

MINUTES OF DISCIPLINE CONVOCATION

Friday, 24th March, 2000
8:30 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Arnup, Braithwaite, Cherniak, Coffey, Copeland, Crowe, E. Ducharme, T. Ducharme, Gottlieb, Lamont, MacKenzie, Martin, Pilkington, Porter, Potter, Simpson, Swaye, White and Wright.

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The reporter was sworn.

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IN PUBLIC

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DISCIPLINE

Ms. Catherine Braid, Discipline Counsel introduced Ms. Andrea Tuck-Jackson who acted as Duty Counsel.

Re: Stuart Elliot ROSENTHAL - Toronto

The Secretary placed the matter before Convocation.

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

Convocation had before it the Report of the Discipline Committee dated 10th June, 1999, together with an Affidavit of Service sworn 17th June, 1999 by Pal Singh that he had effected service on the solicitor by registered mail on 11th June, 1999 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 24th March, 2000 (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
Tamara K. Stomp
Nora Angeles

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

Elizabeth Cowie
for the Society

STUART ELLIOT ROSENTHAL
of the City
of Toronto
a barrister and solicitor

Ken Smith, on October 29, November 10 and 13, 1997
Leslie Paine, on January 20, 1999
for the solicitor
Heard: October 29, November 10 and 13, 1999
January 20, 1999

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

The following Complaints were issued against Stuart Elliot Rosenthal:

On January 10, 1995 Complaint D187/94 was issued; and, on April 10, 1996 Complaint D99/96 was issued, alleging that the Member was guilty of professional misconduct.

On April 10, 1996 Complaint D117/96 was issued; and, on September 30, 1996 Complaint D232/96 was issued, alleging that the Member was guilty of conduct unbecoming a barrister and solicitor.

These matters were heard in public on October 29, November 10 and 13, 1997 before this Committee composed of Thomas J.P. Carey, Chair, Tamara K. Stomp and Nora Angeles. The Member attended the hearing and was represented by Ken Smith. Elizabeth Cowie appeared on behalf of the Law Society.

On October 2, 1998 Complaint D146/98 was issued alleging that the Member was guilty of conduct unbecoming a barrister and solicitor.

This matter was heard in public by the same panel on January 20, 1999. The member attended the hearing and was represented by Leslie Paine. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct and conduct unbecoming a barrister and solicitor were found to have been established:

Complaint D187/94

2. a) While he acted as counsel for the plaintiff, David Lunan and the infant plaintiffs, Joshimar Lunan and Jamar Lunan, in a motor vehicle accident claim,

- i) he failed to reply to communications from the law firm, Iacono Brown, that required a reply, being, letters dated January 22, 1991, January 24, 1991, January 30, 1991, February 19, 1991, March 12, 1991, July 10, 1991, September 5, 1991 and November 20, 1991 and telephone messages left on April 16, 1991, June 20, 1991, November 12, 1991, December 2, 1991 and December 4, 1991;
 - ii) he delayed in obtaining executed releases from his client pursuant to a settlement agreement which was reached in January 1991;
 - iii) he failed to fulfill his obligations to obtain an order to finalize the settlement of the action; and
- b) He failed to provide a reply to the Law Society regarding a complaint by a fellow solicitor, Edward V. Bergeron, despite letters dated November 26, 1993 and May 19, 1994 and telephone calls on March 30, 1994, April 7, 1994 and April 29, 1994.

Complaint D99/96

2. a) He failed to honour escrow terms respecting funds resulting from the settlement of an accident claim for his client, Mike Ancio;
- b) He failed to serve his client, Mike Ancio, in a conscientious, diligent and efficient manner by failing to complete settlement of a claim on behalf of his client as representative for the infant plaintiff, Jesse Ancio;
- c) He failed to fulfil financial obligations incurred in relation to his practice to:
- i) Dr. Vincent Maida in the amount of \$645.87;
 - ii) Dr. Michael Indech in the amount of \$535.00;
 - iii) Network Court Reporting Services in the amount of \$1,149.11;
 - iv) Victory Verbatim Reporting Services in the amount of \$702.19;
- e) He failed to account to his client, Denis Keane, for retainers received for various legal matters;
- f) He failed to reply or failed to reply in a meaningful manner to the Law Society regarding complaints by:
- i) Mike Ancio despite letters dated June 8 and 21, October 20, 1994 and January 12, 1995 and telephone messages left on July 25, August 24 and September 9, 1994;
 - ii) David Lunan despite letters dated July 19 and October 20, 1994, January 12, March 17, September 11, and October 25, 1995 and telephone messages left on August 24, September 9, 1994 and October 16 and 20, 1995;
 - iii) David K. Peachey despite letters dated July 6 and August 25, 1994 and telephone communications on August 5 and 15, 1994;
 - iv) Michael Indech despite a letter dated August 12, 1994;

