing do not in any way justify his conduct with respect to the trust account. The Committee finds that the Solicitor's conduct indicates a sufficiently high degree of recklessness with respect to his dealings with funds held in trust for the Beninis to require a finding of misappropriation.

Failure to Serve the Clients

The Law Society's position with respect to the allegation that the Solicitor had failed to serve the Beninis conscientiously, diligently and efficiently was based on the Solicitor's failure to pay the balance of the real estate commission in connection with the sale of the condominium. This led to a dispute with the real estate broker and, ultimately, to litigation in which the Beninis were successfully sued and incurred additional costs.

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The dispute arose out of a requisition provided by the solicitor for the purchaser of the condominium in a letter dated March 14, 1988 addressed to the Solicitor. The requisition required production on, or before, closing of the consent of the condominium corporation to the construction of an apartment that was in the basement of the condominium together with a valid building permit from the City of Scarborough. No evidence was given at the hearing of any response or action taken by the Solicitor to deal with this requisition prior to the closing of the sale on April 28, 1988. On that date, having been informed that the purchaser's solicitor proposed to withhold part of the purchase price until the problem had been dealt with, the Solicitor gave his personal undertaking to pay whatever costs were required to obtain the necessary permits. The purchase price was paid to the Solicitor in full and, in his reporting letter of June 24, 1988 to the Beninis, he stated:

The sale of No. 98-201 Alexmuir Blvd., in Scarborough has been completed, subject to our resolving the problem with respect to plumbing in the lower level. This should be completed shortly. In addition, we have not as yet remitted the balance of real estate commission, which will be done when the plumbing problem is completed.

There was a crucial conflict between the evidence given by the Solicitor and that of Giulio Benini with respect to the discussions that ensued and the instructions given to the Solicitor with respect to the failure to pay the balance of the commission. The Solicitor testified that Benini had consistently instructed him not to pay it and had authorized him to defend the law suit that followed. Benini testified that he repeatedly insisted that the commission should be paid and that the Solicitor's failure to do so led to litigation that Benini did not want.

In giving his evidence in chief, and in his cross-examination, Benini was argumentative and evasive. He unconvincingly denied knowledge of the reason for the holdback of the commission until after he and his wife had received the statement of claim in January, 1989 and contrary to documentary evidence subsequently produced by the Solicitor, he denied authorizing, or receiving information with respect to, the defence of the action brought by the real estate broker. When shown a letter dated February 22, 1990 in which, contrary to his earlier testimony, he authorized the Solicitor to defend the action and issue a counterclaim, Benini stated that he had signed the letter under duress.

Despite the fact that, in the Committee's view, there was no plausible connection between the problem in the basement and the conduct of the real estate agent and no defence to the statement of claim, the Committee did not find Benini a credible witness and, with considerable hesitation, it believes that the Solicitor must be given the benefit of the doubt on this matter. In consequence, the Committee finds that the particulars with respect to his failure to serve the Beninis in a conscientious, diligent and efficient manner were not established at the hearing.

Particular 2(c): Contravention of sections 14(8) and 14(9) of Regulation 573

The Law Society alleged that the Solicitor issued the following cheques from his trust accounts in contravention of sections 14(8) and (9) of Regulation 573 (now 708) under the Law Society Act:

Cheque #2051:	March 5, 1990,	Penthouse Management	\$1,800.00
Cheque #2101:	June 1, 1990,	Penthouse Management	\$633.41
Cheque #2119:	June 11, 1990,	Granger and Tower	\$1,132.00
Cheque #2125:	August 1, 1990,	Penthouse Management	\$900.00

No evidence appears to have been given with respect tot he withdrawal of March 5, 1990.

27th June, 1996

The withdrawals of June 1 and June 11, 1990 were made from funds held in trust for Blue Jay Courier Service, the business owned by the Solicitor's wife. The first of those cheques was made in favour of penthouse Management from whom the Solicitor leased the premises in which he conducted his practice. The second cheque was made in favour of Granger and Tower who were the landlords of the premises occupied by the Solicitor and his wife as their residence. The withdrawal of August 1, 1990 in favour of Penthouse management was made from funds held in trust for McDonald and Davies Ltd. McDonald and Davies Ltd. was owned by friends of the Solicitor. In each case, the funds withdrawn were part of the amounts improperly debited from the funds held in trust for the Billards.

It was the position of the Law Society that each of these withdrawals was made to discharge legal obligations of the Solicitor to pay rent and that the funds of the clients could only have been used for this purpose if he had first rendered accounts to them for services he had performed or after he had incurred expenses on their behalf for which he was entitled to be reimbursed.

The Solicitor's evidence was that these amounts payable to Penthouse Management were properly withdrawn on behalf of Blue Jay Courier Service and McDonald and Davies Ltd., respectively, in respect of rent for the premises from which he carried on business and from which, he said, Blue Jay Courier Service and McDonald and Davies Ltd. had also conducted part of their business. He said that the payment to Granger and Tower should not have been made.

There was no suggestion that either of the clients had legal obligations to make the rental payments. Nor was there evidence that either client had authorized the withdrawals. On the contrary, the argument appears to have been merely that the withdrawals represented a fair estimate of what the Solicitor might have charged them for their use of the premises. In these circumstances, the cheques should have been made in favour of the Solicitor after he had rendered bills to Blue Jay Courier Service and McDonald and Davies Ltd. for services rendered or to reimburse him for expenses properly incurred by him on their behalf. The Solicitor acknowledged that he should not have made the payments and testified that these were the only occasions in which he had paid rent from funds held on trust for his clients.

Subsection 14(8) of Regulation 753 was as follows:

- (8) Money shall not be drawn from a trust account other than,
- (a) money properly required for payment to or on behalf of a client;
 - (b) money required to reimburse the member for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client;
 - (c) money properly required for or toward payment of the member's fees for which a billing or other written notification has been delivered;
 - (d) money that is directly transferred into another trust account and held on behalf of a client;
 - (e) money that may by inadvertence have been paid into the trust account in contravention of this section,

but in no case shall the money so drawn exceed the unexpended balance of the money held in the trust account for the client.

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In the view of the Committee, the Solicitor contravened the provisions of section 14(8) when, for his own purposes, he withdrew funds held in trust for Blue Jay Courier Service on June 1 and June 11, 1990 and funds held in trust for McDonald and Davies Ltd. on August 1, 1990. In the opinion of the Committee, such contraventions of the provisions of the Regulation constitute professional misconduct.

DATED this 2nd day of May, 1994

Maurice C. Cullity
Chair

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RECOMMENDATION AS TO PENALTY

The Committee recommends that Douglas Edward Rollo be disbarred as a barrister and struck off the rolls of solicitors.

REASONS FOR RECOMMENDATION

The Solicitor has been practising law for 39 years and has no prior discipline record.

He called no witnesses to testify to his character and the performance of his professional responsibilities in the past and he tendered no testimonials from other members of the profession or from members of the public. When the absence of such evidence was mentioned by counsel for the Society, the Solicitor's response was that the complaints related to facts that occurred in his office and involved his staff and himself. He said that he was embarrassed to be before the Committee, that he accepted responsibility for errors committed by his employees and that he was prepared to face the consequences. He testified that he was in good health at the relevant times and that he had no problems of substance abuse.

27th June, 1996

The Solicitor stated that he had not misappropriated funds with a dishonest intent and that the Committee had made no such finding. He referred to his years of practice with no prior discipline record and to his cooperation with the Society's investigation auditor. He stated that he intends to pay to the Billards, the Beninis and Mr. Santoro the amounts owing to them for which they have already been compensated out of the Society's Compensation Fund. He indicated that he hoped to negotiate some kind of settlement with respect to the outstanding costs and interests in connection with the assessment of his account to Ms. Stephenson.

The Solicitor submitted that, in view of the above circumstances, an appropriate penalty would be a suspension for a "substantial" period followed by restrictions with respect to the type or manner of his practice.

Counsel for the Society submitted that the appropriate penalty was disbarment. She argued that the findings with respect to the Solicitor's failure to serve his clients Willis, the Billards, Santoro and Ms. Stephenson in a diligent, conscientious and efficient manner together with the findings of misappropriation of amounts in excess of \$9,000 demonstrated a complete disregard of their interests. She referred to the absence of mitigating circumstances - apart from the Solicitor's clean discipline record - and his continuing failure to make restitution to his clients. She submitted that the Solicitor's conduct with respect to Ms. Stephenson was the most serious breach of the requirement to serve clients in a conscientious, diligent and efficient manner.

The Committee is in substantial agreement with the submissions of counsel for the Society. While the absence of any previous discipline record is obviously a factor to be considered, the evidence of the Solicitor's dealings with each of the clients referred to in the complaint demonstrated, at the best, a serious and reckless indifference to his financial, reporting and other obligations towards them. His conduct towards Ms. Stephenson was reprehensible and inexcusable in that he took advantage of her vulnerability for his own financial benefit.

Although the Committee has found that the Solicitor's misappropriation of funds belonging to the Beninis involved a reckless blindness to his obligations, his misappropriation of the funds belonging to the Billards was intentional and deliberate.

The Committee has given the Solicitor the benefit of the doubt on a number of matters in which his testimony lacked plausibility but we are satisfied that he was not a completely truthful witness on other matters such as his accounting to the Beninis and his statement that he had made a claim under a theft insurance policy in respect of the alleged defalcations by Mr. Barry.

While viewed in isolation, the Solicitor's behaviour with respect to the Billards, the Beninis, Mr. Willis or Mr. Santoro would not call for disbarment, the totality of the evidence - and, in particular, his conduct towards Ms. Stephenson - demonstrates a pattern and an attitude towards his professional responsibilities that is, in our view, incompatible with membership of the Law Society.

We do not believe that, in the absence of other mitigating circumstances, the fact that the Solicitor has not previously been charged with professional misconduct is a sufficient reason for permitting him to resign from the Society.

27th June, 1996

Douglas Edward Rollo was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 20th day of September, 1956.

ALL OF WHICH is respectfully submitted

DATED this 18th day of April, 1995

Maurice C. Cullity
Chair

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Nancy Backhouse, Chair
Nora Angeles
Helene Puccini

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

Janet Brooks
for the Society

DOUGLAS EDWARD ROLLO
of the City
of Toronto
a barrister and solicitor

R. Donald Rollo
for the solicitor

Heard: October 25, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 3, 1994, Complaint D456/93 was issued against Douglas Edward Rollo alleging that he was guilty of professional misconduct.

The matter was heard In Public (with a portion of the hearing heard In Camera) on October 25, 1995 before this Committee composed of Nancy Backhouse, Chair, Nora Angeles and Helene Puccini. Mr. Rollo attended the hearing and was represented by R. Donald Rollo. Janet Brooks appeared on behalf of the Law Society.

DECISION

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

Complaint D456/93

2. a) He breached an Order of Convocation by continuing to practise while under suspension during the period January 29, 1993 to April 14, 1993;
- b) He breached an Order of Convocation by continuing to practise while under suspension during the period March 6, 1992 to May 21, 1992;
- c) He breached an Order of Convocation by continuing to practise while under suspension during the period November 29, 1991 to January 13, 1992;
- d) He failed to file with the Society within six months of the termination of his fiscal year ending October 31, 1991 and October 31, 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;
- e) He failed to provide a reply to the Society regarding a complaint by his client, Amadeus Blazys, despite letters dated June 16, and July 15, 1993 and a telephone message left on June 29, 1993;
- f) he failed to honour a financial obligation arising from the Order of His Honour Judge Fitzpatrick made September 3, 1991 in the matter of Mega Leasing Inc. v. Douglas Edward Rollo wherein he was required to pay the sum of \$2,909.28 plus costs and pre-judgment interest at 10% per annum commencing November 29, 1990;
- g) He failed to comply with the Order of Mr. Justice Potts dated July 19, 1991 which required him to:
 - i) pay the sum of \$800 to William M. Mercer Limited;
 - ii) pay the Applicant, Margaret Kathleen Willis, costs in the amount of \$500; and
 - iii) pay the Respondent, George Earl Willis Sr., costs in the amount of \$500.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D456/93 and is prepared to proceed with a hearing of this matter on Monday, September 25, 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 D456/93 with his counsel R. Donald Rollo and admits particular 2(d) contained therein. The Solicitor further admits the facts as hereinafter set out. The Solicitor admits that particular 2(d) constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on September 20, 1956.

5. The Solicitor's last known address as shown on the records of the Law Society for the period from August 8, 1989 to the present is 121 Richmond Street West, Penthouse, Toronto, Ontario, M5H 2K1. A copy of the Solicitor's Change of Address letter and notice are attached at Tab 1 of the Document Book.

Particular 2(a)

Practised while suspended from January 29, 1993 to April 14, 1993

6. The Solicitor's Annual Membership Fees in the amount of \$1,230.50 were due on August 1st, 1992.

7. The Solicitor did not pay his annual Membership Fees due on August 1st, 1992 until April 14, 1993.

8. On or about July 11, 1992, the Solicitor's office received the Law Society's first Notice of Annual Membership Fees for the payment due August 1st, 1992 and the Solicitor would have seen it shortly thereafter. A sample copy of the Notice as well as the relevant page of the Law Society's mailing list dated July 11, 1992 is attached at Tab 2 of the Book of Documents.

9. The first Notice cautioned the Solicitor that:

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

10. On or about October 8, 1992, the Solicitor's office received the Law Society's second Notice of Annual Membership Fees due August 1st, 1992 and the Solicitor would have seen it shortly thereafter. A sample copy of the second Notice as well as the relevant page of the Law Society's mailing list dated October 8, 1992 is attached at Tab 3 of the Book of Documents. This second Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

11. On or about November 17, 1992, the Solicitor's office received the Law Society's third and final Notice of Annual Membership Fees and the Solicitor would have seen it shortly thereafter. A sample copy of the third Notice as well as the relevant page from the Law Society's mailing list dated November 17, 1992 is attached at Tab 4 of the Book of Documents. This third Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

12. On January 29, 1993, the Solicitor's Annual Membership Fees due August 1st, 1992 remained outstanding. The Solicitor's rights and privileges as a member of the Law Society were suspended effective January 29, 1993 as ordered by Convocation pursuant to section 36 of the Law Society Act.

27th June, 1996

13. By registered letter dated February 1, 1993, the Law Society notified the Solicitor that his rights and privileges as member of the Law Society were suspended effective January 29, 1993 as ordered by Convocation pursuant to Section 36 of the Law Society Act. A copy of the Law Society's letter as well as the registered mail receipt from the Post Office are attached at Tab 5 of the Book of Documents.

14. On April 14, 1993 the Solicitor's rights and privileges as a member were reinstated as a result of his payment of his Annual Membership Fees due August 1st, 1992.

Particular 2(b)

Practised while suspended from March 6, 1992 to May 21, 1992

15. The Solicitor's Annual Membership Fees in the amount of \$1,166.30 were due on October 1st, 1991.

16. The Solicitor did not pay his Annual Fees due October 1st, 1991 until May 21, 1992.

17. On or about August 21, 1991, the Solicitor's office received the Law Society's first Notice of Annual Membership Fees due October 1st, 1991 and the Solicitor would have seen it shortly thereafter. A sample copy of the first Notice as well as the relevant page of the Law Society's mailing list dated August 21, 1991 is attached at Tab 6 of the Book Documents.

18. The first Notice cautioned the Solicitor that:

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

19. On or about November 8, 1991, the Solicitor's office received the Law Society second Notice of Annual Membership Fees due dated November 8, 1991 and the Solicitor would have seen it shortly thereafter. A sample copy of the second Notice and the relevant page from the Law Society's mailing list dated November 8, 1991 are attached at Tab 7 of the Book of Documents. This second Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

20. On or about January 9, 1992, the Solicitor's office received the Law Society's third Notice of fees due dated January 9, 1992 and the Solicitor would have seen it shortly thereafter. A sample copy of the third Notice and the relevant page from the Law Society's mailing list dated January 9, 1992 are attached at Tab 8 of the Book of Documents. This third Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

21. On or about February 18, 1992, the Solicitor's office received the Law Society's final Notice of Annual Fees due together with a letter from the Law Society dated February 14, 1992 and the Solicitor would have seen them shortly thereafter. A sample copy of the final Notice, a sample copy of the letter dated February 14, 1992 and the relevant page of the Law Society's mailing list dated February 18, 1992 are attached at Tab 9 of the Book of Documents. This final Notice also cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act. The Law Society's letter of February 14, 1992 cautioned the Solicitor that:

"On February 13th, 1992, your name appeared on a list of members who have not yet paid their annual fees, which was submitted to the Finance and Administration Committee. That list will be presented to Convocation on February 28, 1992 with the recommendation of the Finance and Administration Committee that your rights and privileges as a member be suspended on that day.

"Your suspension can be averted only if your payment is received on or before February 28th, 1992."

22. On March 6, 1992, the Solicitor's Annual Membership Fees due October 1st, 1992 remained outstanding. The Solicitor's rights and privileges as a member of the Law Society were suspended effective March 6, 1992 as ordered by Convocation pursuant to section 36 of the Law Society Act.

23. On or about March 6, 1992, the Solicitor's office received the Law Society's Suspension Notice dated March 2, 1992 and the Solicitor would have seen it shortly thereafter. A copy of the Suspension Notice as well as the registered receipt form the Post Office are attached at Tab 10 of the Book of Documents.

Particular 2(c)

Practised while suspended from November 29, 1991 to January 13, 1992

24. The Solicitor's Errors and Omissions Insurance Levy (hereinafter "E. & O." levy) in the amount of \$1,651.30 for the second instalment for the coverage period January 1, 1991 to December 31, 1991 was due on July 1, 1991. It was not paid until January 13, 1992.

25. On or about August 15, 1991 the Solicitor's office received the Law Society's second Notice of Errors and Omissions Insurance Levy and the Solicitor would have seen it shortly thereafter. A sample copy of the second Notice and the relevant page from the Law Society's mailing list are attached at Tab 11 of the Book of Documents. This second Notice cautioned the Solicitor that if he failed to make the payment within four months after the due date, his rights and privileges may be suspended by Convocation pursuant to section 36 of the Law Society Act.

26. On or about November 5, 1991, the Solicitor's office received the Law Society's final Notice dated November 5, 1991 and the Solicitor would have seen it shortly thereafter. A sample copy of the final Notice and the relevant page from the Law Society's mailing list are attached at Tab 12 of the Book of Documents.

27. Payment of the Solicitor's Errors and Omissions levy was outstanding on November 29, 1991. On November 29, 1991, the Solicitor's rights and privileges were suspended as ordered by Convocation pursuant to section 36 of the Law Society Act.

28. The Solicitor's office received, by registered mail, a Suspension Notice dated December 2nd, 1991 and the Solicitor would have seen it shortly thereafter. A copy of the Suspension Notice as well as the registered receipt from the Post Office are attached at Tab 13 of the Book of Documents.

HISTORY OF SUSPENSIONS

29. The Solicitor has the following history of suspension for non-payment of fees:

Date of Suspension	Reason for Suspension	Date of Reinstatement
June 1st, 1993	Non-Payment of the E. & O. Levy.	June 24th 1993
January 29th 1993	Non-Payment of the Annual Fees.	April 14 1993
March 6th 1992	Non-Payment of the Annual Fees.	June 21st 1992
November 29th 1991	Non-Payment of the E. & O. Levy.	January 13th 1992
May 24th 1991	Non-Payment of the E. & O. Levy.	July 9th 1991
March 28th 1991	Non-Payment of the Annual Fees.	April 12th 1991
November 23rd 1990	Non-Payment of the E. & O. Levy.	December 5th 1990
May 25th 1990	Non-Payment of the E & O Levy.	June 1st 1990
February 23rd 1990	Non-Payment of the Annual Fees.	March 9th 1990
November 24th 1989	Non-Payment of the E. & O. Levy.	January 2nd 1990
February 23rd 1989	Non-Payment of the Annual Fees.	not available
May 27th 1988	Non-Payment of the E. & O. Levy.	June 2nd 1988
November 22nd 1985	Non-Payment of the E. & O. Levy.	November 27th 1985
November 25th 1983	Non-Payment of the E. & O. Levy.	November 30th 1983

Particular 2(d)

Failure to file annual filings for fiscal years ending 1991 and 1992

30. The Solicitor's fiscal year ends on October 31st.

31. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal years which ended October 31st, 1991 and October 31st, 1992 as required by s. 16(2) of Regulation 708 under the Law Society Act.

32. The Solicitor's filing for the fiscal year ended October 31st, 1991 was due on or before April 30, 1992.

33. On May 4th, 1992, the Solicitor's office received the Law Society's Notice of Default in Annual Filing and the Solicitor would have seen it shortly thereafter. A copy of the Notice of Default in Annual Filing is attached at Tab 14 of the Book of Documents.

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34. On or about June 8, 1992 the Solicitor's office received the Law Society's registered letter dated June 5, 1992 and the Solicitor would have seen it shortly thereafter. The letter advised that should his late filing fee not be paid by June 22nd, 1992, his name would go before Convocation for suspension of his rights and privileges. The Solicitor was advised that the payment of the late filing fee did not relieve him of his obligation to make annual filings. A copy of the registered letter and post office registration receipt is attached at Tab 15 of the Book of Documents.

35. On or about October 27, 1992, the Solicitor's office received the Law Society's registered letter dated October 22, 1992 and the Solicitor would have seen it shortly thereafter. The letter reminded the Solicitor that he may be suspended on November 27th, 1992 should payment of his late filing fee not be received by November 26, 1992. A copy of the registered letter and post office registration receipt is attached at Tab 16 of the Book of Documents.

36. On November 13, 1992, the Solicitor's office received the Law Society's letter dated November 13, 1992 and the Solicitor would have seen it shortly thereafter. The letter reminded the Solicitor again that he may be suspended on November 27th, 1992 should payment of his late filing fee not be received by November 26, 1992. A copy of the letter is attached at Tab 17 of the Book of Documents.

37. On or about December 29, 1992, the Solicitor's office received the Law Society's registered letter dated December 22, 1992 and the Solicitor would have seen it shortly thereafter. The letter advised that the Solicitor's cheque for \$1,500 was returned by the bank marked "N.S.F." The Law Society requested that the Solicitor submit a certified cheque in the amount of \$1,500 before January 28, 1993 to avoid suspension by order of Convocation. A copy of the registered letter and the post office registration receipt is attached at Tab 18 of the Book of Documents.

38. On or about January 15, 1993, the Solicitor's office received a letter from the Law Society dated January 15, 1993 and the Solicitor would have seen it shortly thereafter. The letter advised that as of January 29th, 1993, by order of Convocation made pursuant to section 36 of the Law Society Act, his rights and privileges will be suspended if payment of \$1,500 is not remitted by January 28, 1993. A copy of the letter is attached at Tab 19 of the Book of Documents.

39. On or about April 14, 1993, the Solicitor paid \$1,500 towards the outstanding late filing fee of \$3,000. A copy of the Law Society's letter dated April 14, 1993 confirming payment is attached at Tab 20 of the Document Book.