- v) Charmaine Peddle despite letters dated August 26 and October 20, 1994 and January 12, 1995;
- vi) Denis Keane despite letters dated May 17 and October 20, 1994 and January 12, 1995;
- vii) Robin Arndt-Pease despite letters dated August 12 and October 20, 1994 and January 12, 1995 and telephone messages on September 12 and 20, 1994;
- viii) Michael Code despite letters dated September 8, 1994 and February 7, 1995 and telephone calls on November 16 and 29, 1994;
- ix) Frank P. Lento despite letters dated May 12, October 26 and November 30, 1995 and telephone messages left on November 17 and 23, 1995;
- g) He failed to answer letters dated March 16, April 14 and June 19, 1995 from Vasken Khabayan, a solicitor, requesting the release of David Lunan's file;
- h) He failed to file with the Law Society within six months of the termination of his fiscal years ending January 31, 1994 and January 31, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of Regulation 708 made pursuant to the Law Society Act;
- i) In representing his client, David Lunan and Mr. Lunan's two children, in connection with a claim arising from a motor vehicle accident, he breached an escrow agreement made on or about January 24, 1991, with Lyons, Goodman, Iacono, Smith & Berkow to hold in trust settlement funds of \$9,865.00, in that he released the said funds from trust on February 1, 1991 and again on May 31, 1991; and
- j) In representing his client, Laila Remtulla, in connection with a claim arising from a motor vehicle accident:
 - i) he breached an escrow agreement made on or about October 1, 1993, with Lerner & Associates, to hold in trust settlement funds of \$49,650.00, in that he released the said funds from trust on October 13, 1993; and
 - ii) he failed to comply with the order of Madam Justice Lang of the Ontario Court (General Division) made December 13, 1994, by failing to pay \$1,500.00 into court to the credit of the infants, Irfaan Remtulla and Saira Remtulla, and by failing to pay the costs ordered to be paid by him personally in the amount of \$1,250.00.

Complaint D117/96

- 2. a) On April 5, 1995, he was convicted of the following offences under the *Criminal Code*:
 - i) fraud over \$1,000.00;
 - ii) fraud over \$1,000.00; and
 - iii) using a forged document.
- b) On April 12, 1995, he was convicted of the following offences under the *Criminal Code*:
 - i) fraudulent use of credit card; and
 - ii) fraud over \$1,000.00.

Complaint D232/96

2. a) On June 27, 1996, the Solicitor was convicted of the criminal offence that he on or about the 22nd day of September in the year 1995, at the Municipality of Metropolitan Toronto in the Toronto Region did knowingly use a forged document to wit: a prescription voucher for Apo-Diazepam dated September 22, 1995 as if it were genuine, contrary to the *Criminal Code*;
- b) On June 27, 1996, the Solicitor was convicted of the criminal offence that he on or about the 1st day of October in the year 1995, at the Municipality of Metropolitan Toronto in the Toronto Region did knowingly use a forged document to wit: a prescription voucher for Oxycocet, Prednisone and Sulfasalazine dated October 1, 1995 as if it were genuine, contrary to the *Criminal Code*;
- c) On June 27, 1996, the Solicitor was convicted of the criminal offence that he on or about the 6th day of November in the year 1995, at the Municipality of Metropolitan Toronto in the Toronto Region did knowingly use a forged document to wit: a prescription voucher for Percocet and Diazapan dated November 6, 1995 as if it were genuine, contrary to the *Criminal Code*;
- d) On June 27, 1996, the Solicitor was convicted of the criminal offence that he on or about the 21st day of December in the year 1995, at the Municipality of Metropolitan Toronto in the Toronto Region, being at large on his recognizance entered into before a justice, and being bound to comply with a condition of that recognizance directed by the said justice fail without lawful excuse to comply with the said condition to wit: not enter the premises at 29 Hanley Street or be found within a radius of 500 metres of that address, contrary to the *Criminal Code*;
- e) On June 27, 1996, the Solicitor was convicted of the criminal offence that he on or about the 9th day of December in the year 1995, at the Municipality of Metropolitan Toronto in the Toronto Region did knowingly use a forged document to wit: a drug prescription as if it were genuine, contrary to the *Criminal Code*;
- f) On June 27, 1996, the Solicitor was convicted of the criminal offence that he on or about the 9th day of December in the year 1995, at the Municipality of Metropolitan Toronto in the Toronto Region did knowingly have in his possession a drug prescription pad that was adapted and intended to be used to commit forgery, contrary to the *Criminal Code*;
- g) On June 27, 1996, the Solicitor was convicted of the criminal offence that he on or about the 9th day of December in the year 1995, at the Municipality of Metropolitan Toronto in the Toronto Region did knowingly use a forged document to wit: a drug prescription as if it were genuine, contrary to the *Criminal Code*;
- h) On June 27, 1996 the Solicitor was convicted of the criminal offence that he on or about the 9th day of December in the year 1995, at the Municipality of Metropolitan Toronto in the Toronto Region did knowingly use a forged document to wit: a drug prescription as if it were genuine, contrary to the *Criminal Code*; and
- i) On June 27, 1996, the Solicitor was convicted of the criminal offence that he on or about the 15th day of January in the year 1996, at the Municipality of Metropolitan Toronto in the Toronto Region did knowingly use a forged document to wit: a prescription as if it were genuine, contrary to the *Criminal Code*.

Complaint D146/98

2. a) On June 30, 1998, he was convicted in the Ontario Court (General Division) of the following criminal offences:
- i) that he, during the period from and including the 19th day of September in the year 1996, to and including the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct the course of justice by being a party to preparing a false document for presentation to the Ontario Court (General Division) in an effort to gain an advantage for Valerie Phillips at her sentencing hearing, contrary to the *Criminal Code*,
 - ii) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct the course of justice by counselling Dr. James Dobbin, M.D., Ph.D to refuse to provide information concerning Valerie Phillips to the police who were engaged in an investigation concerning Valerie Phillips with the knowledge and consent of the Court, contrary to the *Criminal Code*,
 - iii) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct the course of justice by counselling Dr. James Dobbin, M.D., Ph.D to lie to the police concerning the nature of his relationship with Valerie Phillips, while the police were engaged in an investigation concerning Valerie Phillips with the knowledge and consent of the Court, contrary to the *Criminal Code*,
 - iv) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct the course of justice by counselling Dr. James Dobbin, M.D., Ph.D to create false medical records for Valerie Phillips, while the police were engaged in an investigation concerning Valerie Phillips with the knowledge and consent of the Court, contrary to the *Criminal Code*, and
 - v) that he, on or about the 20th day of November in the year 1996, in the Municipality of Metropolitan Toronto, being at large at his recognizance entered into before a justice, and being bound to comply with a condition of that recognizance directed by the said justice, did fail without lawful excuse to comply with the said condition, to wit: report, in person to the Reporting Centre - 60 Richmond Street East, Toronto, on each and every Wednesday between the hours of 9:00 a.m. and 9:00 p.m. to the officer-in-charge, contrary to the *Criminal Code*; and
- b) On June 30, 1998, he was found guilty in the Ontario Court (General Division) of the following criminal offences:
- i) that he, during the period from and including the 19th day of September in the year 1996, to and including the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did knowingly make a false document, to wit: a document dated the 17th day of October, 1996 purportedly authored by Dr. James Dobbin, M.D., Ph.D, with the intent that it be acted upon as genuine and did thereby commit forgery, contrary to the *Criminal Code*,
 - ii) that he, during he period from and including the 19th day of September in the year 1996, to and including the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did attempt to cause the Ontario Court (General Division) to act upon a forged document, to wit: a document dated the 17th day of October, 1996 purportedly authored by Dr. James Dobbin, M.D., Ph.D regarding Valerie Phillips, as if it were genuine, contrary to the *Criminal Code*,