40. The Solicitor's filing for the fiscal year ended October 31, 1992 was due on or before April 30, 1993.

41. On or about May 6, 1993, the Solicitor's office received the Law Society's Notice dated May 6, 1993 and the Solicitor would have received it shortly thereafter. The Notice was respect to his default in filing for the fiscal periods ending October 31, 1991 and October 31, 1992. A copy of the Notice is attached at Tab 21 of the Book of Documents.

42. By letter dated June 3, 1993, to the Law Society, the Solicitor advised that he would be making the requisite filing shortly. A copy of the Solicitor's letter of June 3, 1993 is attached at Tab 22 of the Book of Documents.

43. On or about June 4, 1993 the Solicitor's office received the Law Society's Registered Notice of Default in Annual Filing and the Solicitor would have seen it shortly thereafter. The Notice advised that the late filing fee would begin to accrue on June 23rd, 1993. The Solicitor was advised that the payment of the late filing fee did not relieve him of his obligation to make annual filings.

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A copy of the Notice and the post office registered mail receipt are attached at Tab 23 of the Book of Documents.

44. On or about October 19, 1993, the Solicitor's office received a third Notice of Default in Annual Filing and the Solicitor would have seen it shortly thereafter. A copy of the Notice and the registered mail receipt are attached at Tab 24 of the Book of Documents.

45. On or about November 26, 1993, the Solicitor's office received the Society's registered letter of November 26, 1993 and the Solicitor would have seen it shortly thereafter. The letter advised that the Solicitor's rights and privileges were suspended as of November 26, 1993 for non-payment of the late filing fee. A copy of the letter and registered mail receipt are attached at Tab 25 of the Book of Documents.

46. On March 1, 1994, the Solicitor paid \$1,500 in payment of his outstanding late filing fee. The reinstatement fee was paid on or about March 16, 1994. Copies of the letters of March 2, 1994 and March 16, 1994 acknowledging receipt of those payments are attached at Tab 26 of the Book of Documents.

47. On August 12, 1994, the Solicitor filed Forms 2 and 3 for his fiscal years ending October 31, 1991 and October 31, 1992. Copies of the filings are at Tab 27 of the Document Book.

Particular 2(e)
Failed to reply to the Law Society

48. In January 1992, the Solicitor represented Amo Blazys in respect of a criminal charge of assault. Mr. Blazys had also laid criminal charges against the individual who had laid a charge of assault against Mr. Blazys. The charges and countercharges were withdrawn upon the parties entering into a peace bond and upon the payment of \$450.00 to Mr. Blazys for damages to his vehicle.

49. By letter dated April 14, 1993, Mr. Blazys complained that the Solicitor had failed to forward to him the \$450.00 which the Solicitor had received on his behalf. Mr. Blazys stated that the funds had been provided to the Solicitor, in trust, and that although one year and three months had elapsed, the Solicitor had failed to forward payment to him. A copy of the letter is attached at Tab 28 of the Book of Documents.

50. By letter dated April 28, 1993, the Law Society requested the Solicitor's response to the letter of complaint of Mr. Blazys. The Solicitor did not respond to this letter. A copy of the Law Society's letter is attached at Tab 29 of the Book of Documents.

51. By letter to the Law Society dated received May 26, 1993, the Solicitor provided a response to the Law Society's letter of April 28, 1993. The Solicitor stated, *inter alia*,

"The agreement provided that \$450.00 would be paid to Mr. Blazys for damages to his vehicle provided the abided by the territorial agreement over a period of time.

Notwithstanding Mr. Blazys' understanding of the agreement I am awaiting the receipt of a release from the other side before the funds are released to him.

In the circumstances the matter can be resolved if Mr. Blazys provides an indemnity agreement."

27th June, 1996

A copy of the Solicitor's letter is attached at Tab 30 of the Book of Documents.

52. By registered letter dated June 16, 1993, the Law Society acknowledged the Solicitor's letter of May 26, 1993 and requested that the Solicitor:

- a. advise when he received the funds;
- b. provide a copy of his trust ledger;
- c. advise who was the opposing counsel; and
- d. provide documentation to support that the Solicitor had contacted opposing counsel to request the release.

A copy of the Law Society's letter and post office registration receipt are attached at Tab 31 of the Book of Documents.

53. On June 29, 1993, a Law Society staff member telephoned the Solicitor's office and left a message requesting a reply to the June 16, 1993 letter. The staff member's notes are attached at Tab 32 of the Book of Documents.

54. On July 15, 1993, the Law Society sent a further registered letter to the Solicitor advising that the fact of his failure to respond to the Law Society would be referred to the Discipline Committee within seven days if there was no reply. A copy of the Law Society's letter dated July 15, 1993 and enclosure together with registration receipt are attached at Tab 33 of the Book of Documents. The Solicitor did not reply to this correspondence.

55. Under cover of letter dated August 9, 1994, the Solicitor provided the Law Society with two draft letters, one addressed to the Law Society and one addressed to Mr. Blazys. The letters referred to payment of \$450.00 to Mr. Blazys. The Solicitor requested the Law Society's advice as to whether "it would be proper to complete and send them". A copy of the Solicitor's letter and the two draft letters are attached at Tab 34 of the Book of Documents.

56. By letter dated August 19, 1994, the Law Society responded to the Solicitor's letter of August 9, 1994, indicating that it was unnecessary to obtain the Law Society's approval of either letter but indicating the preference of one of the two letters. A copy of the Law Society's letter and enclosure are attached at Tab 35 of the Book of Documents.

57. To date, the Solicitor has failed to provide the information requested in the Law Society's letter of June 16, 1993.

58. On August 1, 1995, a Law Society staff member was advised by Mr. Blazys that he had not received payment of \$450 from the Solicitor. A copy of the staff member's notes of the telephone conversation with Mr. Blazys is attached at Tab 36 of the Document Book.

Particular 2(f)
Financial obligation

59. The Solicitor failed to honour a financial obligation to arising out of a lease of computer equipment from Mega Leasing Inc. On October 14, 1988, the Solicitor entered into a lease agreement with Mega Leasing Inc. The other lessees under the lease were the other solicitors of the Solicitor's former firm. The computer equipment was installed in the Solicitor's office premises. The lease provided for 42 rental payments of which only 10 were made. A copy of the Agreement is attached at Tab 37 of the Book of Documents.

60. On September 3, 1991, His Honour Judge Fitzpatrick of the Toronto Small Claims Court granted judgment against the Solicitor in the amount of \$2,909.28 plus costs and interest at 10% per annum commencing November 29, 1990 in respect of the outstanding payments under the lease. A copy of the Judgment is attached at Tab 38 of the Book of Documents.

61. By letter dated July 15, 1992, Mega Leasing Inc., complained to the Law Society that the Solicitor failed to pay the outstanding Judgment. A copy of the letter of complaint is attached at Tab 39 of the Book of Documents.

62. By letter dated October 6, 1992, the Solicitor advised the Law Society that he was aware of the claim against him by Mega Leasing but that he was unaware of the judgment. A copy of the Solicitor's letter is attached at Tab 40 of the Book of Documents.

63. By letter dated January 28, 1993, the Solicitor advised the Law Society that a motion and supporting material had been prepared for service and filing to set aside the judgment. The Solicitor enclosed a notice of pre-trial, an award of costs of \$50.00 against him and advised that the costs had been paid. A copy of the Solicitor's letter and enclosures are attached at Tab 41 of the Book of Documents.

64. By letter to the Law Society received May 26, 1993, the Solicitor advised that he intended to have the Judgment set aside and provided a Notice of Motion dated February 12, 1993 which had not yet been filed with the court. The Solicitor took the position that since Mr. Maharaj of Mega Leasing Inc. was not a client of the Solicitor or his former firm, the debt was not in relation to his practice. A copy of the letter and Notice of Motion are attached at Tab 42 of the Book of Documents.

65. By letter dated July 2, 1993, the Law Society acknowledged the Solicitor's letter of May 26, 1993. The Law Society confirmed that a debt in relation to a lease for a computer system for the Solicitor's office would be considered professional obligation within the meaning of Rule 13, Commentary 6 of the *Rules of Professional Conduct*. The Solicitor was requested to provide documentation to support that he had taken steps to set aside the judgment. A copy of the Law Society's letter is attached at Tab 43 of the Book of Documents.

66. The Solicitor failed to provide a reply to the Law Society's request for documentation.

67. To date, the Solicitor has not filed an application or any other document with the Court requesting an order setting aside the judgment.

68. To date, the judgment remains outstanding.

Particular 2(g) He failed to comply with the Order of Mr. Justice Potts dated July 19, 1991 which required him to:

- i) pay the sum of \$800 to William M. Mercer Limited;
- ii) pay the Applicant, Margaret Kathleen Willis, costs in the amount of \$500; and
- iii) pay the Respondent, George Earl Willis Sr., costs in the amount of \$500.

69. The Solicitor represented George Earl Willis Sr. in matrimonial proceedings in which Mr. Willis' wife, Margaret Kathleen Willis, sought *inter alia* support and an equalization of property.

70. The Solicitor obtained a valuation of a pension belonging to Mr. Willis for the purposes of the matrimonial proceedings. The valuation was prepared by William M. Mercer Limited.

71. As a result of the Solicitor's failure to pay the account of William M. Mercer Limited, an motion was brought by Margaret Kathleen Willis requiring either her husband or the Solicitor to pay William M. Mercer Limited the sum of \$1,240.00. A copy of the Notice of Motion, and Affidavits of Service of same together with the Motion Record are at Tab 44 of the Document Book.

72. The application was heard on July 19, 1991 before Mr. Justice Potts who ordered, *inter alia*: ...

2. THIS COURT ORDERS that Douglas E. Rollo, Q.C. pay to William M. Mercer Limited the sum of \$800.00.
3. THIS COURT ORDERS that Douglas E. Rollo, Q.C. pay the costs of this motion to the Applicant, fixed at \$500.00, forthwith.
4. THIS COURT ORDERS that Douglas E. Rollo, Q.C. pay the costs of the motion to the Respondent, fixed at \$500.00, forthwith.

A copy of the Order is at Tab 45 of the Document Book.

73. By letter dated October 6, 1992, the Solicitor provided a response to a complaint by counsel for Mrs. Willis, that the Solicitor had failed to make any payment to Mrs. Willis. The Solicitor's letter provided, *inter alia*, that he was not a party to the proceedings, that he did not attend the motion, that he was aware of the judgment and was retaining counsel to bring an application to set aside or vary the order. A copy of the Solicitor's letter is at Tab 46 of the Document Book.

74. To date, the Solicitor has not commenced proceedings to set aside or vary the order.

75. To date, the Solicitor has not made payment to to William M. Mercer Limited, Margaret Kathleen Willis or George Earl Willis Sr. as required by the order.

DATED at Toronto, this 25th day of September, 1995."

Preliminary Issue

At the outset of the hearing, Counsel for the Solicitor asked to be removed from the record in order to give evidence on the Solicitor's behalf with respect to penalty. In order to ensure that the Solicitor was represented at the hearing, the Committee ruled that Counsel could act for the Solicitor at the first part of the hearing with respect to the issue of a finding of professional misconduct and, in addition, if necessary, testify on the Solicitor's behalf at the second part of the hearing with respect to penalty.

Reasons for Findings of Professional Misconduct

Practising under Suspension:

Particular 2(a) of the Complaint:

The Solicitor, while suspended, charged Legal Aid \$234.50 for preparing an opinion letter on January 29, 1993. The Solicitor testified that various drafts of the opinion letter may have been prepared prior to the period of suspension which commenced on January 29, 1993.

27th June, 1996

Particular 2(b):

While suspended, the Solicitor, on March 11, 1992 and March 18, 1992, represented a client on a landlord and tenant matter in court for which services he billed Legal Aid approximately \$400. On March 20, 1992 to April 21, 1992, he represented a client with respect to a criminal charge. The Solicitor testified that while he was entitled to represent both clients as an agent, he neither advised the clients nor the courts that he was suspended.

Particular 2(c):

From November 29, 1991 to December 12, 1991, while suspended, the Solicitor represented a client on a matrimonial matter, charging Legal Aid for services of approximately \$500.

Conclusion regarding Practising Under Suspension

The conclusion of the Committee is that the Solicitor was practising while under suspension during the three separate periods of suspension set out above.

Failing to File:

Particular 2(d) of the Complaint:

The Solicitor admitted in the Agreed Statement of Facts that he failed to file a statutory declaration and a report in the prescribed form for a period which exceeded 27 months for the 1991 filing and 15 months for the 1992 filing. The Solicitor admitted that this constituted professional misconduct. His explanation was that his accountant of some 30 years was retiring and had not attended to the filings. He further testified that he was not operating a trust account during either of these periods.

Failing to Reply to the Law Society:

Particular 2(e) of the Complaint:

On April 28, 1993, the Law Society wrote to the Solicitor requesting his comments regarding \$450 which a client claimed the Solicitor had received in trust on his behalf 15 months previously and failed to release to the client. By letter received by the Law Society on May 26, 1993, the Solicitor responded that he was awaiting the receipt of a release from the other side and that the matter could be resolved if the client provided an indemnity agreement. The Law Society wrote the Solicitor on June 16, 1993 requesting further information, including a copy of his trust ledger. This was followed up by a telephone message left for the Solicitor on June 29, 1993 and a further letter on July 15, 1993.

The Solicitor wrote the Law Society on August 9, 1994 requesting its approval with respect to two draft letters which dealt with paying the client the \$450 in issue. The Law Society gave the approval the Solicitor had sought while advising him that it was unnecessary to obtain approval.

The Solicitor has failed to provide the information the Law Society requested including a copy of his trust ledger. He has not paid the client his \$450 to the present time.

Conclusions regarding Failing to Reply

The conclusion of the Committee is that the Solicitor failed to provide the information requested by the Law society, thereby contravening Rule 13, Commentary 3 of the Rules of Professional Conduct.

Failure to Honour Financial Obligations:

Particular 2(f) of the Complaint:

Mega Leasing Inc.'s Judgment Against the Solicitor for Computer Lease

A judgment on September 3, 1991 was obtained against the Solicitor by Mega Leasing Inc. for \$2,909.28 plus costs and prejudgment interest. This related to computer equipment leased for his practice. At the latest, the Solicitor was aware of this judgment by October 6, 1992 when he responded to an inquiry from the Law Society stating that he had never received a notice of trial, that there was a good defence on the merits and that he would be moving to set aside judgment. Although a notice of motion was drafted to set aside the judgment, this was never proceeded with. The Solicitor's explanation for this was that he was waiting for enforcement proceedings to be brought against him by Mega Leasing. The judgment remains unpaid.

Order of Justice Potts:

Particular 2(g) of the Complaint:

On July 19, 1991, Justice Potts ordered the Solicitor to pay the sum of \$800 to William M. Mercer Limited, \$500 costs to Margaret Willis forthwith and \$500 costs to George Willis, his former client, forthwith. In responding on October 6, 1992 to the Law Society's correspondence regarding the Solicitor's failure to comply with the Order, he advised that he was presently retaining counsel to move to set it aside. At the time of hearing, no such motion had been brought. The Solicitor's explanation for this was that he was waiting for enforcement proceedings to be brought against him. The amounts remain unpaid.

Conclusion regarding Failure to Honour Financial Obligations

The conclusion of the Committee is that the Solicitor has failed to honour financial obligations arising from his practice in contravention of Rule 13, Commentary 16.

Finding of Professional Misconduct

The Committee finds that on the evidence the Solicitor is guilty of professional misconduct with respect to each of the particulars set out in the Complaint.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Douglas Edward Rollo be granted permission to resign.

REASONS FOR RECOMMENDATION

The Solicitor has been practising law for 39 years. A Report and Decision of a prior discipline Committee dated April 18, 1995 recommended that the Solicitor be disbarred. This Report has not yet gone before Convocation.

The Solicitor's son, Donald Rollo, a solicitor himself, testified that his father has been a member in good standing since 1956 but that he had had a problem with judgment since 1989 caused by alcoholism. He testified that after a bad accident in July, 1994 which was alcohol related, his father had stopped drinking. The Solicitor has not been practising since that time and is 66 years of age. Donald Rollo testified that his father had financial problems. He testified that his father was guilty of poor judgment rather than dishonesty and conceded that his father may have been ungovernable.

The Solicitor submitted that the appropriate penalty would be to grant him permission to resign.

Counsel for the Law Society submitted that the appropriate penalty was disbarment regardless of whether the Report and recommendation of the prior Discipline Committee was taken into account. She submitted that the totality of the Solicitor's conduct demonstrated ungovernability and a pattern and attitude incompatible with membership in the Law Society.

The Committee is of the view that as the Report and Decision of the prior Discipline Committee has not yet gone to Convocation, we should base our recommendation with respect to penalty on the facts before us without assuming that the prior Report and recommendations will be confirmed by Convocation.

While the matters before us are serious, they do not, considered by themselves, go so far as to establish ungovernability. There is no evidence of misappropriation of funds. There was evidence of some cooperation with the Law Society. The Solicitor has not been practising for over a year. Given his age and lengthy record with the Law Society without incident, we feel that the public interest will be sufficiently served if the Solicitor is permitted to resign.

Douglas Edward Rollo was admitted as a Solicitor and called to the Bar on the 29th day of September, 1956.

ALL OF WHICH is respectfully submitted

DATED at Toronto this 8th day of November, 1995

Nancy Backhouse
Chair

The Reports as amended were voted on and adopted.

The Impact Statement of Joan E. Stephensen in the April 18th Report was filed as Exhibit 4 and the Affidavit of Donald Rollo was filed as Exhibit 5. The character letters were filed as Exhibit 6.

Note: The Exhibits were renumbered as an error occurred in numbering at the hearing.

The recommended penalty of the Discipline Committee of its Report dated April 18th, 1995 was that the solicitor be disbarred.

27th June, 1996

The recommended penalty of the Discipline Committee of its Report dated November 8th, 1995 was that the solicitor be granted permission to resign.

Ms. Brooks made submissions in support of the solicitor being disbarred.

Ms. Davies made submissions in support of the solicitor being granted permission to resign.

The solicitor addressed Convocation.

There were questions from the Bench.

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

It was moved by Mr. Finkelstein, seconded by Ms. Carpenter-Gunn that the solicitor be disbarred.

Carried

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

Not Put

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

Re: Frederick Blake KENWELL - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Swaye, Ms. Harvey and Ms. Ross withdrew for this matter.

Ms. Jane Ratchford appeared for the Society. Mr. William McDowell, Duty Counsel appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 23rd May, 1996, together with an Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 24th May, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th June, 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

Richmond C. E. Wilson, Q.C., Chair
Gerald A. Swaye, Q.C.
Jane Harvey

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

Elizabeth Cowie
for the Society

FREDERICK BLAKE KENWELL
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 31, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 28, 1995 Complaint D211/95 was issued against Frederick Blake Kenwell alleging that he was guilty of professional misconduct.

The matter was heard in public on January 31, 1996 before this Committee comprising Richmond C.E. Wilson, Q.C., Chair, Gerald A. Swaye, Q.C. and Jane Harvey. The Solicitor did not attend the hearing nor was he represented. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D211/95

2. a) he failed to co-operate with the Law Society's attempts to conduct an audit, pursuant to sections 9 and 18 of Regulation 708 when he failed to produce his books and records despite the Society's:
 - i) visit on March 21, 1995;
 - ii) letters dated April 20, 1995 and May 16, 1995; and
 - iii) telephone communications on March 23, 1995, March 29, 1995, March 30, 1995, March 31, 1995, April 3, 1995, April 4, 1995, April 5, 1995, May 8, 1995 and May 10, 1995.

Service

The Committee was satisfied that the Solicitor had been served in compliance with the Law Society Act and that the matter should proceed in the Solicitor's absence.

RECOMMENDATION AS TO PENALTY

The Committee recommends as follows:

1. that the Solicitor produce to the Law Society by April 1, 1996 the books and records requested in its letter of May 16, 1995;
2. that if the books and records are provided by that date, that the Solicitor be suspended for a period of one month, following the conclusion of the suspension ordered by Convocation on January 25, 1996;
3. that if the Solicitor has not provided the books and records by that date that he be disbarred.

REASONS FOR RECOMMENDATION

In the absence of the Solicitor the task of the Committee is not made easy and while we were not provided with any indication that there had been any default on the Solicitor's part, his failure to provide to the Society the information necessary to make that judgment prevents the Committee from coming to anything other than an unfavourable conclusion.

Notwithstanding the time which has been provided to the Solicitor and in view of the correspondence in the file relating to the solicitor's present efforts to re-establish his job prospects, it was felt that he should be given additional time to accomodate the legitimate needs of the Society. Upon his failure to provide those records in that time disbarment was considered to be the appropriate penalty.

Frederick Blake Kenwell was called to the Bar on March 19, 1991.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of May, 1996

Richmond C.E. Wilson, 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 suspended for a period of 1 month following the conclusion of the suspension ordered by Convocation on January 25th, 1996 if he produced his books and records by April 1st, 1996, failing which he was to be disbarred.

The Law Society's counsel advised that the filings had been made and both counsel made submissions in support of the 1 month suspension.

It was moved by Mr. Crowe, seconded by Mr. Marrocco that the solicitor be suspended for a period of 1 month following the conclusion of any administrative suspension and the suspension ordered by Convocation on January 25th, 1996.

Carried

Re: David Eric HOWLETT - Niagara Falls

The Secretary placed the matter before Convocation.

Messrs. Crowe and Wilson withdrew for this matter.

Ms. Curtis did not participate.

Mr. Maclure appeared for the Society and Mr. McDowell, Duty Counsel appeared on behalf of the solicitor who was present.

27th June, 1996

Convocation had before it the Report of the Discipline Committee dated 9th May, 1996, together with an Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd May at the 3643 Portage Road address (marked Exhibit 1), together with the Report and Affidavit sworn 11th June, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 6th June, 1996 at the 6490 Glengate Street address (marked Exhibit 2), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th June, 1996 (marked Exhibit 3). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Richmond C. E. Wilson, Q.C., Chair
Gordon Z. Bobesich
Marshall A. Crowe

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

Allan Maclure
for the Society

DAVID ERIC HOWLETT
of the City
of Niagara Falls
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 13, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 28, 1994, Complaint D234/94 was issued against David Eric Howlett alleging that he was guilty of professional misconduct.

The matter was heard in public on December 13, 1995 before this Committee composed of Richmond C.E. Wilson, Q.C., Chair, Gordon Z. Bobesich and Marshall A. Crowe. Mr. Howlett attended the hearing and represented himself. Allan Maclure appeared on behalf of the Law Society.

DECISION

The following particulars were found to have been established, with the exception of 2 (b) "September 23, 1992", and 2 (c) "May 10, 1994":

Complaint D234/94

2. a) He failed to comply with his personal undertaking dated March 4, 1992 to Frank M. Marotta, a fellow solicitor.
- b) He failed to provide a response to communications from Frank M. Marotta, a fellow solicitor, in spite of letters to him dated September 23, 1992, March 19, 1993 and March 11, 1994;
- c) He failed to reply to the Law Society regarding a complaint by Frank M. Marotta, in spite of letters to him dated April 13, 1994 and May 25, 1994, a telephone message left for him on May 10, 1994, and a telephone conversation with him on June 8, 1994 wherein he stated that he would respond to the Law Society by June 17, 1994.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D234/94 and is prepared to proceed with a hearing of this matter on December 12, 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 D234/94 and this agreed statement of facts and admits the following particulars contained therein. The Solicitor also admits that the following facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct:

- a) he failed to comply with his personal undertaking dated March 4, 1992 to Frank M. Marotta, a fellow solicitor;
- b) he failed to provide a response to communications from Frank M. Marotta, a fellow solicitor, in spite of letters to him dated March 19, 1993 and March 11, 1994;
- c) he failed to reply to the Law Society regarding a complaint by Frank M. Marotta, in spite of letters to him dated April 13, 1994 and a telephone conversation with him on June 8, 1994 wherein he stated that he would respond to the Law Society by June 17, 1994.