- iii) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct Shawn Genovy, a Police Officer engaged in the execution of his duty to investigate a letter regarding Valerie Phillips, purportedly from Dr. James Dobbin, M.D., Ph.D, dated October 17, 1996, to wit: by counselling James Dobbin, M.D., Ph.D to refuse to provide information regarding Valerie Phillips to the police, contrary to the *Criminal Code*,
- iv) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct Shawn Genovy, a Police Officer engaged in the execution of his duty to investigate a letter regarding Valerie Phillips, purportedly from Dr. James Dobbin, M.D., Ph.D dated October 17, 1996, to wit: by counselling Dr. James Dobbin, M.D., Ph.D to lie to the police concerning the nature of his relationship with Valerie Phillips, contrary to the *Criminal Code*, and
- v) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct Shawn Genovy, a Police Officer engaged in the execution of his duty to investigate a letter regarding Valerie Phillips, purportedly from Dr. James Dobbin, M.D., Ph.D dated October 17, 1996 to wit: by counselling Dr. James Dobbin, M.D., Ph.D to create false medical records for Valerie Phillips, contrary to the *Criminal Code*.

Evidence

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

“STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D187/94 and D99/96 and is prepared to proceed with a hearing of these matters on September 16 and 17, 1997

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D187/94 and D99/96 and does not dispute the particulars contained therein. The Solicitor further does not dispute the facts set out herein and admits these are the facts which would be otherwise proven by the Law Society by calling evidence.

IV. FACTS

4. The Solicitor was called to the Bar on April 18, 1985. He has been suspended for non-payment of his Errors and Omissions Levy since December 2, 1994.

Complaint D187/94

Particular 2a) While acting as counsel for the plaintiff, David Lunan and the infant plaintiffs, Joshimar Lunan and Jamar Lunan, in a motor vehicle accident claim,

- i. he failed to reply to communications from the law firm, Iacono, Brown;
- ii. he delayed in obtaining executed releases from his client pursuant to a settlement agreement which was reached in January 1991;
- iii. he failed to fulfill his obligation to obtain an order to finalize the settlement of the action.

5. David Lunan initially retained Stephen Kwinter to act for him and his children regarding a motor vehicle accident which occurred on or about August 16, 1988. Robert Gray of Iacono, Brown acted for the defendants. Mr. Kwinter issued the statement of claim on June 24, 1989 (Tab 1, Vol I, Document Book) and the statement of defence and cross claim was issued on November 29, 1989 (Tab 2, Vol I, Document Book). In September 1990, examinations for discovery of the parties took place. In 1991, Mr. Kwinter transferred the file to the Solicitor at Mr. Lunan's request. Mr. Kwinter was appointed as the Litigation Guardian for the children.

6. The action was settled in January 1991. By letter dated January 22, 1991 (Tab 3, Vol I, Document Book), Mr. Gray wrote to the Solicitor confirming the settlement proposal in the amount of \$9,685.00 and enclosed Releases for the Solicitor's client's signature. Mr. Gray advised that he would take out an Order dismissing the action on a without cost basis. The Solicitor did not respond to Mr. Gray's letter.

7. By letter dated January 24, 1991 (Tab 4, Vol I, Document Book), Mr. Gray advised the Solicitor that since infants were involved in the action, Mr. Gray would not take out an Order dismissing the action. Mr. Gray further advised the Solicitor that it would be necessary for the Solicitor to obtain court approval of the settlement. Mr. Gray advised the Solicitor further that he had requisitioned the settlement cheque and would forward the same to the Solicitor but suggested that the Solicitor not release the monies from his trust account until settlement of the infants' claim was approved by a Judge.

8. By letter dated January 30, 1991 (Tab 5, Vol I, Document Book), Mr. Gray sent a settlement cheque in the amount of \$9,685.00 to the Solicitor and requested that the Solicitor hold the funds in escrow pending receipt of the Order and an executed Final Release. The Solicitor did not respond.

9. By letters dated February 19 and March 12, 1991 (Tab 6 & 7, Vol I, Document Book), Mr. Gray requested that the Solicitor forward to him copies of the Final Release and to provide a copy of the Order approving the infant settlement. The Solicitor did not respond.

10. On April 16, 25 and June 20, 1991, Mr. Gray's secretary, Nancy, spoke with the Solicitor's office and the Solicitor advised that he was in the process of taking out the Order approving the infant settlement. A copy of the message slips of the conversations are contained at Tabs 8, 9 & 10, Vol I of the Document Book.

11. On June 24, 1991, Mr. Gray's secretary called the Solicitor who advised that he had sent an Affidavit for the Litigation Guardian's, Stephen Kwinter, signature and that he would forward a Release to Mr. Gray's office. A copy of the memorandum outlining the telephone conversation is contained at Tab 11, Vol I of the Document Book.

12. By letter dated July 9, 1991 (Tab 12, Vol I, Document Book), the Solicitor forwarded a Full and Final Release to Mr. Gray signed by Mr. Lunan (Tab 13, Vol I, Document Book). The Solicitor advised Mr. Gray that the delay in obtaining the Order was due to the Litigation Guardian's delay in signing the affidavit.

13. By letters dated July 10 and September 5, 1991 (Tab 14 & 15, Vol I, Document Book), the Solicitor was asked to provide an update regarding the order approving the infant settlement. In Mr. Gray's September 5, 1991 letter, the Solicitor was advised that if his response was not received within 14 days, he would bring a motion for Judgment and seek costs of bringing the motion. The Solicitor did not respond.

14. On November 12, 1991, Edward Bergeron of Iacono, Brown called the Solicitor and left a message advising that he would be bringing a motion to dismiss the action unless he received the Order forthwith. A copy of Mr. Bergeron's notes of the telephone message is contained at Tab 16, Vol I of the Document Book.

15. By letter dated November 20, 1991 (Tab 17, Vol I, Document Book), Mr. Bergeron advised the Solicitor that if he did not receive the appropriate Order dismissing the action within seven days, he would take the necessary steps himself. The Solicitor was advised that Mr. Bergeron would seek costs personally against him on a solicitor-client basis. The Solicitor did not respond.

16. The Solicitor did not forward an Order approving the infant settlement and as a result, Iacono, Brown brought a motion to obtain the said order. A copy of the Motion Record and Affidavit of Robert Gray are contained at Tabs 18 & 19, Vol I of the Document Book. Judgment in favour of David Lunan in the amount of \$9,685.00 inclusive of costs, pursuant to the settlement reached between counsel was granted on December 7, 1992, a copy of which is contained at Tab 20, Vol I of the Document Book. The court ordered that a copy of the Motion Record and the Order be served upon the Litigation Guardian and the Law Society of Upper Canada in order for the appropriate investigations to be conducted.

17. By letter dated November 10, 1993 (Tab 21, Vol I, Document Book), Mr. Bergeron served the Motion Record and the Judgment upon the Law Society which represented a complaint against the Solicitor and the Litigation Guardian, Mr. Kwinter.

Particular 2b) He failed to provide a reply to the Law Society regarding a complaint by Edward V. Bergeron.

18. By letters dated November 26, 1993 (Tabs 22 & 23, Vol I, Document Book), the Law Society wrote to Mr. Kwinter and to the Solicitor enclosing a copy of Mr. Bergeron's letter dated November 10, 1993 and requested comments within two weeks.

19. On March 30, 1994, the Law Society called the Solicitor who advised that he would fax his response to the Law Society over the weekend. A copy of the notes of the telephone conversation are contained at Tab 24, Vol I of the Document Book. The Solicitor did not fax his response as indicated.

20. By letter dated April 7, 1994 (Tab 25, Vol I, Document Book), Mr. Kwinter advised the Law Society that in 1991, he received a direction from Mr. Lunan, his then client, requesting that his files be transferred to the Solicitor. Mr. Kwinter complied with Mr. Lunan's request, however, the Solicitor did not deliver a Notice of Change of Solicitor. Mr. Kwinter further advised that he was not involved in the settlement.

21. On April 7 and 29, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the notes of the telephone messages are contained at Tab 26, Vol I of the Document Book.

22. By registered mail dated May 19, 1994 (Tab 27, Vol I, Document Book), 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 signed for and delivered on May 25, 1994.

23. By letter dated May 29, 1994, received by the Law Society on July 18, 1994 (Tab 28, Vol I, Document Book), the Solicitor advised the Law Society that he had assumed carriage of the file from another solicitor. That solicitor named claimants under the *Family Law Act* and it was clear that there was no claim to be made. The Solicitor further advised that he attempted to have the affidavit executed in order to finalize the order.

24. This matter was authorized against the Solicitor on June 9, 1994. By letter dated August 18, 1994 (Tab 29, Vol I, Document Book), the Solicitor was advised of the above.

Complaint D99/96

Particular 2a) He failed to honour escrow terms respecting funds resulting from the settlement of an accident claim for his client, Mike Ancio.

Particular 2b) He failed to serve his client, Mike Ancio, in a conscientious, diligent and efficient manner.