IV. FACTS

4. The Solicitor was called to the Bar on September 23, 1983.

5. The Solicitor has been administratively suspended from the practice of law since mid 1993. This suspension occurred because of the Solicitor's non-payment of his Errors and Omissions levy. The exact date upon which the suspension commenced is a matter at issue between the Law Society and the Solicitor. The Solicitor states that he wound up his practice in 1993.

27th June, 1996

6. The Solicitor and the Law Society also disagree as to the Solicitor's status between January 15, 1990 and February 22, 1991. The Law Society alleges that the Solicitor was under suspension during this time. The Solicitor disagrees.

7. The Solicitor has otherwise carried on the practice of law in the City of Niagara Falls, Ontario.

8. On March 4, 1992, the Solicitor acted for the vendors in the sale of a property known municipally as 6279-6281 Ker Street, Niagara Falls, Ontario.

9. On March 4, 1992 the Solicitor executed an Undertaking pertaining to the sale of the property and provided it to the purchasers and to their Solicitor, Frank M. Marotta of St. Catharines, Ontario (Document Book, Tab 1).

10. On September 23, 1992 Mr. Marotta wrote to the Solicitor and requested particulars regarding the Discharge of Mortgage and Sheriff Certificate that the Solicitor had undertaken to provide. (Document Book, Tab 2)

11. The Solicitor did not provide the Discharge of Mortgage or the Sheriff's certificate requested by Mr. Marotta. The Solicitor states that he contacted Mr. Marotta's office and left word with his associate, Mr. Lugg, that he would try and resolve these matters.

12. On March 19, 1993 Mr. Marotta again wrote to the Solicitor and requested his immediate attention to his undertaking given on March 4, 1992 (Document Book, Tab 3). The Solicitor did not respond to the request that he comply with the Undertaking.

13. The Solicitor states that he did not receive Mr. Marotta's letter of March 19, 1993.

14. On March 11, 1994, Mr. Marotta again wrote to the Solicitor and advised him that he had attended to the discharge of mortgage that the Solicitor had earlier undertaken to register but had failed to do. He asked the Solicitor to forward a cheque in the sum of \$50.00 to cover the registration costs. (Document Book, Tab 4)

15. The Solicitor states that he did not receive Mr. Marotta's letter of March 11, 1994.

16. On March 18, 1994, Mr. Marotta wrote to the Law Society of Upper Canada and complained about the Solicitor's failure to comply with his undertaking and his failure to respond to his correspondence regarding the undertaking. (Document Book, Tab 5)

17. On April 13, 1994, Jackie Lebovic (nee Mamott), a Complaints Officer, wrote to the Solicitor regarding the complaint of Mr. Marotta and requested that he provide the Law Society with his response. (Document Book, Tab 6)

18. The Solicitor did not reply Mrs. Lebovic's (nee Mamott) letter. The Solicitor states that he did not receive Ms. Lebovic's letter of April 13, 1994 until June 6, 1994.

19. On May 25, 1994, Mrs. Lebovic (nee Mamott) again wrote to the Solicitor. She pointed out his failure to respond to her letter of April 13, 1994 and his failure to reply to a telephone message left on his answering machine on May 10, 1994. She also advised him of unsuccessful efforts made on May 5, 9, and 16, 1994 to reach him or otherwise leave a message on his answering machine. Mrs. Lebovic's (nee Mamott) letter was sent by registered mail and was received by the Solicitor on June 6, 1994. (Document Book, Tab 7)

20. The Solicitor states that he did not receive the telephone message left on May 10, 1994.

21. The Solicitor telephoned the Law Society on June 6, 1994 and left a message requesting staff member Jackie Lebovic (nee Mamott) to telephone him. Mrs. Lebovic (nee Mamott) did so on June 7, 1994. She was unable to reach the Solicitor and left a message. The Solicitor returned her call on June 8, 1994 and during the course of their conversation, agreed to provide his written response once he located his file. At Mrs. Lebovic's (nee Mamott) request, he agreed to respond in writing by June 17, 1994. (Document Book, Tab 8)

22. The Solicitor did not respond by June 17, 1994 and has not yet provided his written response to Mrs. Lebovic's (nee Mamott) letters as he had agreed to do.

23. On June 7, 1994, Mr. Marotta again wrote to the Law Society regarding the matter. He complained that he had spent a considerable amount of time fulfilling the Solicitor's undertaking and he suggested that he should be compensated for his efforts and related disbursements. (Document Book, Tab 9)

24. The Solicitor states that he did not believe that he could comply with the Undertaking and respond to the Society subsequent to June 8, 1994, as he had, subsequent to giving the Undertaking, returned the client's file to the client and referred him to other legal counsel regarding other legal matters.

25. The Solicitor has apologized to Mr. Marotta and has promised to compensate him for his time and disbursements relating to the undertaking. Mr. Marotta has accepted the Solicitor's apology and offer for compensation.

V. PRIOR DISCIPLINE

26. On November 23, 1989, the Solicitor was found guilty of professional misconduct regarding his failure to file Forms 2/3; failure to reply to the communications of the Law Society, clients and other solicitors; failure to maintain books and records; failure to co-operate with the Law Society's investigation; breach of undertaking; practising while under administrative suspension; and his failure to serve clients in a conscientious, diligent and efficient manner. Convocation ordered that the Solicitor be suspended for a period of one month, commencing December 15, 1989 and thereafter indefinitely until his books and records were in order and his outstanding Forms 2/3 were filed. Upon reinstatement, the Solicitor was not permitted to practice as a sole practitioner for a period of two years.

27. The Solicitor has requested and the Society agrees to include in the Document Book the joint submission as to penalty dated July 1, 1989 together with the Report and Decision of the Discipline Committee dated October 12, 1989 and the Order of Convocation dated November 23, 1989. These documents are found at Tab 10 of the Document Book. The Solicitor requests that the joint submission as to penalty be received *in camera* as it contains information which the Solicitor considers to be personal. The Society takes no position with respect to this request.

DATED at Toronto this 12th day of December, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that David Eric Howlett be suspended for a period of three months, such suspension to commence at the conclusion of his current administrative suspension, and that he participate with the Practice Advisory Service and Professional Standards Department at the resumption of his practice.

REASONS FOR RECOMMENDATION

While the matter in question appears on its face to be a single element of indiscretion, and in view of the Solicitor's promise to compensate the complaining lawyer, the panel was tempted to treat the matter as being within the realm of a reprimand. On review of the Solicitor's prior discipline history and on further review of the Solicitor's complete lack of co-operation with the Society when the matter was reported to them, it was considered that a more significant penalty should be meted to the Solicitor. While the event was isolated, it demonstrated this Solicitor's failure to attend to the needs of his client, failure to respect the appropriate level of collegiality with a fellow solicitor, and a complete disregard for the reporting requirements with the Law Society, an attitude which if it were to become prevalent would destroy our ability to govern ourselves.

David Eric Howlett was called to the Bar on September 23, 1993.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED this 9th day of May, 1996

Richmond C.E. Wilson, Q.C.

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

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 3 months, such suspension to commence at the conclusion of the current administrative suspension and further that the solicitor participate with the Practice Advisory Service and Professional Standards at the resumption of his practice.

There were submissions by both counsel in support of the recommended penalty.

It was moved by Mr. Wright, seconded by Mr. Finkelstein that the recommended penalty of the Discipline Committee be adopted.

Carried

Re: Robert Andrew STEWART - Waterloo

The Secretary placed the matter before Convocation.

Ms. Curtis did not participate.

Ms. Brooks appeared on behalf of the Society and Mr. McDowell appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 24th April, 1996, together with an Affidavit of Service sworn 8th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 29th April, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 2nd May, 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

Larry A. Banack, Chair

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

Elizabeth Cowie
for the Society

ROBERT ANDREW STEWART
of the City
of Waterloo
a barrister and solicitor

Not Represented
for the solicitor

Heard: March 29, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 16, 1996, Complaint D8/96 was issued. This Complaint was withdrawn and replaced with D8a/96 issued on March 21, 1996 against Robert Andrew Stewart alleging that he was guilty of professional misconduct.

The matter was heard in public on March 29, 1996 before a single panel Benchers, Larry A. Banack, Chair. The Solicitor was present and not represented by counsel. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D8a/96

2. a) the Solicitor misappropriated the sum of \$3,475.00 more or less between the dates of February 1993 and August 1994 inclusive by receiving retainers and advances for fee billings and disbursements in trust from clients and diverting those funds for his personal use.

EVIDENCE

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D8a/96 and is prepared to proceed with a hearing of this matter on March 26 and 27, 1996.

27th June, 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 D8a/96 and admits the particulars contained therein. The Solicitor further admits that the said particulars, supported by the facts hereinafter set out, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1980. During the time relevant to this Complaint, he was employed as an associate of the firm Heimbecker, Richardson and Petker in Waterloo. He practised mainly in the area of civil litigation. His employment was terminated in December, 1994, and in 1995 he commenced association with Sutherland, Mark, Somerville, Bumstead in Waterloo.

Misappropriation - \$3,475.00

Jeff Carson - \$200.00

5. In February, 1993, Jeff Carson retained the Solicitor to act on his behalf with respect to divorce proceedings. Carson provided the Solicitor with a \$200.00 retainer in cash. This retainer was not deposited to trust or credited to the client but was retained by the Solicitor for his own personal use.

6. The client ledger for Carson, attached hereto as Exhibit 1, does not show the receipt of the retainer, nor does the account rendered Carson on July 7, 1993 and attached hereto as Exhibit 2.

Jay Young - \$525.00

7. In March, 1993, Jay Young retained the Solicitor with respect to a paternity suit. Young provided the Solicitor with a retainer of \$525.00 in cash. This retainer was not deposited to trust or credited to the client but was retained by the Solicitor for his own personal use.

8. On April 21, 1993, Young paid a further retainer of \$500.00, by cheque. This retainer was deposited to the firm trust account, as shown by the deposit book attached hereto as Exhibit 3, and credited to the client, as indicated by the client ledger card, attached hereto as Exhibit 4.

9. Thereafter, a number of further retainers were received and disbursements and fees billed. These are correctly credited and debited to trust, but at no time is Young credited with the initial retainer.

Taghrid Al-Hindi - \$300.00

10. In January, 1994, Ms. Al-Hindi retained the Solicitor to represent her in her divorce. At the Solicitor's request, she provided him with a retainer by way of two post-dated cheques payable to the Solicitor.

11. On February 9, 1994, the Solicitor endorsed cheque 022 in the amount of \$200.00 and deposited it to his personal account, 09-30431 at the Canadian Imperial Bank of Commerce, 27 King Street North, Waterloo. A copy of this cheque is attached hereto as Exhibit 5.

27th June, 1996

12. On February 21, 1994, the Solicitor negotiated cheque 024 in the amount of \$100.00 through the same account and withdrew the proceeds in cash. A copy of this cheque is attached hereto as Exhibit 6.

13. At no time was Ms. Al-Hindi's retainer deposited to trust or credited to her, as indicated by the client ledger card attached hereto as Exhibit 7.

14. The Solicitor retained the \$300.00 retainer for his own personal use.

Mark Vanston - \$100.00

15. In March 1994, Mark Vanston retained the Solicitor with respect to the purchase of condominium property. On March 24, 1994, at the request of the Solicitor, Vanston paid a retainer of \$100.00 by cheque payable to the Solicitor.

16. The Solicitor negotiated the cheque through his personal bank account and withdrew the proceeds in cash. A copy of this cheque is attached hereto as Exhibit 8.

17. The retainer was never deposited to trust or credited to the client, as indicated by the client ledger card attached hereto as Exhibit 9, but was retained by the Solicitor for his own personal use.

Karl Jager - \$250.00

18. On April 23, 1994, Karl Jager retained the Solicitor to represent him on a matrimonial matter and provided him with a retainer of \$250.00. As indicated by the client ledger card, attached hereto as Exhibit 10, the retainer was not deposited to trust or credited to the client. The retainer was converted by the Solicitor to his own personal use.

Dale Vandersandin - \$250.00

19. On May 11, 1994, Dale Vandersandin retained the Solicitor to represent him on a matrimonial matter and provided him with a retainer of \$250.00. As indicated by the client ledger cards, attached hereto as Exhibit 11, the retainer was not deposited to trust or credited to the client. The retainer was converted by the Solicitor to his own personal use.

Michael Block - \$200.00

20. On May 17, 1994, Michael Block retained the solicitor to represent him on a criminal matter, and provided him with a retainer of \$200.00. As indicated by the client ledger card, attached hereto as Exhibit 12, the retainer was not deposited to trust or credited to the client. The retainer was converted by the Solicitor to his own personal use.

Steve Sampey - \$100.00

21. On May 25, 1994, Steve Sampey retained the Solicitor to represent him on an employment matter. At the Solicitor's request, Sampey provided him with an initial retainer of \$100.00 in cash. As indicated by the client ledger card, attached hereto as Exhibit 13, the retainer was not deposited to trust, nor was it credited to the client. The retainer was retained by the Solicitor for his own personal use.

Bill Herrington - \$200.00

22. On July 19, 1994, Bill Herrington retained the Solicitor to represent him on a matrimonial matter. At the Solicitor's request, Herrington provided him with a cash retainer of \$200.00. This retainer was not deposited to trust or credited to the client, as shown by the client ledger card attached hereto as Exhibit 14, but was retained by the Solicitor for his own personal use.

Helio Maciel - \$200.00

23. On August 17, 1994, Helio Maciel retained the Solicitor to represent him on a matrimonial matter and provided him with a retainer of \$200.00. The Solicitor endorsed this cheque and deposited it to his personal account. A copy of this cheque is attached hereto as Exhibit 15. This retainer was not deposited to trust or credited to the client, as shown by the client ledger card attached hereto as Exhibit 16, but was converted by the Solicitor to his own personal use.

Dieter Kolaritsch - \$150.00

24. On May 14, 1993, Dieter Kolaritsch retained the Solicitor to represent him on a matrimonial matter. Kolaritsch made a number of payments on account which were correctly deposited and credited. However, on May 3, 1994, Kolaritsch paid \$150.00 by way of cheque payable to the Solicitor. As indicated by the client ledger card attached hereto as Exhibit 17, this cheque was not deposited to the firm's account or credited to the client.

25. On May 4, 1994, the Solicitor endorsed the cheque and deposited it to his personal bank account. A copy of this cheque is attached hereto as Exhibit 18.

26. The Solicitor therefore converted the \$150.00 payment to his own personal use.

Wayne Hamel - \$250.00

27. On February 2, 1994, Wayne Hamel retained the Solicitor to represent him on a matrimonial matter.

28. In August, 1994, the Solicitor asked Hamel for a payment on account and Hamel provided him with a cheque in the amount of \$250.00. This cheque was not deposited to the firm's account or credited to the client.

29. On August 30, 1994, the Solicitor negotiated the cheque through his personal bank account and withdrew the proceeds in cash, thereby converting the payment to his own personal use. A copy of the cheque is attached hereto as Exhibit 19.

Starlight Diesel - \$750.00

30. On November 22, 1993, George Crombie of Starlight Diesel Inc. retained the Solicitor with respect to a civil matter. On January 7, 1994, the Solicitor rendered an account totalling \$757.08. A copy of this account is attached hereto as Exhibit 20.

31. By cheque dated June 27, 1994, Starlight Diesel paid \$750.00 in satisfaction of the account. The cheque was payable to the Solicitor. That payment was not deposited to the firm's account or credited to the client.

32. On June 27, 1994, the Solicitor deposited the cheque to his personal bank account, thereby converting the payment to his own personal use. A copy of the cheque is attached hereto as Exhibit 21.

33. In October, 1994, a secretary at Heimbecker, Richardson and Petker found a copy of the Starlight Diesel cheque, and became suspicious. She took the cheque to a partner in the firm, Gary L. Petker.

34. Petker and another partner, Larry Richardson, confronted the Solicitor, who admitted to the misappropriations.

35. Heimbecker, Richardson and Petker immediately made restitution to the various clients and terminated the Solicitor's employment.

36. The Solicitor has made full restitution to Heimbecker, Richardson and Petker in the amount of \$3,475.00

V. DISCIPLINE HISTORY

On April 7, 1993, the Solicitor was reprimanded in Committee and ordered to pay costs of \$300.00 for failing to reply to the Law Society.

DATED at Toronto this 26th day of March, 1996."

RECOMMENDATION AS TO PENALTY

It is recommended that Robert Andrew Stewart be suspended from practice for a period of three months and pay the costs of the investigation of this matter in the amount of \$2,000. At the end of the suspension he is to be permitted to resume practice on the following conditions which are to run for a period of two years following the resumption of practice:

1. He is to undertake to practice only as the employee or employed associate of a member of the Law Society of Upper Canada, who is in good standing (hereinafter referred to as the "principal"). The principal must accept the responsibility of supervising him during the term of this undertaking.
2. The principal must be acceptable to the Secretary of the Law Society who may unilaterally refuse to accept any proposed principal on the ground that the Society does not believe that the proposed principal would be a suitable supervisor.
3. He must make full disclosure to the principal of the complaint and decision of this committee.
4. The Society will require the principal to sign an acknowledgement confirming that he or she is aware of the terms of this undertaking, and, assume the responsibility to supervise the Solicitor.
5. He must have no authority over or involvement in the trust account of his principal.
6. All clients must be given a written retainer document detailing that all payments for legal fees are to be paid directly to the principal or the principal's firm. Clients on Legal Aid retainers do not need to be provided the written retainer.
7. He must not directly receive retainers from clients, whether cash or cheque. He must refer such clients to the principal's bookkeeper or some other member of the firm.

27th June, 1996

8. He must not sign fee billings on behalf of clients. He can prepare the fee billing, but it is to be executed by the principal or another lawyer with the firm.

REASONS FOR RECOMMENDATION

The Society and the Solicitor made a joint submission that in all of the circumstances, the appropriate range of suspension would be three to six months with practice restrictions being imposed thereafter and an award of costs between fifteen hundred and twenty-five hundred dollars.

The facts described in the Agreed Statement of Facts, do not disclose a case of an isolated incident of misappropriation or theft but a course of conduct over a significant period of time during which the Solicitor was associated with a law firm, which cannot be condoned.

There was, however, no defrauding or overcharging of clients, but rather conduct that amounted to a theft from the firm. In other circumstances, one would undoubtedly consider that such theft could attract a punishment of disbarment.

However, we have given consideration to the joint submission and the decisions of Convocation in Benaiah, Horman and Sagel. We as well note the amount involved, the fact that the clients were immediately restored to their financial position by the firm and that the Solicitor, in fact, made restitution to the firm as well as the letters of character evidence tendered. We have concluded that the Law Society should not discard the Solicitor as a member of our Society, but should give him a chance to continue to redeem himself as has obviously already begun.

We are as well mindful in imposing the punishment of three months' suspension of the fact that the Solicitor has already begun to pay additional punishment for his conduct by the involuntary termination of the association with his firm and the effect public disclosure of these events will have in his community and family which are still to be dealt with by the Solicitor. However, it should be noted that the imposition of the conditions are not intended to deprive the Solicitor of the opportunity or ability to practice law beyond the period of suspension.

The Solicitor is obviously an able litigator who should be provided with the opportunity to learn from his past mistake and this Committee, with a degree of optimism, shares the view expressed in a letter of reference filed that, "this conduct will never be repeated by Rob in his future practice of law."

It is on the basis of all of the above that this Committee makes the recommendation indicated to Convocation.

Robert Andrew Stewart was called to the Bar on April 10, 1980.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1996

Larry A. Banack
Chair

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

27th June, 1996

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 3 months, pay costs in the amount of \$2,000 and at the end of his suspension that he be permitted to resume practice on the conditions set out in the Report for a 2 year period.

Both counsel made submissions in support of the recommended penalty.

Mr. McDowell requested the commencement of suspension be September 30th, 1996 so that the solicitor could take a Masters program on the 30th of July and also to allow him to deal with client files.

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

Carried

It was moved by Ms. Ross, seconded by Mr. Marrocco that the suspension commence on July 31st, 1996.

Carried

Convocation took a brief recess at 3:50 p.m. and resumed at 4:00 p.m.

Re: Sadrudin JAFFER - Scarborough

The Secretary placed the matter before Convocation.

Messrs. Topp and Swaye withdrew for this matter.

Ms. Curtis did not participate.

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

Convocation had before it the Report of the Discipline Committee dated 21st May, 1996, together with an Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th May, 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

Philip M. Epstein, Q.C., Chair
Thomas E. Cole
Gerald A. Swaye, Q.C.

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

Jane Ratchford
for the Society

SADRUDIN JAFFER
of the City
of Scarborough
a barrister and solicitor

Not Represented
for the solicitor

Heard: March 27, 1996

27th June, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 20, 1995, Complaint D349/95 was issued, and on March 6, 1996, Complaint D77/96 was issued against Sadrudin Jaffer alleging that he was guilty of professional misconduct.

The matter was heard in public on March 27, 1996, before this Committee composed of Philip M. Epstein, Q.C., Chair, Thomas E. Cole and Gerald A. Swaye, Q.C. The Solicitor attended the hearing and represented himself. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

Complaint D349/95

2. a) That he paid office and personal expenses to the extent of \$461.37 directly from his trust account.
- b) He breached Regulation 708 made under the Law Society Act respecting books, records and accounts by:
 - i) failing to maintain books, records and accounts for both trust and general accounts for a period of more than two years;
 - ii) failing to explain many deposits and disbursements to his trust account;
 - iii) creating many overdrawn trust accounts;
 - iv) failing to review his bookkeeper's work for accuracy and completeness; and
 - v) appropriating fees from his trust account for which a billing or other written notification had not yet been delivered.
- c) He delayed the Society's examination of his books, records and accounts by failing to bring same up to date as requested on December 20, 1993. As of July 11, 1995, they still had not been brought up to date.

Complaint D77/96

2. a) He failed to reply to the Law Society regarding a complaint by another lawyer, A. H. Griesdorf;
- b) He failed to discharge an execution registered against his client Farida Chhagan, despite being provided with the funds to do so; and
- c) He failed to account to his client, Allaudin Chhagan for the sum of \$862.00.

EVIDENCE

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

Complaint D349/95

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D349/95 and is prepared to proceed with a hearing of this matter on March 27, 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 D349/95, as amended, 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 in 1976. At the material time to this complaint to the present, the Solicitor has been a sole practitioner with an emphasis on real estate law.

Particular 2(a) He paid office and personal expenses to the extent of \$461.37 directly from his trust account

5. By cheque dated January 25, 1992, drawn on the Solicitor's trust account at Canada Trust, the Solicitor appropriated the sum of \$161.37 to pay McBee Systems in payment for accounting ledgers pertaining to his law practice (Document Book, Tabs 1, 4 and 11).

6. By cheque dated December 15, 1992, drawn on the Solicitor's trust account at Canada Trust, the Solicitor appropriated the sum of \$300 to pay Coopers & Lybrand for accounting services provided in connection with preparation of Forms 2 and 3 of his Law Society filings (see cheque and statement, Document Book, Tabs 5 and 11).

7. According to the Solicitor, at the time these payments were made, there were earned fees in excess of \$461.37 in the trust account.

Particular 2(b) Breach of Regulation 708 of the Law Society Act respecting books, records and accounts by:

- i. failing to maintain books, records and accounts for both trust and general accounts for a period of more than two years

8. On December 20, 1993, an investigation auditor from the Law Society attended at the Solicitor's office to perform an examination of his books and records. At that time, the Solicitor advised the auditor that his books and records for both his trust and general accounts had been in arrears for a period of two years. The Solicitor's trust account was immediately frozen and a new trust account opened with the Solicitor's accountant and a Law Society auditor as co-signers. The Solicitor was requested to bring his books and records up to date immediately.

9. In early April, 1994, the auditor returned to the Solicitor's office to discover that the books and records were only partially complete. The Solicitor advised that he would have them ready by April 27, 1994. On April 27, 1994, the Law Society's auditor returned to the Solicitor's office to find that the records were still not up to date. Both trust and general records for the 1993 and 1994 years had not yet been completed.

10. By July 25, 1994, the Solicitor's bookkeeper finally completed the 1993 trust books and records, however, it was determined that none of the 1992 client balances had been carried forward and the 1994 trust books and records had not yet been reconciled. In addition, the 1993 and 1994 general books and records were not up to date. As of July 28, 1994, many outstanding problems remained and are detailed in subsequent paragraphs herein.

11. On July 11, 1995, the Society received the Solicitor's Form 2/3 filings for the period ending December 31, 1993 (Tab 12). A review of these forms show that there are still many unexplained items concerning his trust account.

Particular 2(b)(ii) failing to explain many deposits and disbursements in his trust account

12. Attached at Tab 1 of the Document Brief, is the 1992 general ledger showing trust receipts and disbursements. As of the date of this complaint, there were many unexplained receipts and disbursements contained in these records. They were left on the trust reconciliations as deposits and disbursements not posted by the Solicitor's bookkeeper (Document Book, Tab 6). For 1992, there were 60 unexplained items consisting of 20 deposits totalling \$180,256.36 and 40 disbursements totalling \$196,155.57. These items are circled on the ledger.

13. For 1993, there were 46 unexplained items consisting of seven deposits totalling \$13,453.93 and 39 disbursements totalling \$27,564.45. The 1993 trust receipts and disbursements journal is found at Tab 7 of the Document Book. The amounts that have been circled on the journal are unexplained receipts and disbursements. As in 1992, these were left on the trust reconciliations as deposits and disbursements not posted (Document Book, Tab 8).

14. On March 25, 1996, the Society was provided with information in the form of a letter bearing that same date with attached schedules (Document Book, Tab 13) which provides information about some of the unexplained disbursements from and deposits to the trust account in the period in question. As of the date of this hearing, the Society has not had the opportunity to verify this information. In addition, the following are still unexplained: 1992 disbursements - \$16,101.81, 1992 deposits - \$4,674.23, 1993 disbursements - \$16,101.81 and 1993 deposits - \$11,453.93.

Particular 2(b)(iii) creating many overdrawn trust accounts

15. A review of the Solicitor's books and records by the auditor disclosed that in 1992, there were six overdrawn trust accounts totalling \$5,359.27 (Document Book, Tab 9). Only one had been corrected as of July 28, 1994.

16. In 1993, there were seven overdrawn trust accounts totalling \$3,865.45 (Document Book, Tab 9). The Solicitor's 1993 filing shows that these accounts remained overdrawn and unexplained as of the date of submission of the filing, July 11, 1995.

Particular 2(b)(iv) failing to review his bookkeeper's work for accuracy and completeness

17. The Solicitor failed to review his bookkeeper's work for accuracy and completeness in connection with the above-mentioned books and records.

27th June, 1996

Particular 2(b)(v) appropriating fees from his trust account for which a billing or other written notification had not yet been delivered

18. The auditor's examination of the Solicitor's books and records disclosed that the Solicitor appropriated fees from his trust account for which a billing or other written notification was delivered subsequently on 8 occasions in 1992 and on 6 occasions in 1993 (see Schedules at Document Book, Tab 10).

19. In addition, in 1993, the Solicitor appropriated fees of \$200 on September 17, 1993, \$250 on July 29, 1993, \$700 on November 1, 1993 and \$750 on November 16, 1999 without delivery of a fee billing (see Tab 10).

Particular 2(c) He delayed the Society's examination of his books and records

20. The Solicitor was first requested by the Law Society auditor on December 20, 1993 to bring his books and records up to date. As of July 28, 1994, they had still not been completed. The Solicitor's filings for the 1993 year, which was one of the years for which the Solicitor was asked to bring his records up to date, show that this had still not been done for the 1993 year as of July 11, 1995.

V. PRIOR DISCIPLINE

21. On April 21, 1986, the Solicitor was reprimanded in Committee and ordered to pay costs of \$1,000 for failing to maintain his books, records and accounts and for failing to file for his Forms with the Law Society for his fiscal year ended December 31, 1985.

22. On June 8, 1994, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$500 for failing to file his Forms with the Law Society for his fiscal year ended December 31, 1992. The Solicitor also provided an oral Undertaking to enter into the Law Society's Practice Review Program.

23. On August 22, 1995, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$200 for failing to file his Forms with the Law Society for his fiscal year ended December 31, 1993.

DATED at Toronto, this 27th day of March, 1996."

Complaint D77/96

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D77/96 and is prepared to proceed with a hearing of this matter on March 27, 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 D77/96 and admits the particulars contained therein. The Solicitor further admits that the said particulars supported by the facts hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1976. At the material time to this complaint to the present, the Solicitor was a sole practitioner with an emphasis on real estate law.

Particular 2(a) he failed to reply to the Law Society regarding a complaint by another lawyer, A. H. Griesdorf;

Particular 2(b) he failed to discharge an execution registered against his client Farida Chhagan, despite being provided with the funds to do so; and

Particular 2(c) he failed to account to his client, Allaudin Chhagan for the sum of \$862.00.

5. In the fall of 1993, the Solicitor was retained by Allaudin and Farida Chhagan in relation to a real estate purchase. On October 2, 1993, Mr. Chhagan provided the Solicitor with a cheque in the amount of \$862.00 in settlement of an execution registered by the Workers' Compensation Board in the name of Farida Chhagan. (Document Book, Tab 1)

6. The Solicitor cashed the cheque but did not forward payment to the Workers' Compensation Board. Throughout 1994, the Chhagans received Statements of Account from the Workers' Compensation Board for the \$862.00. (Document Book, Tab 2)

7. By letter dated May 17, 1994, Mr. Chhagan wrote to the Worker's Compensation Board to advise, among other things, that he had given a cheque to his Solicitor to be forwarded to the Board in settlement of their account. A copy of the letter is attached as Tab 3 of the Document Book.

8. By letter dated March 23, 1995, Allan Griesdorf, Mr. Chhagan's subsequent lawyer, wrote to the Solicitor to advise, among other things, that if he did not receive a reply explaining the situation, he would contact the Law Society. The Solicitor did not respond. A copy of the letter is attached as Tab 4 of the Document Book.

9. By letter dated April 6, 1995, Mr. Griesdorf wrote to the Law Society describing the circumstances of his client's situation and the inability of either he or his client to elicit a response from the Solicitor, and requesting the Law Society's assistance. A copy of the letter is attached as Tab 5 of the Document Book.

10. On April 20, 1995, Mr. Griesdorf wrote to the Law Society to advise, among other things, that he had attempted to call the Solicitor at his office and received no answer on March 14, and 15. Mr. Griesdorf had also called the Solicitor's residence on March 15 and left a message on the answering machine. The Solicitor did not return the call. A copy of the letter is attached as Tab 6 of the Document Book.

11. By letter dated May 9, 1995, the Law Society wrote to the Solicitor to request, among other things, the Solicitor's response to the circumstances described therein within two weeks. The Solicitor did not respond. A copy of the letter is attached as Tab 7 of the Document Book.

12. On July 5 and July 7, 1995, the Law Society left telephone messages for the Solicitor. The Solicitor did not return the calls. A copy of the handwritten notes is attached as Tab 8 of the Document Book.

27th June, 1996

13. By registered letter dated July 12, 1995, the Law Society wrote to the Solicitor to advise, among other things, that if it did not receive a reply within seven days, the matter would be referred to the Chair of the Discipline Committee. A copy of the letter and Acknowledgement of Receipt card returned "unclaimed" are attached as Tab 9 of the Document Book.

14. Mr. Chhagan has been paying off the Workers' Compensation execution by way of monthly payments of \$100.00, which commenced May 15, 1995 and will end April 15, 1996. At that point, he will still owe \$281.00. The total of these payments represent the principal amount of the execution and interest accumulated thereon, plus an adjustment made after 1992.

15. Because of the state of the Solicitor's books and records, he is unable to account for what was done with this money.

V. DISCIPLINE HISTORY

16. On April 21, 1986, the Solicitor was reprimanded in Committee and ordered to pay costs of \$1,000 for failing to maintain his books, records and accounts and for failing to file for his Forms with the Law Society for his fiscal year ended December 31, 1985.

17. On June 8, 1994, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$500 for failing to file his Forms with the Law Society for his fiscal year ended December 31, 1992. The Solicitor also provided an oral Undertaking to enter into the Law Society's Practice Review Program.

18. On August 22, 1995, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$200 for failing to file his Forms with the Law Society for his fiscal year ended December 31, 1993.

DATED at Toronto, this 27th day of March, 1996.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Sadrudin Jaffer be suspended for a period of three months and indefinitely thereafter until his books and records are brought into good standing to the satisfaction of the Law Society. The following conditions must also be met prior to the Solicitor's reinstatement:

1. He must have made restitution to Farida and Allaudin Chhagan in the amount of \$1,481.00;
2. Upon reinstatement, he will continue to participate and co-operate with the Practice Review Program;
3. Upon reinstatement, he shall be required for a period of two years to submit to the Law Society, attention Adele Robertson, monthly trust reconciliations, on a monthly basis;
4. He shall be required to bring all outstanding filings up to date;
5. He shall be required to pay costs of \$5,000 to the Law Society.

REASONS FOR RECOMMENDATION

This appears, based on the Agreed Statement of Fact, to be largely a case of grossly improper bookkeeping by the Solicitor. The Solicitor has a previous discipline record which also reflects his inability or unwillingness to maintain books and records and accounts in accordance with the Law Society Rules of Professional Conduct. It has to be brought home to the Solicitor that he cannot carry on practice in this fashion and that he has an obligation to comply with the Rules respecting accounts. There is a joint submission with respect to penalty.

Although the Solicitor's previous misconduct record is not a happy one and although these matters are serious, the panel is satisfied that the offenses do not warrant disbarment. Accordingly, we accept the joint submission as noted above.

Sadrudin Jaffer was called to the Bar on April 8, 1976.

ALL OF WHICH is respectfully submitted

DATED this 21st day of May, 1996

Philip M. Epstein, Q.C.
Chair

Ms. Ratchford advised that the solicitor had been properly served in accordance with the Law Society Act.

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

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 3 months and indefinitely thereafter until his books and records are brought into good standing in addition to the other conditions set out in the Report.

Ms. Ratchford made submissions in support of the recommended penalty and advised that the solicitor had communicated his agreement by fax.

It was moved by Mr. Marrocco, seconded by Mr. Finkelstein that the recommended penalty be adopted.

Carried

Re: Byron Douglas LONEY - Barry's Bay

The Secretary placed the matter before Convocation.

Mr. Topp and Ms. Angeles withdrew for this matter.

Ms. Curtis did not participate.

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

27th June, 1996

Convocation had before it the Report of the Discipline Committee dated 12th February, 1996, together with an Affidavit of Service sworn 8th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 26th April, 1996 (marked Exhibit 1), together with the Report and Affidavit of Service sworn 14th March, 1996 by David Munro that he had effected service on the solicitor personally on 13th 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

Jane Ratchford
for the Society

BYRON DOUGLAS LONEY
of the Village
of Barry's Bay
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 June 6, 1995 Complaint D157/95 was issued and on June 23, 1995, Complaint D167/95 was issued against Byron Douglas Loney 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. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

Complaint D157/95:

2. a) He failed to provide a reply to the Law Society, regarding a complaint by Jan van Balen Walter despite letters dated January 11, 1995 and March 13, 1995 and telephone requests on February 22, 1995, March 7, 1995 and March 9, 1995.

Complaint D167/95:

2. a) He failed to serve his clients, Cheryl and Jeff Reid, in a conscientious, diligent and efficient manner, in that:
 - i) he failed to answer reasonable requests from his clients for information; and
 - ii) he failed to provide his clients with a final report and an accounting for monies entrusted to him;
- b) he failed to reply to the Law Society regarding a complaint by Cheryl and Jeff Reid in spite of a letter dated October 7, 1993 and telephone messages left on February 2 and 14, 1994, March 1, 1994 and November 22, 1993 and letters dated December 9, 1993 and February 18, 1994.
- c) he failed to serve his client, Wendell Culley, in a conscientious, diligent and efficient manner, in that:
 - i) he failed to answer reasonable requests from his clients for information; and
 - ii) he failed to provide his clients with a final report and an accounting for monies entrusted to him;
- d) he failed to reply to the Law Society regarding a complaint by Wendell Culley in spite of letters to him dated February 24, 1994 and April 22, 1994 and a telephone conversation with him on March 25, 1994 and telephone messages left on April 6, 1994 and April 12, 1994;
- e) he failed to honour a financial obligation incurred in connection with his practice in favour of Barb Harren in the amount of \$157.50;
- f) he failed to reply to the Law Society regarding a complaint by Barb Harren in spite of letters to him dated March 23, 1994 and April 22, 1994 and telephone requests on April 6, 1994 and April 12, 1994;
- g) he failed to serve his client, Edward S.B. Tracey, in a conscientious, diligent and efficient manner, in that:
 - i) he failed to account for monies entrusted to him in the sum of \$620.00; and
 - ii) he failed to complete steps necessary to facilitate payment of monies from the Public Trustee in connection with an estate matter;
- h) he failed to reply to another solicitor, Robert B. Howe, in spite of letters to him dated December 10, 1993, March 14, 1994, April 28, 1994 and August 30, 1994;
- i) he failed to reply to the Law Society regarding a complaint by Edward S.B. Tracey in spite of letters to him dated March 30, 1994 and April 22, 1994 and telephone requests on April 13, 1994 and April 15, 1994;
- j) he failed to serve his client, Cy Morris, in a conscientious, diligent and efficient manner, in that:
 - ii) he failed to account for monies entrusted to him in the sum of \$1675.00;

- k) he failed to reply to the Law Society regarding a complaint by Cy Morris in spite of letters to him dated April 27, 1994 and June 1, 1994 and telephone requests on May 18, 1994 and May 26, 1994;
- l) he failed to serve his clients, Brian and Megan Hazelton, in a conscientious, diligent and efficient manner, in that:
 - ii) he failed to complete the registration of a Transfer/Deed of Land in favour of his clients;
- m) he failed to reply to the Law Society regarding a complaint by Brian and Megan Hazelton in spite of letters to him dated May 11, 1994 and June 1, 1994 and telephone messages left on May 26, 1994 and May 31, 1994;
- n) he failed to reply to the Law Society regarding a complaint by Wayne Carr (CCNS Corporate Services) in spite of letters to him dated September 16, 1994 and December 1, 1994 and a telephone conversation on October 12, 1994;
- q) he failed to reply to the Law Society regarding a complaint by Bonnie Pilatzke in spite of letters to him dated August 24, 1994 and October 4, 1994 and telephone conversations with him on September 14, 1994 and September 23, 1994;
- r) he failed to serve his client, Ursula C. Day, in a conscientious, diligent and efficient manner, in that;
 - i) he failed to account for monies entrusted to him in the sum of \$850.00;
 - ii) he failed to answer reasonable requests from his client for information; and
 - iii) he failed to take the necessary steps to complete an offer to purchase in connection with a real estate matter;
- s) he failed to reply to correspondence from another solicitor, Robert B. Howe, dated November 4, 1994;
- t) he failed to reply to the Law Society regarding a complaint by Robert B. Howe, in spite of letters to him dated January 6, 1995 and April 3, 1995 and telephone requests on February 16, 1995, February 17, 1995, February 22, 1995, March 3, 1995, March 13, 1995, March 14, 1995, March 21, 1995 and March 29, 1995;
- u) he failed to file with the Society within six months of the termination of his fiscal year ending September 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 Fact:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D167/95 and is prepared to proceed with a hearing of this matter 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. FACTS

4. The Solicitor was called to the Bar on April 15, 1987. He was suspended indefinitely by Convocation on June 22, 1995 and remains suspended.

Particular 2b) He failed to reply to the Law Society regarding a complaint by Cheryl Reid;

5. By letter dated October 7, 1993 the Law Society wrote to the Solicitor enclosing a copy of Mrs. Reid's letter and requested his comments within two weeks. The Solicitor did not respond.

6. On November 22, 1993, a Law Society employee called the Solicitor who advised that the Law Society would receive his report by the end of the week. The report was not provided.

7. On December 1, 1993, a Law Society employee called the Solicitor and left a message on his voice mail. The Solicitor did not return the Law Society's call of December 1, 1993.

8. By registered letter dated December 9, 1993, the Law Society enclosed a copy of its letter dated October 7, 1993. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on December 13, 1993.

9. On February 2, 1994, the Solicitor called the Law Society and advised that he would complete his report by the end of the week. The Solicitor said that the reason for the delay in responding was due to personal problems.

10. On February 14, 1994, a Law Society employee called the Solicitor who advised that he would fax his response to the Law Society that day. The Solicitor did not fax his response to the Law Society on February 14, 1994.

11. By registered mail dated February 18, 1994 to the Solicitor, the Law Society enclosed a copy of its letters dated October 7, 1993 and December 9, 1993. The Solicitor was again reminded of his professional obligation to respond promptly to communications from the Law Society. He was again advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

12. By facsimile received by the Law Society on February 25, 1994 the Solicitor advised that he had not completed his report but would do so by February 28, 1994. He further advised that he would fax the Law Society with a copy of his report which would address most of the issues raised by Mrs. Reid. He did provide the Law Society with his report.

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13. On March 1, 1994, a Law Society employee called the Solicitor and left a message with his receptionist to return her call.

Particular 2d) He failed to reply to the Law Society regarding a complaint by Wendell Culley;

14. By letter dated February 24, 1994 to the Solicitor the Law Society enclosed a copy of the Culley's letter of complaint dated December 29, 1993 and requested his comments within two weeks.

15. On March 25, 1994, a Law Society employee called the Solicitor who advised that he would send his response the following week. The Solicitor did not send his response.

16. On April 6, 1994 and April 12, 1994, a Law Society employee called the Solicitor and left messages for him to return her calls. The Solicitor did not return the Law Society's calls of April 6 and April 12, 1994.

17. By registered mail dated April 22, 1994 the Law Society wrote the Solicitor and enclosed a copy of its letter dated February 24, 1994. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The letter was delivered and signed for on April 27, 1994.

Particular 2f) He failed to reply to the Law Society regarding a complaint by Barb Harren;

18. By letter dated March 23, 1994 the Law Society wrote to the Solicitor enclosing a copy of Ms. Harren's letter dated January 30, 1994 and requested his comments within two weeks.

19. On April 6, 1994 and April 12, 1994, a Law Society employee called the Solicitor and left messages for him to return her calls. The Solicitor did not return the Law Society's calls of April 6, 1994.

20. By registered mail dated April 22, 1994 the Law Society enclosed a copy of its letter dated March 23, 1994. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The letter was delivered and signed for on April 27, 1994.

Particular 2i) He failed to reply to the Law Society regarding a complaint by Edward S.B. Tracey;

21. By letter dated March 30, 1994 the Law Society wrote to the Solicitor enclosing a copy of Mr. Tracey's letter of complaint dated March 4, 1994 and requested his comments within two weeks.

22. On April 13, 1994, a Law Society employee called the Solicitor who advised that he would send his reply by the end of the week.

23. On April 15, 1994, a Law Society employee called the Solicitor and left a message with the receptionist for the Solicitor to return her call.

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24. By registered mail dated April 22, 1994 the Law Society enclosed a copy of its letter dated March 30, 1994. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The letter was delivered and signed for on April 27, 1994.

Particular 2k) He failed to reply to the Law Society regarding a complaint by Cy Morris;

25. By letter dated April 27, 1994 the Law Society wrote to the Solicitor enclosing a copy of Mr. Morris' March 11, 1994 letter of complaint and requested his comments within two weeks. A further letter was provided by Mr. Morris dated May 25, 1994.

26. On May 18, 1994 and May 26, 1994, a Law Society employee called the Solicitor and left messages for him to return her calls. The Solicitor did not return the Law Society's calls of May 18, 1994 and May 26, 1994

27. By registered mail dated June 1, 1994 the Law Society enclosed a copy of its letter dated April 27, 1994. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The letter was delivered and signed for on June 7, 1994.

Particular 2m) He failed to reply to the Law Society regarding a complaint by Brian and Megan Hazelton;

28. By letter dated May 11, 1994 the Law Society wrote to the Solicitor enclosing a copy of Mr. and Mrs. Hazelton's letter of complaint dated February 27, 1994 and requested his comments within two weeks. The Solicitor did not respond.

29. On May 26, 1994 and May 31, 1994, a Law Society employee called the Solicitor and left messages for him to return the calls. The Solicitor did not return the Law Society's calls of May 26, 1994 and May 31, 1994.

30. By registered letter dated June 1, 1994 the Law Society enclosed a copy of its letter dated May 11, 1994. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on June 7, 1994.

Particular 2n) He failed to reply to the Law Society regarding a complaint by Wayne Carr (CCNS Corporate Services);

31. By letter dated July 5, 1994 Wayne Carr of CCNS Services wrote to the Law Society about the Solicitor's failure to pay his outstanding accounts.

32. By letter dated September 16, 1994 the Law Society wrote to the Solicitor enclosing a copy of Mr. Carr's letter and requested his comments within two weeks. The Solicitor did not respond.

33. On October 12, 1994, a Law Society employee called the Solicitor who advised that he would respond to the letter of complaint that evening.

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34. By registered mail dated December 1, 1994 the Law Society enclosed a copy of its letter dated September 16, 1994. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on December 15, 1994.

Particular 2q) He failed to reply to the Law Society regarding a complaint by Bonnie Pilatzke;

35. By letter dated August 24, 1994 the Law Society wrote to the Solicitor enclosing a copy of Ms. Pilatzke's letter of complaint dated July 18, 1994 and requested his comments within two weeks. The Solicitor did not respond.