Particular 2f) i) He failed to reply in a meaningful manner to the Law Society regarding a complaint by Mike Ancio.

25. The Solicitor was retained by Mike Ancio, on behalf of his son, Jesse Ancio, who was hit by a car while crossing at a pedestrian walkway. By letter dated January 19, 1993 (Tab 30, Vol I, Document Book), Wejco Adjusters sent two cheques, in trust, in the amounts of \$2,750.00 and \$5,250.00 in full settlement of Jesse Ancio's claim. The Solicitor was asked to hold the funds in escrow until Wejco Adjusters received a completed judgment. The Solicitor cashed the cheques on January 27, 1993, copies of which are contained at Tab 31, Vol I of the Document Book.

26. Mr. Ancio stated that he signed documents in the spring of 1993 and was advised by the Solicitor that the Solicitor would attend at the court to obtain a judgment. Mr. Ancio stated that he received a copy of the judgment but believed that it was still to be signed and entered. He made several calls to the Solicitor about his son's case, all of which were not returned.

27. By letter dated January 18, 1994 (Tab 33, Vol I, Document Book), Mike Ancio made a complaint to the Law Society regarding the foregoing.

28. By letter dated February 11, 1994 (Tab 34, Vol I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Ancio's letter dated January 18, 1994 and requested his comments within two weeks. The Solicitor did not respond.

29. On March 15 and April 29, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 35, Vol I of the Document Book.

30. By registered mail dated May 17, 1994 (Tab 36, Vol I, Document Book), 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 signed for and delivered on May 19, 1994.

31. By letter dated May 22, 1994 (Tab 37, Vol I, Document Book), the Solicitor advised the Law Society that court approval was necessary as the case involved an infant settlement. The Solicitor further advised that the order was rejected and was subsequently resubmitted. The Solicitor advised further that he should receive the order from the court within fifteen days at which time he would send a copy together with the accountant's receipt to the Law Society.

32. Mr. Johnston of Wejco Adjusters advised the Law Society that on May 31, 1994, he was advised by the Solicitor that the affidavits filed were returned as they were incorrect and were resubmitted the previous week.

33. By letter dated June 8, 1994 (Tab 38, Vol I, Document Book), the Law Society acknowledged that the Solicitor would forward a copy of the Order to the Law Society within two weeks. The Law Society also asked the Solicitor to provide an explanation for the delay in proceeding with the matter and the reasons why he did not communicate with Mr. Ancio. The Solicitor did not respond.

34. On June 15, 1994, the Solicitor advised Mr. Johnston that he would arrange to have the documents picked up from the court that day. (Tab 32, Vol I, Document Book)

35. On July 25, August 24 and September 9, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the messages are contained at Tab 39, Vol I of the Document Book.

36. By registered mail dated October 20, 1994 (Tab 40, Vol I of the Document Book), 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 signed for and delivered on October 24, 1994. The Solicitor did not respond.

37. The Law Society wrote to the Ontario Court of Justice, Accountant's office, to inquire whether the Solicitor paid the monies into court. A copy of this letter is contained at Tab 41, Vol I of the Document Book. On November 8, 1994, the Law Society was advised by Elizabeth Cooper of the Accountant's office that the funds had not been paid into court. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 42, Vol I of the Document Book.

38. On November 16, 1994, the Solicitor called the Law Society and left a message advising that he had his trial the previous week and that he was out of town. He further advised that he would respond by the following Monday. A copy of the transcribed and handwritten notes of the telephone message from the Solicitor are contained at Tab 43, Vol I of the Document Book.

39. By letter dated November 22, 1994 (Tab 44, Vol I, Document Book), the Solicitor advised the Law Society that he had occasionally met with Mr. Ancio to inform him of the status of the matter and that he had provided a report to Mr. Ancio. The Solicitor indicated that he enclosed a copy of the documents with his letter, however, the material was not attached.

40. By letter dated January 12, 1995 (Tab 45, Vol I, Document Book), the Solicitor was asked to provide documentation confirming the status of the matter and a copy of the report to Mr. Ancio within two weeks. The Solicitor did not respond.

41. To date, the Solicitor has not responded to the Law Society regarding a complaint by Mike Ancio and has not completed the infant settlement.

Particular 2c) i) He failed to fulfil a financial obligation incurred in relation to his practice to Dr. Vincent Maida in the amount of \$645.87.