36. On September 14, 1994, a Law Society employee called the Solicitor and was advised that he would respond by the following day or on the following Monday.

37. On September 23, 1994, a Law Society employee called the Solicitor and was advised that his secretary had been ill and that his response would be delivered at the beginning of the following week. The Solicitor's response was not received.

38. By registered letter dated October 4, 1994 the Law Society enclosed a copy of its letter dated August 24, 1994. The Solicitor was reminded of his professional obligation to respond promptly to the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on October 7, 1994.

Particular 2t) He failed to reply to the Law Society regarding a complaint by Robert B. Howe;

39. By letter dated January 6, 1995 the Law Society wrote to the Solicitor enclosing a copy of Mr. Howe's letter of complaint dated December 8, 1994 and requested his comments within two weeks. The Solicitor did not respond.

40. On February 16, 1995, a Law Society employee called the Solicitor and left a message for him on his answering machine to return the call.

41. On February 17, 1995, a Law Society employee called the Solicitor and was advised by the Solicitor that the funds provided to him by Ms. Day were still in his trust account. He further advised that the Law Society had placed signing controls on his accounts and that he would contact the Audit and Investigation Department in order to release the monies to Ms. Day. The Solicitor advised further that he would respond by February 20, 1995.

42. On February 22, 1995, a Law Society employee called the Solicitor and was advised that he would send his response by the following day. On March 3, 1995, a Law Society employee called the Solicitor who advised that he would mail his response by the weekend. On March 13, 1995 and March 14, 1995, a Law Society employee left messages for the Solicitor to return her calls. On March 21, 1995, a Law Society employee called the Solicitor and was advised that he had just completed the response and would send it by noon the following day. On March 29, 1995, a Law Society employee left a message for the Solicitor advising him that if his response was not received by March 30, 1995, a registered letter would be sent to him. The Solicitor did not respond to the Law Society by March 30, 1995.

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43. By registered mail, to the Solicitor's last known address dated April 3, 1995, the Law Society enclosed a copy of its letter dated January 6, 1995. The Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was further advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

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

FINDING OF COMMITTEE

Particular (a) (i) and (ii)

We have heard evidence from Cheryl Reid, a sales agent for New Zealand Milk Products who lives in Fergus, Ontario. In July of 1992, she and her husband used Mr. Loney to close a property purchase of a cottage. The property was to close at the end of July for \$70,000, of which \$40,000 was to be a mortgage. There was a discussion of a fee in the amount of \$450. The discussion may or may not have taken place in one day or on one occasion. We are not concerned with that.

The transaction closed, but it was not until December of 1992 when Mrs. Reid was given the documents in connection with the transaction, but she has never been given even until this date, a statement of account. Throughout this period, there were a large number of phone calls where promises were made that the information ultimately given in December will be ready in a week but never was. Appointments were made, but the material was never available. The information was never given. At the end of the day, one can say that there was a failing to provide the final documentation in connection with this real estate transaction which was basically a very simple one. No final report. No statement of account has been given.

The Solicitor took the position that she really wasn't missing any information respecting the first of the two particulars, but she was merely missing the documents themselves. It is apparent to us that the documents were needed in order to give her a full understanding of what the money was spent on and where it went. There were a multitude of requests made and in particular, she says,

"After calling two or three times per week (long distance), we were finally able to obtain a couple of documents at the end of December with a promise that the rest would be forthcoming shortly. During that five months of continual calling, Mr. Loney returned only one phone call, [which makes it clear that occasionally she did reach him by phone but to no avail] and each time I did actually make contact with him, he promised to have everything ready 'next week'".

We accept that evidence and find that particular established.

Particular (b)

The Solicitor takes the position the this particular of failing to reply to the Law Society and all the others in the two complaints that are before us, are met by the following actions.

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As his difficulties came to the attention of various entities associated with the Law Society, they took action and to some of them he responded. For example, in connection with many of these claims, he spoke to LPIC, the Lawyers' Professional Indemnity Insurance Company. In some cases, the claims were closed in his favour. There was a visit from Marlene Chapman of the Audit Department of the Law Society of Upper Canada and he made available to her all his books and records and files and answered her questions.

He was engaged in the Practice Review Programme and had contact with Ms. Sue McCaffrey of that department.

It is his view that these cumulatively amount to, or are better than, a reply to the Law Society within the meaning of particular (b). We do not regard this as a contention we can accept. In our view, the failure to reply directly to letters of complaint regarding particular matters when addressed by the Law Society has been established in this case because in this particular and in all the others, there is not a single letter written back dealing with the complaints.

Particular (c)

Sandra Culley and her husband retained Mr. Loney to represent them regarding a purchase of real estate. During June and July of 1992, she telephoned Mr. Loney several times but he did not respond or return the phone calls. On July 3, 1992 they drove from Brampton to Barry's Bay - the trip was some four and a half hours - to meet with Mr. Loney but he was not in his office. Funds were wired to him for the purposes of this transaction but at least some of the money, namely, \$212.35 owing for property taxes that had been prepaid, were never transferred to the vendor.

Mr. and Mrs. Culley have never received a statement of account, nor have they received a response to their various letters to him though the transactions were apparently completed.

In these circumstances, particular 2(c) is established. The Solicitor says, in dealing with particular (c), in his evidence, that it arose because of "my own default, procrastination and difficulties in my personal life". We think that is true.

Particular (d)

This is a failure to reply, the facts of which were established and our reasoning in connection therewith has been dealt with above.

Particular (e)

This was a case where the Solicitor was dealing with a matter on the basis that the fees would be paid by Legal Aid. He ordered the transcript of the preliminary hearing. He did not pay for it. Indeed, he never billed Legal Aid for the work done on behalf of the client and has not done so to this date. Although, if he did it, he could get the \$157.50 referred to in this particular.

This particular was found to be established.

Particular (f)

This is a failure to reply, the facts of which were established and our reasoning in connection therewith has been dealt with above.

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Particular (g)

Mr. Loney was retained in this matter to collect the sum of approximately \$25,000 held by the office of the Public Trustee from the estate of Mr. Tracey's mother. He was the sole beneficiary. He paid Mr. Loney \$120 to file an Application for Administration regarding this estate. He further paid \$500 in cash to "take care of the administration of my mother's estate". Thereafter, he heard nothing from Mr. Loney for several months. He telephoned him and went to his office every fortnight. Mr. Loney kept putting him off when he asked about the status of the administration of the estate. Finally, in December 1993, he retained another solicitor, Robert Howe, to assist him. Mr. Howe was unable to receive any response to his persistent attempts to contact Mr. Loney and to receive an accounting.

Ultimately, it transpired that Mr. Loney had not made any application for the Administration of the estate at all respecting the monies entrusted to him.

We find this particular established.

Particular (h)

The facts referred to in particular (g) above sustains and supports this particular and we find it established.

Particular (i)

This is a failure to reply, the facts of which were established and our reasoning in connection therewith has been dealt with above.

Particular (j)

Mr. Morris retained Mr. Loney to act for him on the sale of a property in one place and the purchase of a property in another. Prior to the closing of the purchase, he gave the Solicitor a cheque in the amount of \$1,680.80 to cover the balance of the home improvement loan which had to be paid off before it could be sold. In addition, the amount of \$1,675 was given in respect of what they considered to be the fees in the transaction. In February, he realized that the funds representing the cheque to pay the balance of the home improvement loan, had not been removed from his account and he learned that the property was still in his name.

On contact with the Solicitor, he admitted he had done nothing on the matter since December 7th, 1993 and failed to register the deed and the vendor takeback mortgage on the property.

He retained another counsel who, as it turned out, prepared the necessary documents and showed up to register them only to find that the very same day, March 21, 1994, the Solicitor had attended and registered the deed and the mortgage. The Solicitor never issued a statement of account setting out the fees and disbursements of the transaction despite repeated requests made by him for them.

The Solicitor indicated that he had discussed beforehand the fees and disbursements and produced notes from his file to support that contention. We examined those notes and the numbers there unfortunately, as the record reflects, do not in any way give an accounting for the money taken. Indeed, they do not add up to the same sum at all.

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The first part of the particular alleges a failure to answer reasonable requests from the client for information. We do not consider this particular to be established and it was dismissed with the consent of Counsel for the Law Society on the ground that it really is at best a recitation of an allegation inherent in the principal allegation contained in particular sub (ii).

Particular (k)

This is a failure to reply, the facts of which were established and our reasoning in connection therewith has been dealt with above.

Particular (l)

In August of 1991, Mr. and Mrs. Hazelton retained Mr. Loney to transfer title of land from his deceased grandfather's name into their name. As it turned out, there were considerable problems of an interesting intellectual nature that prevented the transfer on a simple basis and Mr. Loney got quite involved in those problems. Ultimately, he solved them. On September 10, 1993, he attended at Mr. Loney's office and signed some papers. During the fall of 1993, he called Mr. Loney many times and each time was advised that the deed which would enable the transfer to be made would be delivered to him in a week.

By letter dated February 1, 1994 he wrote to Mr. Loney and advised him that if he didn't receive the deed by February 11, 1994, he would complain to the Law Society of Upper Canada.

Finally, in September of 1994, they received the deed from Mr. Loney and his wife registered it at the Land Registry Office in Pembroke on September 9, 1994.

Clearly, this is an unacceptable delay amounting, in our view, to failure to complete the registration and the second part of this particular is therefore found established. We consider that Counsel for the Law Society does not concur, that the first part of this is really inherent in that and therefore we dismiss particular (l)(i).

Particular (m)

This is a failure to reply, the facts of which were established and our reasoning in connection therewith has been dealt with above.

Particular (n)

This is a failure to reply, the facts of which were established and our reasoning in connection therewith has been dealt with above.

Particular (o) has been withdrawn and we will not deal with it. Particular (p) is withdrawn as well. Particular (q) is a failure to reply, the facts of which were established and our reasoning in connection therewith has been dealt with above.

Particular (r)

Ursula C. Day retained Mr. Loney in connection with a land purchase in 1992 in Barry's Bay, Ontario. The transaction proceeded in an ordinary way and on October 6th, 1992, Mr. Loney wrote to Mrs. Day and enclosed a copy of a completed agreement of purchase and sale and acknowledged receipt of a \$500 deposit together with an application fee in the amount of \$350.

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Nothing was heard from Mr. Loney from October 1992 to September 1993. A severance application had been required to be accomplished as part of that transaction but it turned out when other counsel were consulted, that no such severance application had been submitted to the County of Renfrew Land Division Committee by Mr. Loney.

Mr. and Mrs. Day attempted to contact Mr. Loney about the status of the matter, but he did not return the phone calls. He did not pursue a severance application as he was instructed to do, nor have the Days ever received a statement of account from Mr. Loney regarding their payment to him in the amount of \$850, nor has the money been returned to them despite repeated requests.

Mr. Loney explains his failure to deal with the Days, in part, respecting the failure to account for monies, on the basis that he did not think it appropriate once the client had complained to the Law Society of Upper Canada, to deal with them directly. We do not accept that.

Mr. Loney says that he is not aware of any requests for information, but the evidence satisfies us beyond a reasonable doubt that those requests were made.

With regard to the ultimate failure to take the necessary steps to complete the offer to purchase, Mr. Loney says he was, "frustrated by time". "I did nothing on the file". It appears to us that this particular is established as well.

Particular (s)

Evidence from Robert Howe indicates that he was retained by the Days and wrote to Mr. Loney in an attempt to solve this problem but he never received any answer. This particular is established. It was also admitted by the Solicitor.

Particular (t)

This is a failure to reply, the facts of which were established and our reasoning in connection therewith has been dealt with above.

Particular (u)

On the basis of the affidavit of Ms. Andrighetti and on the Solicitor's admission, it is made clear that this particular is established.

RE: COMPLAINT D157/95

This alleges a failure to reply to the Law Society of Upper Canada, the facts of which were established and our reasoning in connection therewith has been dealt with above. The complaint was also admitted by the Solicitor.

These are the findings with respect to professional misconduct.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Byron Douglas Loney be granted permission to resign and that if he fails to do so he be disbarred.

REASONS FOR RECOMMENDATION

The Solicitor has previously been found guilty of professional misconduct on two occasions.

In June of 1995, he was suspended indefinitely by Convocation for his failure to file the necessary forms and papers in 1992.

On August 21, 1995, at Ottawa, he was found guilty of professional misconduct by a differently constituted discipline committee in connection with a number of particulars of failing to maintain the books and records, and misappropriation, or failing to maintain trust balances or transferring from trust amounts of money that ought not to have been transferred.

That committee, we are told, recommended that the Solicitor be disbarred by Convocation unless he takes advantage of an opportunity to make certain explanations prior to that date. The Reasons of that committee are not available to us. We take cognizance of the fact that there have been findings of misconduct, one of them not yet reviewed by Convocation, but it is important to remember that the Solicitor is not being tried for those offences, nor are they previous history in the sense that these offences were committed after he had been put on notice by a finding made against him by a committee.

The Solicitor was called to the Bar in 1987. It appears that he ran into serious difficulties with his personal life which became acute in September of 1993 when he separated from his wife. As the Solicitor put it before us: "Basically, I fell apart". His voice broke. There was real emotion and he had difficulty dealing with this part of his life. The separation was a difficult one which engendered allegations that he had scared his two children, now age 7 and 9, and had assaulted his wife.

There was a reconciliation between them in December of 1993. The reconciliation was not successful and the Solicitor refers to himself as being, "destroyed" by these events. The marriage had lasted about nine years and during the course of these events, his wife had a breakdown which lasted until June of 1994 during which she was unable to work. In July of 1995, they separated again and she has custody of the two children.

He now works as a labourer and does some carpentry work at a mill which his brother operates in Sudbury. He lives with his brother in his brother's basement. He is clearly sensitive to the reduced circumstances in which he finds himself, and is sensitive to the fact that this is providing him with a break from an intolerably stressful situation, but it is apparent to us from seeing him and observing him that the stress continues.

He has never seen a medical therapist and told us that he had no idea that the Ontario Health Insurance Plan could cover a psychiatrist or a therapist who would provide a similar service.

The misconduct proved before us discloses a course of conduct that is very serious. It lasts at least from April 1992 through September 1994 with respect to an inability to function adequately as a lawyer and to serve his clients properly. Unfortunately, even after he had been through the Practice Review Programme of the Law Society, he still did not respond to letters of complaint from the Law Society of Upper Canada up to and including at least March 29, 1995.

The pattern of failure to serve clients is exactly the kind of issue respecting which the public turns to the Law Society and expects them to be able to exercise real control. Even today, as we deal with this matter respecting the Reids, we really have no idea of what happened to their money in detail and there was no ability to account. The same is true of Mr. Morris.

27th June, 1996

The pattern of failure to serve clients, failure to respond to their needs and failure to respond to the Law Society discloses a solicitor who is ungovernable.

We do not really understand why the Solicitor is ungovernable. As he appears before us, though some of his judgements are questionable, he is articulate and capable of presenting the issues in a way which engenders in us compassion and a desire to help. But, the Solicitor has, while acting for himself without counsel, offered us no plan, no hope for change in the future beyond his own determination to do so, and no options because that determination has not issued in any action of any kind to date. He has filed no character evidence and we have received no assistance by way of a report from a psychiatrist.

The Solicitor says, "I have in essence today been forced to deal with a number of truths". That may be so. We hope that this is the beginning of a better period in his life rather than the end of a very difficult one. The evidence gives us no alternative but to recommend to Convocation that the Solicitor be disbarred as ungovernable, but we recommend to Convocation also that if the Solicitor seeks permission to resign, that he be granted permission to do so. The object here, in our view, is to protect the public. We recommend disbarment because we cannot see any other method by which it can be achieved, short of resignation. We do so with regret.

Byron Douglas Loney was called to the Bar on the 15th day of April, 1987.

ALL OF WHICH is respectfully submitted

DATED this 12th day of February, 1996

Clayton Ruby
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 granted permission to resign failing which he would be disbarred.

Counsel for the Society made submissions in support of the solicitor being disbarred.

Convocation was advised that the solicitor had submitted his resignation as required by the Discipline Committee.

It was moved by Mr. Marrocco, seconded by Mr. Wilson that the solicitor be permitted to resign.

Carried

Re: Michele Margaret SARDINHA - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Swaye withdrew for this matter.

Ms. Curtis did not participate.

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

27th June, 1996

Convocation had before it the Report of the Discipline Committee dated 21st May, 1996, together with an Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th May, 1996 (marked Exhibit 1), together with the Report and Affidavit of Service sworn 14th June, 1996 by David Munro, Process Server that he had effected service on the solicitor personally on 13th June, 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

Philip M. Epstein, Q.C., Chair
Thomas E. Cole
Gerald A. Swaye, Q.C.

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

Jane Ratchford
for the Society

MICHELE MARGARET SARDINHA
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: March 26, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 16, 1995, Complaint D350/95 was issued and on February 12, 1996, Complaint D48/96 was issued against Michele Margaret Sardinha alleging that she was guilty of professional misconduct.

The matter was heard in public on March 26, 1996 before this Committee composed of Philip M. Epstein, Q.C., Chair, Thomas E. Cole and Gerald A. Swaye, Q.C. The Solicitor was not present and was not represented by counsel. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

Complaint D350/95

- 2.a) In connection with her representation of her client, Joe Bugeja (carrying on business as Five Bees Sportswear), regarding a claim by Sign-O-Lite (Macey Neon):

27th June, 1996

- i) she failed to serve her client in a conscientious, diligent and efficient manner by settling the action without the client's instructions;
 - ii) between January 31 and September 8, 1992, she misapplied \$2,750 from the mixed trust account of Lilly, Blott in order to make payments to Sign-O-Lite under the settlement to which she had agreed.
- b) In connection with her representation of her client, Bruce Hemphill, in respect of a medical malpractice action, she:
- i) failed to serve the client in a conscientious, diligent and efficient manner, by allowing his civil action to be dismissed, and also by failing to bring a motion to restore the action; and
 - ii) misled the client between July, 1990, and October, 1992, by failing to advise him of the dismissal of the action.
- c) In connection with her representation of her client, Robert Cheshire, regarding a proceeding to vary the terms of a child support and access order, she:
- i) failed to serve her client in a conscientious, diligent and efficient manner, by failing to commence proceedings to vary the child support and access provisions of the orders in question, in a timely fashion;
 - ii) misled her client by advising him that she had commenced proceedings and had obtained a favourable result when she had done neither;
 - iii) prepared false court documents, in particular, a Notice of Application and a document alleged to be a Judgment made by Mr. Justice Steele on March 26, 1992, and provided same to her client; and
- d) In connection with her representation of Marluke Investments Ltd. (David Lucas) regarding proceedings for collection of sums owing by Trican Corporation, she misapplied \$7,000 from the Lilly, Blott mixed trust account, in favour of her client.

Complaint D48/96

- 2.a) She failed to reply to the Law Society regarding a complaint by Heather Alek despite letters dated September 12, 1994 and November 16, 1994 and telephone messages left on October 13, 1994 and November 8, 1994.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

Having heard the evidence of the various witnesses and having reviewed carefully the affidavits of William Reid, Bruce Machon, Luan Egan and Bruce Hemphill, and upon reviewing the documents set out in exhibit number 7 and exhibit number 8, we are fully satisfied that the complaint has been made out.

The substance of the complaints are that the Solicitor, apparently on the eve of trial, negotiated a settlement on behalf of a client without instructions and without authority. To compound that problem, the Solicitor then commenced payment of the settlement that she had made without authorization, by making payments out of the mixed trust account of the law firm by whom she had been employed and in addition, apparently in an attempt to cover up the problem, made personal payments from her own account in connection with the settlement. Subsequently, the fact that no such settlement was authorized was discovered.

27th June, 1996

As a result of this, she has exposed her client to a claim that he is bound by the settlement.

The second complaint deals with a medical malpractice matter in which the Solicitor was, on behalf of the client, ordered to deliver an amended pleading within certain time frames. The Solicitor failed to prepare and serve the amended claim in a timely fashion and accordingly, the action was dismissed. The claim was actually dismissed in July of 1990. The Solicitor never notified the client of the dismissal of his medical malpractice action and it was not until October, 1992 that the client ultimately learned, through other sources, that his action had been dismissed.

The most striking misconduct of the Solicitor was, however, in connection with her involvement of her client, Robert Cheshire. Mr. Cheshire, a resident of Alberta, wished a reduction of child support and increased access. Although Mrs. Cheshire was represented by a solicitor, it appears clear from the documents submitted and from the affidavit of Mr. Machon and the evidence given by Mr. McIntyre, that the solicitor prepared an application that was never served and fabricated a court order. That court order appears at tab 15 of the exhibit book. It purports to be an order of Mr. Justice Steele made on the 26th day of March, 1992, in which it purports to reduce the child support payable by the client and increases the rights of access by the client.

It is clear from the evidence that the solicitor entirely fabricated this order and in order to further deceive all those involved, photocopied an entry stamp from a totally unrelated order, see tab 23.

When the wife and her counsel learned that the husband was reducing support in accordance with this order, an investigation was carried out and it was subsequently determined that the order was a fabrication.

When the Solicitor's employers, in particular Mr. Ron Chapman, confronted the solicitor with the fact that she had fabricated the order, the solicitor offered no explanation whatsoever. She was advised that the employment was being terminated as a result of this conduct and even in the face of that, did not offer any explanation for her conduct.

The Solicitor, in connection with her representation of Marluke Investments Limited, in connection with a law suit with Trican Corporation, paid out \$7,000 from the Lilly, Blott mixed trust account in favour of her client. It seemed clear that these monies were misappropriated although apparently not for the solicitor's benefit. This bizarre conduct is also unexplained.

Note: Amendment, see page 387

Finally, in connection with D48/96, a very lengthy letter of complaint was sent to the Law Society. The client was involved in a trademarks and patent dispute in connection with a game that the client had apparently invented. The complaint was forwarded to the Solicitor on or about September 12th, 1994 and although follow up attempts were made with the Solicitor to get a response to the lengthy complaint, no response has ever been received.

The Solicitor was notified again in November, 1994, that unless a response was received in a timely fashion, that the matter would be referred to discipline. There was still no response to the complaint.

At the opening of this matter, counsel for the Society advised us of the various and varied attempts at service on the solicitor. These include service by registered mail and attendance by a process server at the last known address of the Solicitor. We were advised that other mail addressed to the Solicitor was seen in the mail box of the home on East Lynn Avenue and that it appeared that the Solicitor resided there.

27th June, 1996

The Solicitor has given no response whatsoever to the Society in connection with these matters or to her former employer. She did not appear at the proceeding and did not tender any explanation as to why she was not appearing.

We are satisfied that all of the complaints have been made out.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Michele Margaret Sardinha be disbarred.

REASONS FOR RECOMMENDATION

These are serious complaints. They involve the obstruction of justice, the fabrication of a court order, the misappropriation of trust monies, failure to respond to the Law Society, misleading of clients and failure to properly serve clients. All of this is coupled with a complete lack of explanation of the Solicitor for her conduct.

Note: Amendment, see below

The Committee is thus left with serious misconduct and no explanation. In all of the circumstances, they have little alternative but to recommend to Convocation that the Solicitor be disbarred.

Michele Margaret Sardinha was called to the Bar on April 15, 1988.

ALL OF WHICH is respectfully submitted

DATED this 21st day of May, 1996

Philip M. Epstein, Q.C.
Chair

Ms. Ratchford asked that the following amendments be made to the Report:

- page 4, 4th paragraph, 2nd sentence should read "It seemed clear that these monies were misapplied....." not misappropriated
- page 6, 1st paragraph under the heading Reasons, 2nd line should read "....the misapplication of trust monies...." not misappropriation

Counsel for the Society advised that the solicitor was properly served according to the Law Society Act.

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.

It was moved by Mr. Wright, seconded by Ms. Ross that the solicitor be disbarred.

Carried

27th June, 1996

Re: John Steven CASEY - Kitchener

The Secretary placed the matter before Convocation.

Messrs. Topp, Marrocco and Carey and Ms. Carpenter-Gunn withdrew for this matter.

Ms. Curtis did not participate.

Mr. Neil 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 26th April, 1996, together with an Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd May, 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

Thomas J. P. Carey, Chair
Robert B. Aaron
Kim Carpenter-Gunn

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

Elizabeth Cowie
for the Society

JOHN STEVEN CASEY
of the City
of Kitchener
a barrister and solicitor

Not Represented
for the solicitor

Heard: February 13, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 5, 1995 Complaint D435/94 was issued; on November 6, 1995 Complaint D341/95 was issued; and on December 4, 1995 Complaint D375/95 was issued, alleging that John Steven Casey was guilty of professional misconduct.

The matter was heard in public on February 13, 1996 before this Committee comprising Thomas J.P. Carey, Chair, Robert B. Aaron and Kim Carpenter-Gunn. The Solicitor did not attend the hearing, nor was he represented. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D435/94

2. a) He failed to serve his client, Bonnie Quesnel, in a conscientious, diligent and efficient manner, in that he:
 - i) failed to proceed with his client's divorce action in a timely manner;
 - ii) failed to keep his client advised as to the status of her Divorce proceedings;
- b) In or about April to June 1994, he misled his client, Bonnie Quesnel, by representing to her that the Petition for Divorce was being served on her husband, when such was not the case;
- c) He failed to respond to the Law Society regarding Mrs. Quesnel's complaint, despite letters dated August 2, 1994 and September 21, 1994, and telephone conversations on August 29, 1994, September 1, 1994, September 12, 1994, September 13, 1994 and September 15, 1994;
- d) He breached an Order of Convocation suspending his rights and privileges to practise law for non-payment of his Annual Fees, by continuing to practise during the suspension period from May 9, 1994 to December 16, 1994;
- e) On or about October 19, 1994, he misled the Law Society's representative in her investigation, by giving false explanations in that he:
 - i) advised that he sent post-dated cheques for payment of his Annual Fees;
 - ii) advised that he learned of his suspension on June 20, 1994 and ceased working on the Clark purchase when such was not the case; and
 - iii) advised that he signed one trust cheque during his suspension period, being, October 1994, when such was not the case.
- f) He failed to file with the Society within six months of the termination of his fiscal year ending January 2, 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,

Complaint D341/95

2. a) He failed to reply to the Law Society regarding a complaint by Mrs. C. Fortune despite a registered letter dated June 20, 1995; and
- b) He failed to provide a report on title to the Bank of Montreal regarding a mortgage on which funds were advanced on May 1, 1991.

- c) He failed to file with the Society within six months of the termination of his fiscal year ending January 2, 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 D375/95

2. a) He failed to co-operate with the Law Society's representative in her attempt to conduct an audit when he did not produce all of his books and records as set out in Section 15 of Regulation 708.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

We were not given the benefit of an appearance by Mr. Casey, nor throughout most of the history of these three complaints did he respond meaningfully to a host of enquiries, phone calls and letters from both clients and audit staff, complaint staff and discipline counsel. What responses were received read as a litany of excuses that, strung together, have become almost laughable in their lack of credibility. If it wasn't the Solicitor's computer that was breaking down, it was his car that was breaking down or his fax machine wasn't working. It seems to be a kind of propensity to bad luck with equipment.

The real difficulty for the public is that, if I might quote with permission from the letter of Ms. Quesnel, now Mrs. O'Hara:

"It is lawyers like Mr. Casey that give lawyers a bad name."

The Committee was impressed by the straightforward, candid and honest evidence of all of the witnesses, but especially Mrs. O'Hara. The other witnesses, I should add, that we heard from were primarily staff people from the Law Society and they all gave their evidence in a credible manner and were completely accepted as witnesses. But, Mrs. O'Hara particularly impressed us as someone who is a trusting person. She didn't come to Mr. Casey with any malice towards lawyers; in fact, trusted lawyers, and struck the Committee as a person who is direct and expects the same. She is a hard working person who no doubt has to be careful with her money and paid for her legal fees up front, over twelve hundred dollars (of which she has only received four hundred dollars back). She received no service whatsoever from the Solicitor. Her simple request was for an uncontested divorce so that she and her ex-husband could get on with their lives. It was a simple divorce, no outstanding issues of custody, support or access or property settlement.

It is clear to this Committee that she was constantly put off and deflected by the Solicitor who apparently, after receiving her money, had no other interest whatsoever in her matter. She persisted and through her own efforts, was able to find out enough information about what should be done to confront the Solicitor who eventually gave her an excuse about a problem with the marriage certificate.

It is interesting to note that when the Law Society staff eventually contacted him, he indicated no knowledge of the file whatsoever, that it was his father's file, claimed to have sent a reply or couldn't send a reply because of difficulties with his computer equipment. In summary, it was simply one inadequate excuse after another for inaction.

27th June, 1996

The tragedy is, two people and probably at least four people - and that's not mentioning possible children - had their lives held up in the air while someone callously ignored their interests. It may be in the scheme of things, there wasn't a big dollar value on this file. It wasn't a \$750,000 misappropriation. But, certainly at least \$800 was taken and was not used for the purpose it was intended. There is the human cost of lives left up in the air and no closure to two marriages because they couldn't get the divorce that they wanted. It's this type of behaviour that really does put a black mark on the entire profession.

It seemed clear to the Committee that had the Solicitor simply said to Mrs. O'Hara, "I can't do this, I'm not competent to do this, I'm not interested in doing this, I'm having personal problems", that she would have gladly taken her money back and gone elsewhere. I'm struck by the words in her letter found at Tab 1 of Exhibit 5 which are almost apologetic.

"I'm sorry that I have to lodge this complaint against Mr. John Casey but it seems I have no recourse. All I want is my divorce which I paid for in advance. As far as I know, it's straight forward. Just waiting out the time which I've already done. I feel Mr. Casey has misrepresented me and should return my money that I paid in good faith and let him pay for the divorce".

There is nothing complicated about that. There's no other motivation but a simple one of wanting some answer and an apology.

The other complaints including practising under suspension are just as serious in that they are part of a pattern of lack of response to the governing body of this profession. We note as well that the Solicitor has a previous discipline record where he, in complaint D450/93, was found guilty of two counts of professional misconduct in failing to serve a client in a conscientious, diligent and efficient manner in failing to file a statement of defence and counterclaim and misleading the client in telling him that those documents had been properly served and filed. The facts are really on all fours to the misconduct with Mrs. O'Hara.

The remaining counts here of failing to reply to a complaint from Mrs. Fortune on behalf of her employer, the Bank of Montreal; failing to report for some four years about a mortgage matter and failing to co-operate with the Law Society conducting an audit are equally serious. If there is no co-operation with an audit, the Society has no way of knowing whether misconduct has taken place in a solicitor's practice. In the absence of books and records, the Society is at a complete loss to know if there has been misappropriation, misapplication or other serious offences under the rules of this profession.

RECOMMENDATION AS TO PENALTY

The Committee recommends that John Steven Casey be disbarred and that his name be struck off the Roll of Solicitors.

REASONS FOR RECOMMENDATION

The Solicitor has been found guilty by this Committee of three complaints that are set out at D435/94, D341/95 and D375/95. The Committee wishes to deal with the penalty on the three counts collectively and after hearing the submissions of counsel, Ms. Cowie, for the Law Society, we are all of the view that the appropriate penalty to be recommended is that Mr. Casey be disbarred.

27th June, 1996

There is a pattern in the three cases before us and in the previous discipline history of the Solicitor that shows, in our view, at best a complete disinterest in acting as a responsible solicitor, responsible to our governing body, and being governed by its rules; and at worst, utter contempt for the rules of this profession and for the clients which he took an oath to serve.

The Solicitor has not co-operated in any way with the Law Society, and has ignored the many attempts of the Law Society to contact him. We have found that the particulars set out at Complaint D435/94 also involved giving false explanations regarding payment of the annual fees and practising under suspension, all of which is part and parcel of an attitude of complete non-reaction to the governing body and in short, ungovernability.

If there is nothing else the profession can do with a solicitor such as this, it terminates his membership in the profession, if only to protect the public and perhaps to protect the solicitor from himself.

The Solicitor has, we are told, walked away from his practice and been uncommunicative with the governing body. Great efforts have been made to try to locate a home address in Toronto for the Solicitor, but he has not responded to any of the many attempts to contact him.

He has left us with no recourse but to recommend that he be disbarred and struck off the Roll of Solicitors and that is our recommendation.

John Steven Casey was called to the Bar on April 11, 1980.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1996

Thomas J.P. Carey
Chair

Mr. Perrier advised that the solicitor had been properly served according to the Law Society Act.

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.

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

Carried

Re: John ROTHEL - Timmins

The Secretary placed the matter before Convocation.

Ms. Curtis did not participate.

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

27th June, 1996

Convocation had before it the Report of the Discipline Committee dated 23rd 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) 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

Daniel J. Murphy, Q.C., Chair
Colin L. Campbell, Q.C.
Donald H. L. Lamont, Q.C.

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

Neil Perrier
for the Society

JOHN ROTHEL
of the City
of Timmins
a barrister and solicitor

Brian Greenspan
for the solicitor

Heard: May 18, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 4, 1993, Complaint D236/93 was issued, on May 18, 1993, Complaint D415a/93 was issued, on May 18, 1995, Complaint D103a/94 was issued and on May 18, 1995, Complaint D369a/94 was issued against John Rothel alleging that he was guilty of professional misconduct.

The matter was heard in public on May 18, 1995 before this Committee composed of Daniel J. Murphy, Q.C., Chair, Colin L. Campbell, Q.C. and Donald H.L. Lamont, Q.C. The Solicitor was in attendance at the hearing and was represented by Brian Greenspan. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

27th June, 1996

Complaint D236/93

2. a) He has failed to provide a reply to the Law Society regarding a complaint by Carol Gauthier despite letters dated May 5 and July 13, 1993 and a telephone request on May 25, 1993 and a telephone message left on July 7, 1993.

Complaint D415a/93

2. a) On or about December 3, 1991, he pre-took fees in the sum of \$20,000 for the client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;
- b) On or about December 3, 1991, he pre-took fees in the sum of \$5,000 for the client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;
- c) On or about December 3, 1991, he pre-took fees in the sum of \$8,000 for the client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;
- d) On or about December 9, 1991, he pre-took fees in the sum of \$10,000 from his client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;
- e) On or about January 8, 1992 he pre-took fees in the sum of \$6,500 from his client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;
- f) He misled a client, G.N. Masonry, of the status of its construction lien action when he knew that the claim had not been perfected;
- g) i) He misled a client, Paulette Lemire, when he advised her that her action had been settled and that she would be receiving the sum of \$12,000;
- ii) He failed to serve his client, Paulette Lemire, in a competent and diligent manner when he failed to conclude a settlement agreement on her behalf.

Complaint D103a/94

2. a) He failed to serve his client, Maurice Roy, in a conscientious, diligent and efficient manner in that he failed to release his file to his new lawyer, Clifford Dresner, and, promptly render an account to his client for his fees and disbursements upon the termination of his retainer.

Complaint D369a/94

Re: 117 Queen Avenue

- (1) a) in or about the spring of 1992, he misappropriated funds from his mixed trust account when he failed to deposit client retainers totalling \$4,000.00 paid on account into trust;
- b) he preferred the interest of his mortgagor client, John Hardy, over his mortgagee client, CIBC Mortgage Corporation, when he acted on a mortgage financing transaction and did not disclose to the mortgagee that the mortgagor was experiencing financial difficulties;

27th June, 1996

- c) he failed to serve his clients in a conscientious, diligent and efficient manner by failing to report to clients and failed to render accounts to substantiate fees earned and disbursements made on behalf of his clients.

Re: 147 Queen Avenue

- (2) a) he misappropriated trust funds belonging to John Hardy in the sum of \$43,281.81 from his mixed trust account;
- b) he acted in a conflict of interest when he transferred a property at 147 Queen Avenue, Timmins, to a client experiencing financial difficulties when he, himself, was the vendor, without recommending that the client seek independent legal representation or advice, and without advising his mortgagee client of those difficulties;
- c) in relation to the transaction where Mr. Hardy assumed the Solicitor's mortgage, he breached Rule 23, Commentary 7, by failing to disclose to his client, CIBC Mortgage Corporation, material information regarding Mr. Hardy's financial condition;
- d) he has misled the Law Society investigator by relating different versions of the events surrounding the failure to discharge the mortgage on 147 Queen Avenue.

Re: 108 Main Avenue

- (3) a) he misapplied the sum of \$45,171.58 from his trust account for Mrs. Louise Dolan to avoid detection of the misappropriation set out in particular 2(a);
- b) he breached Section 14 of Regulation 708 by drawing the sum of \$675.00 from his trust account towards payment of his fees without having delivered a billing or other written notification to the client.

Re: 112 Seneca Cres.

- (4) a) he misled a fellow solicitor, Mr. John Kukurin, in a mortgage financing transaction, by representing that he would properly pay down and discharge an existing CIBC mortgage, and register a first mortgage in favour of the National Bank.

Re: 231-233 Cedar Street

- (5) a) he failed to serve his client, Beneficial Realty, in a mortgage financing transaction by failing to register a vendor take-back mortgage on title to the property in the sum of \$60,000 until approximately six months after the close of the transaction.

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 D236/93, D415a/93, D103a/94, and D369a/94 and is prepared to proceed with a hearing of these matters on May 18, 1995.

II. IN PUBLIC/IN CAMERA

2. The parties agree that these matters should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act, with the exception of medical evidence relating to penalty.

III. ADMISSIONS

3. The Solicitor has reviewed the above four Complaints 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 29, 1977 and has practised as a sole practitioner in Timmins since March 8, 1982.

Complaint D236/93

Particular 2a) He has failed to provide a reply to the Law Society regarding a complaint by Carol Gauthier despite letters dated May 5 and July 13, 1993 and a telephone request on May 25, 1993 and a telephone message left on July 7, 1993

5. The Complainant wrote to the Society on April 12, 1993 complaining about Mr. Rothel's delay in handling the Complainant's separation agreement and support for her three children (Document Book, Tab 1).

6. The Law Society's attempts to contact the Solicitor are set out below in the following chart:

DATE	TYPE OF CONTACT	RESULT
May 5th, 1993	Letter requesting response to complaint.	No response. (Tab 2)
May 25th, 1993	Telephone Call - to inquire about when a response could be expected. Solicitor stated that he was to meet with Ms. Gauthier on May 26th, 1993. A date for a response to the Society was set for June 2nd, 1993.	No response. (Tab 3)
June 2nd, 1993	Solicitor advised the Society that he was not able to complete the response by this date and that he would be absent from Timmins the following week. He requested that the Society allow him until the week of June 21st, 1993 to provide a response. (Tab 4)	The Society agrees to allow the Solicitor until June 23, 1993 to reply.
June 5th, 1993	Law Society staff telephoned Solicitor's office and let telephone ring ten times. No one answered the telephone.	No reply.
June 21, 1993	The Solicitor failed to reply to the Society by this date.	
July 7th, 1993	Law Society staff telephoned Solicitor's office to advise that a response was required no later than Friday July 9th, 1993 or a registered letter would be sent on the 12th of July. (Tab 5)	No response.
July 13th, 1993	Registered letter sent to Solicitor. (Tab 6)	No response.

7. The Solicitor responded by letter dated October 1, 1993, two weeks after the issuance of the Complaint D415a/93.

Complaint D415a/93
Particulars

- 2 a) On or about December 3, 1991, he pre-took fees in the sum of \$20,000 for the client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;

- b) On or about December 3, 1991, he pre-took fees in the sum of \$5,000 for the client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;
- c) On or about December 3, 1991, he pre-took fees in the sum of \$8,000 for the client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;

8. The Solicitor represented Mr. Nadeau, Ms. Lemire and their related companies for a number of years. Mr. Nadeau and Ms. Lemire are common-law spouses. In January of 1992, they retained another solicitor, Ms. Suzanne Desrosiers, after they became concerned about the Solicitor's handling of their matter.

9. The Solicitor's client trust ledgers for Nadeau, Lemire and their related companies reveal that he did not have any money remaining in trust on their behalf. A review of the ledgers also revealed that he made three transfers from his file #91R-192 (Document Book, Tab 7). The file was for one of Mr. Nadeau's companies, 611629 Ontario Ltd. The details of these transfers were as follows:

Date	Amount
December 3, 1991	\$40,000
December 9, 1991	10,000
January 8, 1992	6,500
Total Transferred	\$56,500

10. Ms. Desrosiers, contacted the Solicitor by letter dated February 17, 1992 (Document Book, Tab 8), expressing concern with respect to certain transfers of trust monies out of the Solicitor's client trust accounts, which monies were being held for various companies owned by Mr. Nadeau. The Solicitor did not respond to Ms. Desrosier's letter. As a result, Ms. Desrosier complained to the Law Society by letter dated March 17, 1992 (Document Book, Tab 9).

11. In December 1992, Nadeau, Lemire and their related companies commenced an action against the Solicitor. An application was brought in January of 1993 for the return of the client files from the Solicitor. On January 7, 1993, the Court ordered (Document Book, Tab 10), inter alia, that the Solicitor:

- 1) *Release all of the applicant's files, books, records and seals, forthwith, without removal or alteration of any documents in the files, and that the same be delivered to Suzanne Desrosiers, the solicitor for each of the applicants, on or before the 25th day of January, 1993.*
- 2) *Prepare and deliver Statements of Distribution of Trust Funds and his accounts on all outstanding files to Suzanne Desrosiers on or before the 25th day of January, 1993.*
- 3) *Deliver any Trust Funds on behalf of each of the Applicants to Suzanne Desrosiers "In Trust", on or before the 25th day of January, 1993.*

12. The Solicitor failed to comply with the Court Order. Ms. Desrosiers brought a motion for contempt originally returnable March 11, 1993. The contempt motion was settled on consent in May of 1993 after which the Solicitor complied with the original Court Order.

13. The Solicitor explained that these transfers were made as a result of fees that were owed to him by Mr. Nadeau and his companies. With respect to the \$40,000 transfer, the Solicitor provided a summary indicating to which of the files these fees were related. Attached to this summary were hand-written invoices (Document Book, Tab 11). The Solicitor later provided typewritten invoices (Document Book, Tab 12). These invoices provided no detail as to the work performed by the Solicitor. Invoices were also provided for the transfer of \$10,000 and \$6,500.

14. The Solicitor's explanation is that he withdrew monies from the Nadeau trust account on account of fees owing for work done on a number of files discussed below. In each case, the Solicitor withdrew the fees over two years prior to sending an invoice.

15. Set out below is a chronology of the files in which the Solicitor transferee monies from the trust account.

FILE #	CLIENT NAME	DATE	ACTION
85R-49	Noroco Management	Dec./86	Final advance of mortgage deposited in client trust account
		Dec.3/91	Solicitor withdraws \$5,000 from client (Nadeau) trust account
		Feb./93	Solicitor delivers a statement of account for \$5,000 No description of services performed in statement
			Solicitor invoices client (Nadeau)
84R-146	489448 Ont. (Parkview)	Oct. 14/86	Memorandum written by Solicitor completing this file
		Dec.3/91	Solicitor withdraws \$20,000 from client (Nadeau) trust
		Apr./93	Solicitor invoices client (Nadeau) \$20,000 and prepares statement of account dated May 31/91-no details
			Solicitor files consent to dismiss the action and the order
		Dec.3/91	Solicitor withdraws \$8,000 from client (Nadeau) trust account
		Apr./93	Solicitor invoices client (Nadeau) and provides Ms. Desrosiers with detailed statement of account dated May 31, 1991

Particular 2(d)

On or about December 9, 1991, he pretook fees in the sum of \$10,000 from his client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;

Particular 2(e)

On or about January 8, 1992, he pretook fees in the sum of \$6,500 from his client trust account contrary to section 14(8) of Regulation 708 of the Law Society Act;

16. The Solicitor admits that the transfer of the \$10,000 on December 9, 1991, and the \$6,500 on January 8, 1992 was pre-taking.

Particular 2(f)

He misled a client, G.N. Masonry, of the status of its construction lien action when he knew that the claim had not been perfected

DATE	EVENT
December 1989	Solicitor retained to act on behalf of G.N. Masonry (Nadeau company) in a construction lien action.
December 27, 1989	claim for lien registered on title
After December 27, 1989	Solicitor perfected the claim for lien by registering the Certificate of Action and issuing the Statement of Claim. The Solicitor failed to serve the Statement of Claim on one of the defendants or take further steps to pursue the action.

17. The Solicitor misled his client, G. N. Masonry, when he advised them that the lien action was scheduled for trial when he knew that a Statement of Claim had not been served on one of the defendants or set down for trial.

Particular 2 (g) (i) He misled a client, Paulette Lemire, when he advised her that her action had been settled and that she would be receiving the sum of \$12,000;

(ii) He failed to serve his client, Paulette Lemire, in a competent and diligent manner when he failed to conclude a settlement agreement on her behalf.

DATE	EVENT
1985	Paulette Lemire is Mr. Nadeau's common-law spouse. In 1985, she retained the Solicitor to collect arrears in child support from ex-husband, Rosaire Lemire. In 1990, Ms. Lemire was advised by the Solicitor that the matter had been settled out of Court. Ms. Lemire was advised that she would be receiving \$12,000.
1990	<p>Ms. Lemire has never received \$12,000, despite assurances by the Solicitor that this amount would be forthcoming. The Solicitor also failed to report to his client on this matter.</p> <p>A review of the file showed that John Kukurin, the solicitor for Ms. Lemire's ex-husband, had made an offer to settle on September 28, 1990, whereby Ms. Lemire would receive \$12,000. There was no further correspondence in the file dated subsequent to this letter. Mr. Kukurin was contacted and he stated that the Solicitor informed him that he would respond to the offer after consulting with his client. Mr. Kukurin stated that the Solicitor did not contact him subsequently and therefore, he closed his file on the matter.</p>
Post 1990	The Solicitor misled his client as to the status of her file by informing the client that a settlement had been reached in the sum of \$12,000. In actual fact, the Solicitor failed to follow-up on the proposal received from the defendant's lawyer.

18. The solicitor for the ex-husband was contacted by the Law Society and stated that an Offer to Settle in the sum of \$12,000 was made to the Solicitor on September 28, 1990 but that the Solicitor never contacted Mr. Kukurin subsequently and therefore, he closed his file on the matter. The matter was eventually settled by Ms. Desrosier in or about August of 1994 in the sum of \$10,000. Ms. Lemire lost interest on the \$12,000 offer to settle for a period of 4 years.