42. The Solicitor was retained by Sharon Mielke with respect to a claim resulting from a motor vehicle accident. By letter dated May 14, 1992 (Tab 46, Vol I, Document Book), the Solicitor wrote to Dr. Vincent Maida requesting him to prepare a medico-legal report and to provide an account for the report.

43. By letter dated May 26, 1992 (Tab 47, Vol I, Document Book), Dr. Maida provided a medico-legal report to the Solicitor and his account in the amount of \$560.00 (Tab 48, Vol I, Document Book). Reminder notices were subsequently sent reminding the Solicitor that interest was accruing.

44. By facsimile dated April 26, 1994 (Tab 49, Vol I, Document Book), Dr. Maida sent a reminder to the Solicitor that the account was overdue. The Solicitor was advised that if payment was received by April 29, 1994, he would waive the interest charges, otherwise, he would refer the matter to the Law Society. The Solicitor did not remit payment.

45. By letter dated April 29, 1994 (Tab 50, Vol I, Document Book), Dr. Maida wrote to Dr. David Peachey of the Ontario Mediation Association for assistance to resolve the issue of the unpaid account. Dr. Maida was advised by the Solicitor's client that the case had been settled in December 1993.

46. By registered mail dated May 20, 1994 (Tab 51, Vol I, Document Book), Dr. Peachey wrote to the Solicitor requesting payment in the amount of \$645.87 which included interest accrued. The Solicitor was advised that if payment was not received by June 3, 1994, the matter would be referred to the Law Society. The Solicitor did not respond and did not remit payment.

47. By letter dated June 6, 1994 (Tab 52, Vol I, Document Book), Dr. Peachey made a complaint to the Law Society regarding the Solicitor's failure to pay the outstanding account and his failure to reply to Dr. Peachey's correspondence.

Particular 2f) iii) He failed to reply to the Law Society regarding a complaint by David K. Peachey.

48. By letter dated July 6, 1994 (Tab 53, Vol I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Dr. Peachey's letter dated June 6, 1994 and requested his comments within two weeks. The Solicitor did not respond.

49. On August 5, 1994, the Law Society called the Solicitor who advised that he would provide a cheque to Dr. Peachey and send a copy to the Law Society. On August 15, 1994, the Law Society left a message for the Solicitor reminding him to provide a copy of his cheque to Dr. Peachey. A copy of the transcribed and handwritten notes of the communications with the Solicitor are contained at Tab 54, Vol I of the Document Book.

50. By registered mail dated August 25, 1994 (Tab 55, Vol I, Document Book), 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 signed for and delivered on August 26, 1994. The Solicitor did not respond.

51. To date, the Solicitor has not responded to the Law Society regarding a complaint by Dr. David Peachey and has not paid Dr. Vincent Maida's outstanding account.

Particular 2c) ii) He failed to fulfil a financial obligation incurred in relation to his practice to Dr. Michael Indech in the amount of \$535.00.

52. The Solicitor was retained by Sandra Montambault with respect to a claim resulting from a motor vehicle accident. By letter dated March 15, 1991 (Tab 56, Vol I, Document Book), the Solicitor wrote to Dr. Michael Indech and requested him to prepare a medico-legal report and to provide his account for the report to the Solicitor. The Solicitor undertook to protect Dr. Indech's account from the proceeds of settlement.

53. By letter dated March 21, 1991 (Tab 57, Vol I, Document Book), Dr. Indech advised the Solicitor that he did not accept his undertaking to protect his account from the proceeds of settlement. Dr. Indech advised that he would require payment upon release of his report. Dr. Indech asked the Solicitor to confirm that he would comply with this arrangement.

54. By letter dated March 27, 1991 (Tab 58, Vol I, Document Book), the Solicitor advised Dr. Indech that he would pay for the medico-legal report upon receipt of the same.

55. By letter dated May 23, 1991 (Tab 59, Vol I, Document Book), Dr. Indech provided the Solicitor with the medical legal report and advised that his fee for the preparation of the report was \$535.00. The Solicitor was asked to pay promptly.

56. By letters dated July 10, 1992 and July 28, 1993 (Tabs 60 & 61, Vol I, Document Book), the Solicitor was reminded that the account remained unpaid. The Solicitor was advised that if payment was not received by August 6, 1993, the matter would be referred to the Law Society. The Solicitor did not respond to Dr. Indech's letters and did not remit payment for the account.