Complaint D103a/94

Particular 2(a) He failed to serve his client, Maurice Roy, in a conscientious, diligent and efficient manner in that he failed to release his file to his new lawyer, Clifford Dresner; and, promptly render an account to his client for his fees and disbursements upon the termination of his retainer.

27th June, 1996

19. In November, 1988, the Solicitor was retained to act for Mr. Maurice Roy in an estate matter in which Mr. Roy was the Executor.

20. In late, 1992, Mr. Roy started to encounter difficulties with Solicitor namely, lack of communication and delay. As a result, Mr. Roy terminated Solicitor's retainer and requested an accounting and the return of the file. The Solicitor did not respond.

21. In or about February, 1993, Mr. Roy sent a letter to Solicitor formally requesting the return of his file and an accounting. The Solicitor did not respond.

22. On March 2, 1993, Mr. Roy retained a new solicitor, Mr. Clifford Dresner, to act for the estate. Mr. Dresner sent the Solicitor a letter advising him of his retainer and requesting return of the file and an accounting (Document Book, Tab 13). The Solicitor did not respond.

23. On April 23, 1993, Mr. Dresner sent the Solicitor a follow-up letter (Document Book, Tab 14) indicating that he would report him to the Law Society if he did not reply. The Solicitor called Mr. Dresner's office and left message that he would send file the first week of May (Document Book, Tab 15).

24. On June 29, 1993, the Solicitor called Dresner's office and left message that the file would be delivered Friday (Document Book, Tab 16). The Solicitor failed to deliver the file and the accounting.

25. On August 29, 1993, Mr. Roy complained to the Law Society about the Solicitor's failure to release the file and provide an accounting (Document Book, Tab 17).

26. The following chart sets out the Law Society's attempts to contact the Solicitor:

<u>Date</u>	<u>Type of Contact</u>	<u>Result</u>
Sept. 20, 1993	Letter requesting response to complaint.	No response. (Tab 18)
Oct. 28, 1993	Telephone call. Left message with	Solicitor returned call on secretary for Solicitor to return call. November 1, 1993 and advised was attending to the matter. He indicated he would be sending file to Complainant together with letter to the Society "this week". (Tab 19)
Nov. 12, 1993	Telephone call to Solicitor.	Solicitor stated he had been sick off and on for last couple of weeks. Solicitor promised response by November 22, 1993. (Tab 19)

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Nov. 22, 1993	Solicitor's secretary telephoned to advise that Solicitor was out of office, but Solicitor instructed her to call to relay that he would be finalize the matter tomorrow and would also send response to Society.	No response. (Tab 19)
Nov. 26, 1993	Registered letter advising of referral to Discipline if no reply within seven days.	No response. (Tab 20)
Jan. 27, 1994	Telephone call to Solicitor. Solicitor apologized for delay and stated he was taking all Law Society matters home on weekend and would call Law Society on February 1, 1994. (Tab 21)	Solicitor called on 1, 1994 and advised that he had file and would forward same to Dresner immediately and send Society a copy of the cover letter. (Tab 22)

27. On April 12, 1994, the Solicitor provided a copy of his file to Mr. Rodney Hull, who was retained by Errors & Omissions.

Complaint D369a/94

Particulars

Re: 117 Queen Avenue

- (1)a) in or about the spring of 1992, he pretook funds deposited by his client, John Hardy, when he failed to deposit client retainers totalling \$4,000.00 paid on account into trust
- b) he preferred the interest of his mortgagor client, John Hardy, over his mortgagee client, CIBC Mortgage Corporation, when he acted on a mortgage financing transaction and did not disclose to the mortgagee that the mortgagor was experiencing financial difficulties
- c) he failed to serve his clients in a conscientious, diligent and efficient manner by failing to report to clients and failed to render accounts to substantiate fees earned and disbursements made on behalf of his clients

Re: 147 Queen Avenue

- (2)a) he misappropriated funds belonging to John Hardy in the sum of \$43,281.81 from his mixed trust account
- b) he acted in a conflict of interest when he transferred a property at 147 Queen Avenue, Timmins, to a client experiencing financial difficulties when he, himself, was the vendor, without recommending that the client seek independent legal representation or advice, and without advising his client of those difficulties
- c) in relation to the transaction where Mr. Hardy assumed the Solicitor's mortgage, he breached Rule 23, Commentary 7, by failing to disclose to his client, CIBC Mortgage Corporation, material information regarding Mr. Hardy's financial condition

27th June, 1996

- d) he has misled the Law Society investigator by relating different versions of the events surrounding the failure to discharge the mortgage on 147 Queen Avenue

Re: 108 Main Avenue

- (3) a) he misapplied the sum of \$45,171.58 from his trust account for Mrs. Louise Dolan to avoid detection of the misappropriation set out in particular 2(a)
- b) he breached Section 14 of Regulation 708 by drawing the sum of \$675.00 from his trust account towards payment of his fees without having delivered a billing or other written notification to the client

Re: 112 Seneca Cres.

- (4) a) he misled a fellow solicitor, Mr. John Kukurin, in a mortgage financing transaction, by representing that he would properly pay down and discharge an existing CIBC mortgage, and register a first mortgage in favour of the National Bank

Re: 231-233 Cedar Street

- (5) a) he failed to serve his client, Beneficial Realty, in a mortgage financing transaction, by failing to register a vendor take back mortgage on title to the property in the sum of \$60,000 until approximately 6 months after the close of the transaction

28. The Solicitor misappropriated \$43,281.81 to pay down a mortgage debt on a property he owned at 112 Seneca Crescent in Timmins. The following chronology pertains to the above

particulars:

Date	Event
117 Queen Avenue	
1990	<p>John Hardy became concerned with his personal circumstances as a result of divorce proceedings that he was in danger of losing the property which was his matrimonial home.</p> <p>To protect interest he sells the property to a friend, Noel Belair, in trust, until he can re-purchase.</p> <p>Belair obtains one year mortgage financing in the approximate sum of \$67,500 from Sid Brooks to mature on May 1st, 1991.</p>

Date	Event
	<p>Belair himself encounters financial difficulties and Hardy is concerned that he may lose the property.</p> <p>Hardy approaches Solicitor with the problem.</p>
May-July/92	<p>Hardy pays \$4,000 retainer to Solicitor in cash (See receipts at Document Book, Tab 6). Retainer funds from Hardy not deposited in trust in breach of Reg. 708, s.14. As there is no record of receipt of funds or billing, the Solicitor pretook the \$4,000 in funds.</p> <p>The Solicitor acted on this transaction and on the purchase of a property located at 147 Queen Ave. which the Solicitor owned (The 147 Queen Ave. transaction will be referred to later in the Agreed Statement of Facts).</p>
June 2/92	<p>Solicitor suggests arrangement to Hardy whereby he, the Solicitor, will purchase the property from Belair and take out first mortgage financing with the CIBC.</p> <p>Solicitor will then sell property to Hardy who will assume the CIBC mortgage (Solicitor was aware that CIBC would assume mortgage automatically as a result of his involvement with the CIBC on the property at 147 Queen Ave. which will be described later in this Agreed Statement of Facts).</p> <p>Solicitor purchases property from Noel Belair for \$98,000.</p> <p>CIBC takes 1st mortgage from Solicitor in the sum of \$84,966.</p>
June 29/93	<p>Solicitor sells property to Hardy.</p> <p>Hardy still has executions registered against him.</p> <p>CIBC mortgage is assigned to Hardy. Solicitor acts on assignment.</p> <p>Solicitor does not disclose to CIBC that Hardy has executions registered against him or that he is in financial difficulty.</p>
Post June/93	<p>Hardy makes several requests for reporting letter from Solicitor.</p> <p>As of September 30/94, Solicitor had not provided Hardy with a reporting letter.</p> <p>Solicitor acted on all of the above transactions and at no time suggested that either the CIBC or Mr. Hardy obtained independent legal advice or representation.</p>
147 Queen Ave	

Date	Event
June 30/89	Solicitor purchases property from the Prudhommes for the sum of \$73,500 and assumes a first mortgage from the CIBC in the sum of \$48,750.
1990	<p>The following transactions all occurred within the same time frame as the transactions on 117 Queen Ave.</p> <p>As stated above, the Solicitor suggested Hardy could purchase his property at 147 Queen Ave.</p> <p>As a result of having to sell 117 Queen Ave., Hardy purchases the 147 Queen Ave. property as he wants to reside in the same area (near the high school where he teaches).</p> <p>Due to his financial difficulties, he arranges that another friend, Mr. Patrick Bamford, would purchase the property on his behalf on the understanding that Hardy would make all mortgage payments respecting the financing of the property.</p>
Oct. 18/90	<p>Bamford purchases property from Solicitor for \$88,000.</p> <p>Bamford assumes CIBC mortgage.</p> <p>A vendor take-back 3rd mortgage in the sum of \$16,000 is registered to Solicitor as mortgagee.</p> <p>4th mortgage in the sum of \$25,500 is registered to Beneficial Realty Ltd.</p>
Nov 15/90	<p>Solicitor's 3rd mortgage transferred to Mr. & Mrs. Richards.</p> <p>Solicitor had met the Richards on a fishing trip. Solicitor suggests that the Richards may be interested in this mortgage investment.</p> <p>Solicitor acts on transaction in a conflict of interest.</p> <p>Solicitor does not suggest that the Richards obtain ILA or ILR.</p>

Date	Event
May 31/93	<p>As a result of the additional financing obtained from the sale of the 117 Queen Street property from the Solicitor to Hardy, Hardy is able to purge himself of executions and purchase this property from Bamford for the sum of \$94,000.</p> <p>Solicitor again acts on transaction.</p> <p>Mortgage financing arranged through the National Bank of Canada in the sum of \$86,715.</p> <p>National Bank of Canada to receive first mortgage.</p> <p>Solicitor retained and instructed by National Bank to register a first mortgage against the property prior to advancing closing funds.</p>
Jun 1/93	<p>Solicitor receives the sum of \$84,600 from National Bank into his trust account.</p> <p>Solicitor required to discharge the CIBC mortgage and, discharge or postpone the Richards' 3rd, and the Beneficial Realty 4th, mortgage registered on title to the property.</p> <p>Contrary to his instructions, the Solicitor used the funds to pay off a CIBC mortgage which was registered on a property he owned located at 112 Seneca Crescent in the amount of \$43,281.81 thereby misappropriating that sum.</p> <p>The result was that the National Bank received a 4th mortgage behind the CIBC.</p>
Nov./93	Beneficial Realty debt completely paid off.
Dec. 7/93	CIBC mortgage debt is paid and the CIBC mortgage subsequently discharged (Note: the monies used to pay off the CIBC mortgage were "kited" from the 108 Main St. file set out later in this Agreed Statement of Facts).
May 4/94	As a result of investigators' questioning, Solicitor prepared discharges.
May/94	Beneficial Realty mortgage discharged.

Date	Event
May 4/94	Solicitor misled audit investigator by stating that the mortgages on 147 Queen Ave. had been paid but were not discharged due to an oversight, when, in fact, the Solicitor used the monies received from the National Bank to pay down a personal mortgage debt he owed on a property he owned at 112 Seneca Cres.
May 5/94	<p>Solicitor stated that he had cancelled the cheque to the CIBC due to a dispute over the amount owed to the bank. The audit investigator used the Solicitor's books and records to point out to the Solicitor that the cheque had to have been cashed. Solicitor eventually produced his other file for his property at 112 Seneca Cres. He admitted that he had paid out his own mortgage and had planned to straighten out the trust account later but stated that he became so busy he had forgotten about it.</p> <p>The cheque was located in the 112 Seneca Cres. file.</p>
108 Main Avenue	
1993	Solicitor retained by vendor (Dolan) and purchaser (Roy) to close purchase and sale transaction. Dolan states that she was aware that Solicitor was also representing Roy. No suggestion by the Solicitor that either party obtain ILA or ILR.
Dec. 7/93	<p>Purchase and Sale transaction closes.</p> <p>Solicitor receives the sum of \$89,177.61 from Roy.</p> <p>The money was to be used to pay out a CIBC mortgage registered against the property in the sum of approximately \$71,000.</p> <p>Solicitor renders an account to Dolan dated December 7, 1993, (Document Book, Tab 34) representing that the CIBC mortgage was discharged.</p> <p>Solicitor does not pay down the existing CIBC mortgage or discharge the mortgage.</p> <p>Solicitor misapplies the sum of \$45,171.58 from this trust account to pay off the CIBC mortgage on the Hardy property at 147 Queen Ave. (please refer to chronology at 147 Queen Ave.)</p> <p>CIBC later contacts Dolan to enquire why her mortgage payments are late. Dolan calls Solicitor who informs her that "he will take care of it".</p>

Date	Event
March 24/94	<p>Solicitor later obtains funds from his mother-in-law and pays out the CIBC mortgage on this property.</p> <p>The Solicitor further pre-took his legal fees in the sum of \$675.00 in breach of Regulation 708, s.8(c).</p>
112 Seneca Cres.	
Jan. 31/89	<p>Solicitor purchases this property from the McDonalds.</p> <p>Solicitor assumes a first mortgage from the CIBC which had a face value of \$51,660.</p>
Sept. 13/91	<p>Solicitor decides to refinance the property. Solicitor enters into an agreement with the National Bank to obtain financing in the approximate sum of \$67,000 to be secured by a first mortgage registered in favour of the National Bank.</p> <p>Another solicitor and friend of the Solicitor, Mr. John Kukurin, is retained by the Bank to act on the transaction. Solicitor misrepresents to Kukurin that he will do the work on the transaction and see to the proper registration of the mortgage contrary to the Solicitor's representation that he did not use the monies advanced from the National Bank to pay down the debt of the CIBC and did not inform Kukurin. The Solicitor does not pay down or discharge the CIBC mortgage until August of 1993. This resulted in Mr. Kukurin not being able to send a reporting letter to the National Bank until Sept. 13, 1993, two years after the transaction was to have closed.</p>
231-233 Cedar Street North	

Date	Event
Fall 1993	<p>Solicitor approached Mr. Hardy suggesting that Hardy might purchase the property at a reasonable cost for investment purposes.</p> <p>According to Mr. Hardy, the Solicitor informed him that he could purchase the property for \$60,000.</p> <p>The Solicitor admits that he did not register the mortgage security in the sum of \$60,000 until six months after the close of the transaction. The Solicitor acknowledges that this left Beneficial Realty in an unsecured position for that period in time.</p>
Nov. 1/93	<p>Hardy purchases property for \$60,000.</p> <p>Though transaction was supposed to have closed on this date, the Land Transfer Deed is not registered until March 17/94.</p> <p>Hardy obtains mortgage financing in the sum of \$60,000 from Beneficial Realty on November 1, 1993. However, Solicitor does not register the mortgage in favour of Beneficial Realty until March 17, 1994. It should be noted that although the date of signature in Box 11 of the Document is November 1, 1993, Hardy did not sign this document until March of 1994.</p> <p>The above came to the attention of Hardy because in March of 1994 he had attended at the National Bank to obtain re-financing.</p>

V. PRIOR MISCONDUCT

29. In April, 1991, the Solicitor was reprimanded in Committee for failing to reply to Law Society communications.

30. In 1992, two formal complaints of professional misconduct were issued against the Solicitor. At the discipline hearing of these complaints in January, 1993, the Solicitor gave an Undertaking (Document Book, Tab 23) to the Law Society to, *inter alia*, consult with a psychiatrist through the LINK Program and to co-operate and implement all reasonable recommendations of the Professional Standards Programme.

31. The Solicitor initially contacted a Dr. Lacroix through the LINK Program, and subsequently undertook to the Committee to see Dr. Malcolm instead of Dr. Lacroix, for an assessment, on the Chairman's suggestion (Document Book, Tab 24 - excerpt of transcript). By letter dated April 30, 1993 (Document Book, Tab 25), the Solicitor advised the Law Society that he has seen Dr. Malcolm twice and was attempting to make a further appointment with him.

32. By inter-office memorandum dated February 10, 1994 (Document Book, Tab 26), the Professional Standards Department advised the Discipline Department that its Committee recommended that the Solicitor's file be closed due to his unwillingness to co-operate with the Practice Review Programme, despite his Undertaking sworn January 13, 1993.

27th June, 1996

33. In its Report and Decision dated February 24, 1995 (Document Book, Tab 27), the Discipline Committee recommended that the Solicitor be suspended for a period of one month, such suspension to continue thereafter until Senior Counsel-Discipline is satisfied that the Solicitor is fit to return to practice. It was also recommended that the Solicitor pay costs in the amount of \$3,750. This matter is still pending before Convocation.

DATED at Toronto this 18th day of May, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that John Rothel be disbarred.

REASONS FOR RECOMMENDATION

At the conclusion of the hearing in this matter on May 18, 1995, the solicitor was found guilty of professional misconduct and the matter was adjourned to allow counsel for the Society and the solicitor to submit written submissions with respect to penalty. Counsel for the solicitor indicated to the Committee that he intended to advance the position that permission to resign be granted as opposed to disbarment. The Committee received written submissions from the Society on June 21, 1995. On October 10, 1995, the Committee received a letter from counsel for the solicitor advising the Committee that he agreed with the submission of counsel for the Society that the Committee recommend to Convocation that the solicitor be disbarred.

Misappropriation is any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing but also unauthorized temporary use for the lawyer's own purpose (see In the Matter of Charles W. Sommers).

The general rule in misappropriation cases is that, save in unusual circumstances, disbarment is required (see Daniel Gilad Cooper).

There are no unusual circumstances in this case. While the solicitor has made restitution, that factor is not enough to warrant deviating from the penalty of disbarment and the Committee so recommends.

John Rothel was called to the Bar on March 29, 1977.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of February, 1996

Daniel J. Murphy, 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.

Counsel for the Society made brief submissions in support of the recommended penalty.

27th June, 1996

It was moved by Ms. Ross, seconded by Ms. Stomp that the solicitor be disbarred.

Carried

Re: Edward John BROGDEN - Sarnia

The Secretary placed the matter before Convocation.

Ms. O'Connor withdrew for this matter.

Ms. Curtis did not participate.

Mr. Brown 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 16th May, 1996, together with an Affidavit of Service sworn 22nd May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th May, 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

Nancy Backhouse, Chair
Ronald D. Manes
Shirley O'Connor

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

Elizabeth Cowie
for the Society

EDWARD JOHN BROGDEN
of the City
of Sarnia
a barrister and solicitor

Unrepresented
for the solicitor

Heard: February 27, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 5, 1996, Complaint D268/95 was issued against Edward John Brogden alleging that he was guilty of professional misconduct.

The matter was heard in public on February 27, 1996 before this Committee composed of Nancy Backhouse, Chair, Ronald Manes and Shirley O'Connor. The Solicitor was not present and was not represented by counsel. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D268/95

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

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

Service

The solicitor was not present and was not represented by counsel. The Law Society filed a Service Brief (Exhibit 1). At Tab 7 of Exhibit 1 the Solicitor advised Ms. Cado of the Law Society that the best time for him to have this matter heard was the last half of February, 1996. At Tab 9 of Exhibit 1, Ms. Cowie of the Law Society faxed the Solicitor to advise that the dates she proposed to set for the Hearing were February 27 and 28, 1996. At Tab 10 of Exhibit 1, Ms. Cowie wrote to the Solicitor confirming that the matter had been adjourned to February 27 and 28, 1996, to proceed. Under cover of letter dated November 28, 1995 from Ms. Cado to the Solicitor, a cheque in the amount of \$100.00 was sent to him to assist him in attending in Toronto for the hearing which he had advised he was unable to afford to do. The Solicitor in a letter dated December 3, 1995 to Ms. Cado at Tab 5 of Exhibit 1 stated that he would not use the aforesaid cheque. Under the circumstances, we are satisfied that the Solicitor had proper notice of this Hearing and that it should proceed.

Helen Pascari, the Annual Filing Co-ordinator with the Law Society testified that the Solicitor had last made his Annual Filing for the period ending December 31, 1993 and that a Notice of Default in Annual Filing dated July 7, 1995 had been sent and received by the Solicitor. A second Notice of Default and Annual Filing dated August 16, 1995 had been sent to the Solicitor which Ms. Pascari was unable to confirm the Solicitor had received, his office having been moved by that date. From several letters from the Solicitor contained in the Service Brief, it is apparent that the Solicitor's position was that he could not afford to pay an accountant to make his annual filings because of the delay by Legal Aid in paying his accounts. As sympathetic as we are to the Solicitor's apparent financial difficulties, the Law Society cannot protect the public interest without ensuring that solicitors in practice maintain their books and records and make their filings certified by an accountant within the prescribed time-frames.

In his letter dated December 4, 1995 to Ms. Cado the Solicitor advised that he had cleared his schedule from December 22 through January 15, 1996 to do the bookkeeping himself and have the audits done for 1994 and 1995. No filings were made by the time this matter came before this Committee. The Solicitor did not request a further adjournment. Under the circumstances, the Committee finds that the Solicitor is guilty of professional misconduct.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Edward John Brogden be suspended for one month and for such period thereafter until he makes his proper filings for his fiscal year ending December 31, 1994.

REASONS FOR RECOMMENDATION

The Solicitor was disciplined on three prior occasions. On July 11, 1995, he was reprimanded in committee for failing to file for his fiscal year ending December 31, 1993. He subsequently filed for this period. On January 26, 1995, the Solicitor was suspended for two months for practicing while under suspension. On May 29, 1990, he was reprimanded in committee for failing to reply and failing to provide mortgage documentation. In view of the prior discipline and all the above circumstances, the Committee recommends that the Solicitor be suspended for one month and for such period thereafter until he makes his proper filings for his fiscal year ending December 31, 1994.

Edward John Brogden was called to the Bar on March 19, 1970.

ALL OF WHICH is respectfully submitted

DATED this 16th day of May, 1996

Nancy Backhouse
Chair

A fax from the solicitor was distributed to Convocation.

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

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month and for such period thereafter until he makes his proper filings for the fiscal year ending December 31, 1994.

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

It was moved by Mr. Gottlieb, seconded by Mr. Millar that the recommended penalty be adopted.

Carried

Re: Raymond Vincent DONOHUE - Sarnia

The Secretary placed the matter before Convocation.

Messrs. Topp and Carey and Ms. O'Connor withdrew for this matter.

Ms. Curtis did not participate.

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

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Convocation had before it the Report of the Discipline Committee dated 6th March, 1996, together with an Affidavit of Service sworn 29th March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th 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

Nancy L. Backhouse, Chair
Thomas J. P. Carey
Shirley O'Connor

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

Rhonda Cohen
for the Society

RAYMOND VINCENT DONOHUE
of the City
of Sarnia
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 16, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 30, 1995 Complaint D185/95 was issued; on August 10, 1995 Complaint D218/95 was issued; and on November 24, 1995 Complaint D366/95 was issued against Raymond Vincent Donohue, alleging that he was guilty of professional misconduct.

The matter was heard in public on January 16, 1996 before this Committee comprising Nancy Backhouse, Chair, Thomas Carey and Shirley O'Connor. The Solicitor did not attend the hearing, nor was he represented. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D185/95

2. a) he failed to maintain his books and records on a current basis as required by Section 15 of Regulation 708 of the Law Society Act;

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- b) he failed to maintain sufficient balances in his trust account to meet his trust obligations as required by Section 14(12) of Regulation 708 of the Law Society Act, insofar as he had an outstanding shortage in his trust account from June 30, 1993 to March 1995 in the amount of \$7,625.00;
- c) he breached an Order of Convocation that he suspend his practice for failure to pay his annual fees, by continuing to practise during the period November 1, 1994 to February 14, 1995;

Complaint D218/95

- 2. a) he failed to provide a meaningful reply to the Law Society regarding a complaint by Charles Compbell despite letters to him dated July 28, 1994, November 8, 1994, March 7, 1995 and April 19, 1995 and telephone communications on August 24, 1994, September 13, 1994, September 15, 1994, September 23, 1994, September 29, 1994, October 4, 1994, October 5, 1994, October 7, 1994, October 11, 1994, December 12, 1994, December 28, 1994, January 10, 1995, January 11, 1995, January 19, 1995, January 24, 1995, February 20, 1995, February 22, 1995, April 3, 1995, April 5, 1995 and April 10, 1995.

Complaint D366/95

- 2. a) the Solicitor breached an Order of Convocation that he suspend his practice for failure to pay his Errors and Omissions Levy, by continuing to practise from May 26, 1995 to July 20, 1995.

Service

The Solicitor advised Counsel for the Law Society that he was ill and unable to attend this hearing but that he was content that the matter proceed. He entered into an Agreed Statement of Facts and agreed to a joint submission with respect to penalty. The Solicitor has adjourned these matters on three previous occasions due to illness. He had consented to the hearing being peremptory to him on January 16, 1996. Based on these facts, the Committee was of the view that the matter should proceed.

Evidence

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

Re: Complaints D185/95 and D218/95

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of each of Complaints D185/95 and D218/95 and is prepared to proceed with a hearing of each of these matters on November 14 and 15, 1995.

II. IN PUBLIC/IN CAMERA

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

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III. ADMISSIONS

3. The Solicitor has reviewed each of Complaints D185/95 and D218/95 and admits the particulars contained therein. The Solicitor further admits that the said particulars supported by the facts hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on September 20, 1956. He is a sole practitioner. On May 26, 1995, the Solicitor was administratively suspended for non-payment of the Errors & Omissions Insurance Levy. He remains suspended.

Complaint D185/95

Particular 2 a) He failed to maintain his books and records on a current basis as required by Section 15 of Regulation 708 of the Law Society Act.

5. On January 19, 1995, an Examiner for the Law Society attended at the Solicitor's office for the purpose of conducting an investigation of the Solicitor's books and records pursuant to Sections 9 and 18 of Regulation 708 of The Law Society Act. The Examiner discovered that the books and records had not been maintained since August 31, 1993. The Solicitor's secretary, Rhonda Wilson, confirmed that the last time the Solicitor's bookkeeper, Nancy Muth, had visited the office was during the fall of 1993.

6. A trust comparison as at August 31, 1993, identified a shortage in the Solicitor's trust account in the amount of \$7,625.00 (Document Book, Tab 1). The Solicitor's secretary subsequently brought the trust records up to date, but the records for the general account remain in arrears. As a result, the Examiner placed co-signing controls on the Solicitor's trust account on January 19, 1995.

7. The Solicitor reinstated his membership on or about February 14, 1995 at which time an operating trust account was opened.

Particular 2 b) He failed to maintain sufficient balances in his trust account to meet his trust obligations as required by Section 14(12) of Regulation 708 of The Law Society Act, insofar as he had an outstanding shortage in his trust account from June 30, 1993 to March 1995 in the amount of \$7,625.00.

8. In 1992, Revenue Canada placed an attachment order on the Solicitor's general account.

9. In March of 1995, a trust comparison prepared as at February 28, 1995 indicated that the trust account still showed a shortage of \$7,625.00. (Document Book, Tab 2)

10. On June 4, 1993, Revenue Canada wrote a letter to the Solicitor's bank, Canada Trust, advising that:

- (a) Revenue Canada's investigation of the Solicitor revealed that during the period of December 1992 to January 1993, the Solicitor had made several payments to himself totalling \$7,625.00;
- (b) these payments were in contravention to Revenue Canada's "Requirement to Pay";
- (c) Canada Trust would be held responsible for the payments; and
- (d) Canada Trust must pay the \$7,625.00 to Revenue Canada. (Document Book, Tab 3)

11. On June 30, 1993, Canada Trust withdrew \$7,625.00 from the Solicitor's trust account and remitted it to Revenue Canada. The Solicitor was copied on Canada Trust's letter of the same date which accompanied the payment to Revenue Canada. (Document Book, Tab 4 and 5).

12. The Solicitor made no restitution, or demand from Canada Trust for the replacement of the funds until April 7, 1995 (2 years later), after the intervention of the Law Society and after the issuance of the within Complaint. At that time, the Solicitor replaced the requisite amount of funds into his trust account. (Document Book, Tabs 4 and 5)

Particular 2 c) He breached an order of Convocation that he suspend his practice for failure to pay his annual fees, by continuing to practise during the period November 1, 1994 to February 14, 1995.

13. On or about June 10, 1994, the Law Society forwarded to the Solicitor a Notice advising him that his Annual Fees were due and payable on July 1, 1994. The Solicitor was further advised by Explanatory Notes dated June 10, 1994, and enclosed with the above Notice, that payment must be made in order to avoid having his rights and privileges suspended by Convocation as of November 1, 1994. (Document Book, Tab 6) The Solicitor did not respond.

14. On or about September 26, 1994, the Law Society forwarded to the Solicitor a Final Notice advising him that his Annual Fees were due and payable on July 1, 1994. The Solicitor was further advised that if payment was not received by November 1, 1994, he would have his rights and privileges suspended by Convocation on November 1, 1994. (Document Book, Tab 7) The Solicitor did not respond.

15. By registered letter dated November 2, 1994, the Solicitor was advised that his rights and privileges as a member of the Society had been suspended effective November 1, 1994 for failing to pay the first instalment of his annual fees. A copy of the Acknowledgement of Receipt card indicated that the Solicitor picked up the registered letter on November 9, 1994. (Document Book, Tab 8)

16. The Solicitor subsequently satisfied the outstanding annual fee levy on or about January 18, 1995. However, the Solicitor remained administratively suspended beyond that date because of a coincident suspension for non-payment of his Errors and Omissions insurance levy (see paragraphs 17 & 18 below).

17. On or about August 12, 1994, the Law Society forwarded to the Solicitor a Notice advising him that his Errors and Omissions Insurance Levy was due and payable on August 1, 1994. The Solicitor was further advised by an enclosure entitled, "Additional Information", that payment must be made in order to avoid having his rights and privileges suspended by Convocation on December 1, 1994. (Document Book, Tab 9)

18. On or about October 21, 1994, the Law Society forwarded to the Solicitor a Final Notice advising him that his Errors and Omissions Insurance Levy was due and payable before December 1, 1994. The Solicitor did not pay the levy by December 1, 1994 and a suspension was ordered as of that date.

19. On or about February 14, 1995, the Solicitor remitted to the Law Society money orders totalling \$2,665.00 in satisfaction of the outstanding Errors and Omissions insurance levy and the reinstatement fee. The Law Society confirmed the above by letter dated February 21, 1995, and reinstated the Solicitor as of February 14, 1995. (Document Book, Tab 11)

20. Throughout the period when his rights and privileges as a Solicitor were suspended, November 1, 1994 to February 14, 1995 (3.5 months), the Solicitor continued to practice law as evidenced by various documentation obtained during the course of the Law Society's audit, including the following:

- (a) the Solicitor's diary entries for the months of November and December, 1994 and January, 1995;
- (b) the Solicitor's trust bank statements for the months of November and December, 1994;
- (c) the Solicitor's professional letters to various of his clients dated throughout the months of November and December, 1994 and January, 1995;
- (d) the Solicitor's fee billings dated in the months of December, 1994 and January, 1995. (Document Book, Tab 12-38)

Complaint D218/95

Particular 2 a) He failed to provide a meaningful reply to the Law Society regarding a complaint by Charles Campbell despite letters to him dated July 28, 1994, November 8, 1994, March 7, 1995 and April 10, 1995 and telephone communications on August 24, 1994, September 13, 1994, September 15, 1994, September 23, 1994, September 29, 1994, October 4, 1994, October 5, 1994, October 7, 1994, October 11, 1994, December 12, 1994, December 28, 1994, January 10, 1995, January 11, 1995, January 19, 1995, January 24, 1995, February 20, 1995, February 22, 1995, April 3, 1995, April 5, 1995, and April 10, 1995.

21. By letter dated July 18, 1994, Charles Campbell (the "Complainant"), a client of the Solicitor, wrote to the Law Society requesting its assistance in obtaining a reply from the Solicitor on the status of his file. Among other things, the Complainant advised that he had repeatedly asked the Solicitor for a letter outlining the progress of his slip and fall action but to date had not received a reply. The Complainant also advised that he had called the Solicitor on several occasions and the Solicitor did not return his calls. (Document Book, Tab 39)

22. By letter dated July 28, 1994, the Law Society wrote to the Solicitor regarding the aforementioned complaint requesting, among other things, the Solicitor's comments and a documented status report on the progress of the Complainant's file within two weeks of the date of the letter, (Document Book, Tab 40). The Solicitor did not reply.

23. On August 23, 1994, the Solicitor left a message for the Law Society advising that he had been sick and would send a reply the next day, (Document Book, Tab 41). He did not send a reply.

24. On August 24, 1994, the Law Society telephoned the Solicitor and left a message requesting that the Solicitor send his response by fax. The same day, the Solicitor faxed a letter acknowledging the Law Society's telephone call of July 28, 1994 and advising that he would forward a written response by August 26, 1994. He did not respond as promised. (Document Book, Tabs 42 & 43)

25. On August 29, 1994, the Law Society responded to the Solicitor's faxed letter with a telephone call. The Solicitor's office informed the Law Society that the Solicitor had been ill on August 24, 1994, gone to the hospital and would return the call the next day, (Document Book, Tab 44). He did not return the call.

26. By letter dated August 31, 1994, the Solicitor wrote to the Law Society advising, among other things, that he did not respond on August 30, 1994 as he was not in the office. He said he reviewed the Complainant's file and advised that the matter had been outstanding for so long due to an inability of the parties involved to agree on items claimed for special damages and loss of income. The Solicitor said he would contact the Complainant immediately to schedule a meeting with him by no later than September 6, 1994. The Solicitor did not contact the Complainant. (Document Book, Tab 45)

27. On September 3, 1994, the Law Society telephoned the Solicitor who advised that he had been in and out of the hospital and would send his reply that day. The Solicitor did not reply. (Document Book, Tab 46)

28. On September 15, 1994, the Law Society contacted the Solicitor who stated that he still had been unable to reach the Complainant. The Law Society extended the Solicitor's time to respond to the Complainant until September 21, 1994. (Document Book, Tab 46)

29. By letter dated September 14, 1994, the Solicitor wrote to the Law Society to advise that he had been unable to contact the Complainant and would call later in the day to advise the Law Society whether he was able to contact the Complainant. The Solicitor did not call the Law Society. (Document Book, Tab 47)

30. On September 23, 1994, the Law Society spoke with the Solicitor who advised that he was in the hospital and would try to work on the status report over the weekend. (Document Book, Tab 48)

31. On each of September 29 and October 4, 1994, the Law Society left messages for the Solicitor requesting that, in light of his illness, he call to discuss the setting of a date for his response. (Document Book, Tab 48)

32. On October 5, 1994, the Solicitor telephoned the Law Society to apologize for the delay. He advised that he was very ill but would fax the Law Society his report by that Friday (Document Book, Tab 49). He did not.

33. On each of October 7 and 11, 1994, the Law Society left messages for the Solicitor who responded on October 11, 1994, stating that he would fax the report later in the day as he had been in the hospital in the morning (Document Book, Tab 49). He did not fax a report that day.

34. By letter dated October 13, 1994, the Solicitor wrote to the Law Society to advise, among other things, that he had been negotiating with the Lindsey Morden Insurance Adjuster to settle the matter, but had not been successful. He said he would contact the insurers again and reattempt to negotiate a settlement, failing which, he would issue a Statement of Claim. (Document Book, Tab 50)

35. By letter dated November 8, 1994, the Law Society wrote to the Solicitor advising, among other things, that while it acknowledged receipt of his correspondence, the Solicitor had still not submitted to the Law Society a detailed status report pertaining to the Complainant's file. The Law Society requested that the Solicitor do so at his earliest convenience. The Solicitor did not send a report. (Document Book, Tab 51)

36. On each of December 8, and December 12, 1994, the Law Society left messages for the Solicitor who replied on December 12, 1994, stating he would send the report on December 14, 1994. He did not send the report. (Document Book, Tab 52)

37. On December 20, 1994, the Law Society contacted the Solicitor who advised that he had, again, been in and out of the hospital and would send a handwritten response by January 4, 1995. The Solicitor did not send the report. (Document Book, Tab 52)

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38. On January 10, 1995, the Law Society contacted the Solicitor's office to advise that if it did not receive the status report by 5:00 p.m. on January 11, 1995, the matter would be referred to the Discipline Committee on January 12, 1995. On January 11, 1995, the Solicitor called the Law Society to request an extension to later that afternoon. The Law Society agreed but advised the Solicitor that no further extensions would be granted. (Document Book, Tab 52)

39. By letter dated January 11, 1995, faxed to the Law Society that same day, the Solicitor advised, again, that the matter had still not been settled and that he would contact the Complainant to make arrangements for a Statement of Claim to be issued. The Solicitor's letter did not include a documented status report. (Document Book, Tab 53)

40. On January 19, 1995, the Complainant called the Law Society to advise that at least once a week, he saw the Solicitor in a shopping mall, looking well. The Complainant also advised that the Solicitor had not contacted him whatsoever. (Document Book, Tab 54)

41. On each of January 24, February 20 and February 21, 1994, the Law Society left telephone messages for the Solicitor. He did not return the calls. (Document Book, Tab 55)

42. On February 22, 1995, the Law Society telephoned the Solicitor to reiterate its request for a documented status report on the Complainant's case. The Solicitor said that he would "get started on it". (Document Book, Tab 56)

43. By letter dated March 7, 1995, the Law Society wrote to the Solicitor to confirm its telephone request of February 22, 1995, that the Solicitor provide a chronological report regarding the Complainant's file (Document Book, Tab 57). The Solicitor did not send a report.

44. On April 3, 1995, the Law Society telephoned the Solicitor who said that he would fax the report the following morning. He did not. (Document Book, Tab 58)

45. On April 5, 1995, the Solicitor called the Law Society's to advise that he was sick at home and would fax the report the next day. He did not fax the report. (Document Book, Tab 58)

46. On April 10, 1995, the Law Society called the Solicitor and again, requested the report. The Law Society also advised that since this matter had been ongoing since July, 1994, the Law Society required a note from the Solicitor's doctor. The Solicitor apologized for the delay and said that he would respond that day. He did not. (Document Book, Tab 58)

47. By letter dated April 19, 1995, sent by registered mail, the Law Society wrote to the Solicitor and advised, among other things, that in spite of the Solicitor's illness, the Solicitor had taken an inordinate amount of time to respond to the Law Society and had repeatedly stated that information was forthcoming when it was not. The Law Society further advised that, under the circumstances, it required a note from the Solicitor's doctor indicating the nature and severity of the Solicitor's illness and, in the event that it did not receive the Solicitor's written response within seven days from the date of the letter, the matter would be referred to the Chair of the Discipline Committee for further instructions. (Document Book, Tab 59)

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V. DISCIPLINE HISTORY

48. On April 27, 1995, the Solicitor was Reprimanded in Convocation and ordered to pay costs in the amount of \$2,500.00 for contravention of Section 14 of Regulation 708 under the Law Society Act, by operating his general account transactions through his trust account for the purpose of avoiding creditors.

DATED at Toronto this 14th day of November, 1995."

Re: Complaint D366/95

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D366/95 and is prepared to proceed with a hearing of the matter on December 12 and 13, 1995, together with Complaints D185/95 and D218/95.

II. IN PUBLIC/IN CAMERA

2. The parties agree that this matter, together with Complaints D185/95 and D218/95, should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D366/95 and admits the particulars contained therein. The Solicitor further admits that the said particulars supported by the facts hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on September 20, 1956. He is a sole practitioner. On May 26, 1995, the Solicitor was administratively suspended for non-payment of the Errors & Omissions Insurance Levy. He remains suspended.

Complaint D366/95

Particular 2 a) He breached an Order of Convocation effective May 26, 1995, that he suspend his practice for failure to pay his Errors and Omissions Insurance Levy, by continuing to practice from May 26, 1995 to July 20, 1995.

5. On or about December 20, 1994, the Law Society forwarded to the Solicitor a Notice advising him that his Errors and Omissions Insurance Levy was due and payable on January 1, 1995. The Notice advised that payment must be made within four months of the date that the levy was due and payable in order to avoid suspension of the member's rights and privileges. A copy of the Notice and "Additional Information" are contained at Tab 1 of the Document Book.

6. On or about April 10, 1995, the Law Society forwarded to the Solicitor a Second and Final Notice advising him that his Errors and Omissions Insurance Levy was due and payable on January 1, 1995. A copy of the Notice and memorandum are contained at Tab 2 of the Document Book. The Solicitor was advised that if he failed to make payment by 5:00 p.m. on May 5, his rights and privileges to practice law would be suspended by Convocation.

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7. By registered letter dated May 29, 1995, the Law Society notified that his rights and privileges as a member of the Society were suspended effective May 26, 1995, since he had not paid his Errors and Omissions Insurance Levy for the period January 1 - June 30, 1995 by May 5, 1995. A copy of the Acknowledgement of Receipt card indicates that the Solicitor picked up the letter on June 5, 1995. Document Book, Tab 3)

8. Since May 26, 1995, when the Solicitor's rights and privileges were suspended, to date, he has continued to practice law as evidenced by various documentation obtained during the course of the Law Society's audit which includes the following:

- a. Solicitor's trust bank statement as at May 31, 1995;
- b. Solicitor's certified trust cheque dated May 30, 1995 payable to Peter-Eugene Melnychuk, in trust;
- c. Solicitor's Client Ledger for Thomas and Elaine Browning evidencing activity throughout May and June, 1995;
- d. Solicitor's reporting letter to his clients, Thomas and Elaine Browning, dated May 30, 1995 with enclosed Statement of Monies and Statement of Account regarding a real estate transaction;
- e. Solicitor's reporting letter to his clients, Thomas and Elaine Browning, dated May 30, 1995 with enclosed Statement of Monies and Statement of Account regarding a further real estate transaction;
- f. Solicitor's reporting letter to his client, Unigasco Credit Union Limited, dated May 31, 1995 regarding a real estate transaction;
- g. Solicitor's final report to his client, Unigasco Credit Union Limited, dated June 30, 1995;
- h. Solicitor's reporting letter to his client, Unigasco Credit Union Limited, dated July 4, 1995 and enclosed copy of Charge/Mortgage registered May 30, 1995;
- i. Solicitor's trust bank statement as at June 30, 1995;
- j. Cancelled cheques drawn on the Solicitor's trust account during the period May 30 to June 9, 1995;
- k. Solicitor's time docket sheet from April 21 - June 26, 1995;
- l. Solicitor's reporting letter to his client, Herbert Green, dated June 8, 1995;
- m. Solicitor's letter to his client, Herbert Green, dated June 9, 1995;
- n. Raymond F. Phillips' letter to the Solicitor dated June 9, 1995;
- o. Solicitor's letter to Raymond F. Phillips dated June 12, 1995;
- p. Solicitor's letter to Raymond F. Phillips dated June 21, 1995;
- q. Solicitor's letter to his client, Herbert Green, dated June 21, 1995;
- r. Raymond F. Phillips' letter to the Solicitor dated June 21, 1995;
- s. Solicitor's letter to Les Zuk dated June 28, 1995;

- t. Raymond F. Phillips' letter to the Solicitor dated July 4, 1995;
- u. Solicitor's trust cheque dated July 14, 1995 payable to Huron Shores Real Estate Inc;
- v. Solicitor's trust cheque dated July 14, 1995 payable to Estate of Jacqueline T. Cassidy;
- w. Solicitor's reporting letter to his client, Deborah Buchner, dated July 17, 1995 with enclosed Statement of Monies;
- x. Solicitor's letter to the Regional Assessment Office dated June 23, 1995;
- y. Solicitor's reporting letter to his client, Margaret Hitchcock, dated June 28, 1995; and
- z. Solicitor's letter to his client, Margaret Hitchcock, dated July 20, 1995 with enclosed Statement of Monies and Statement of Account.

(Document Book, Tabs 4-28)

V. DISCIPLINE HISTORY

9. On April 27, 1995, the Solicitor was Reprimanded in Convocation and ordered to pay costs in the amount of \$2,500.00 for contravention of Section 14 of Regulation 708 and the Law Society Act, by operating his general account transactions through his trust account for the purpose of avoiding creditors.

DATED at Sarnia this 1st day of November, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Raymond Vincent Donohue be suspended for a period of 6 months to commence upon the conclusion of the administrative suspension and pay Law Society costs in the amount of \$500 forthwith.

REASONS FOR RECOMMENDATION

The Solicitor's misconduct is serious. He failed to maintain his books and records. He knowingly failed to maintain a sufficient balance in his trust account. He practised in the aggregate 5½ months while under suspension. He failed to reply to the Law Society. These matters obviously put the public at considerable risk.

The Solicitor has said he is no longer practising. He has undertaken at the completion of his suspension to take the necessary steps to resign administratively. The Committee is of the view that the appropriate penalty is that which was jointly submitted to us by the parties, that of a 6 month suspension with costs of \$500 to be paid by the Solicitor forthwith. The Committee recommends that the Staff Trustee assist the Solicitor in winding up his practice.

27th June, 1996

Raymond Vincent Donohue was called to the Bar on the 20th day of September, 1956.

ALL OF WHICH is respectfully submitted

DATED this 6th day of March, 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 suspended for a period of 6 months to commence upon the conclusion of the administrative suspension and pay the Society's costs in the amount of \$500.

It was moved by Mr. Marrocco, seconded by Ms. Ross that the recommended penalty be adopted.

Carried

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IN CAMERA

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IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

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IN PUBLIC

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The in camera Report of the Application for Readmission of Frank Frederick Shunock was filed as Exhibit 1.

It was moved by Mr. Gottlieb, seconded by Ms. Ross that the Report not be accepted and be referred back to a new committee on the basis that there was an error in principle.

Carried

DISCIPLINE COMMITTEE

Re: Ritchie James LINTON - Brampton

Ms. Brooks appeared for the Society and Mr. C. Brannigan appeared for the solicitor who was present.

The matter was adjourned to the next Convocation Assignment Tribunal in September.

CONVOCATION ROSE AT 5:15 P.M.

Confirmed in Convocation this 27 day of September, 1996


Treasurer