57. By letter dated August 17, 1993 (Tab 62, Vol I, Document Book), Dr. Indech made a complaint to the Law Society regarding the Solicitor's failure to pay his outstanding account.

Particular 2f) iv) He failed to reply in a meaningful manner to the Law Society regarding a complaint by Michael Indech.

58. By letter dated September 22, 1993 (Tab 63, Vol I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Dr. Indech's letter dated August 17, 1993 and requested his comments within two weeks. The Solicitor did not respond.

59. By letters dated November 8, 1993 (Tab 64 & 65, Vol I, Document Book), sent by regular and registered mail, 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 signed for and delivered on November 10, 1993.

60. By letter dated November 9, 1993 (Tab 66, Vol I, Document Book), the Solicitor advised the Law Society that his records indicated that Dr. Indech's account had been paid. The Solicitor further advised that he was retrieving the cancelled cheque.

61. By letter dated January 4, 1994 (Tab 67, Vol I, Document Book), the Law Society reminded the Solicitor that he was to provide proof that Dr. Indech's account had been paid. The Solicitor was asked to respond in the near future. The Solicitor did not respond.

62. On February 3 and 9, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 68, Vol I of the Document Book.

63. By registered mail dated February 15, 1994 (Tab 69, Vol I, Document Book), the Solicitor was again 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 signed for and delivered on February 17, 1994.

64. By letter dated February 22, 1994 (Tab 70, Vol I, Document Book), the Solicitor advised the Law Society that his records indicated that the account had been paid. The Solicitor advised further that he had asked his bookkeeper to find the cancelled cheque and that he hoped to finalize this matter within a few weeks.

65. By registered mail dated May 20, 1994 (Tab 71, Vol I, Document Book), the Law Society advised the Solicitor that if confirmation was not received within fourteen days that Dr. Indech's account had been paid, the matter would be referred to the Chair and Vice-Chairs of the Discipline Committee. The Law Society's letter was signed for and delivered on May 25, 1994.

66. By letter dated May 29, 1994 (Tab 72, Vol I, Document Book), the Solicitor advised that Dr. Indech would not release the report without prepayment. The Solicitor further advised that Dr. Indech did not send him reminder notices or invoices. The Solicitor also advised that he was writing the insurance company to inquire if the report was paid by them.

67. By registered mail dated August 12, 1994 (Tab 73, Vol I, Document Book), the Law Society provided the Solicitor with copies of letters to him from Dr. Indech showing that the report was sent to the Solicitor. The Solicitor was advised that if proof of payment was not received within one month, the matter would be referred to the Chair and Vice-Chairs of the Discipline Committee. The Law Society's letter was signed for and delivered on August 15, 1994. The Solicitor did not respond.

68. To date, the Solicitor has not responded to the Law Society's requests for proof of payment and has not paid Dr. Indech's account.

Particular 2c) iii) He failed to fulfil a financial obligation incurred in relation to his practice to Network Court Reporting in the amount of \$1,149.11.

69. The Solicitor retained Network Court Reporting with respect to transcribing a matter on behalf of his client. On September 9, 1992 and September 30, 1993, Network Court Reporting Ltd. sent invoices to the Solicitor in the amount of \$941.87 together with interest. The Solicitor did not pay the outstanding account. A copy of the accounts are contained at Tabs 74 & 75, Vol I of the Document Book.

70. By letter dated October 25, 1993 (Tab 76, Vol I, Document Book), Charmaine Peddle of Network Court Reporting Ltd. made a complaint to the Law Society regarding the Solicitor's failure to pay the outstanding account.

Particular 2f) v) He failed to reply in a meaningful manner to the Law Society regarding a complaint by Charmaine Peddle.

71. By letter dated November 16, 1993 (Tab 77, Vol I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Peddle's letter dated October 25, 1993 and requested his comments within two weeks. The Solicitor did not respond.

72. On December 14 and 17, 1993, the Law Society called the Solicitor and left messages for him to return the calls. On December 17, 1993, the Solicitor returned the call and advised that he would respond by December 20, 1993. The Solicitor inquired whether he was responsible for the account as he no longer acted for the client. The Law Society advised him that he was still responsible. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 78, Vol I of the Document Book.

73. By registered mail dated January 19, 1994 (Tab 79, Vol I, Document Book), 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.

74. By letter dated January 28, 1994 (Tab 80, Vol I, Document Book), the Solicitor enclosed his letter to the Law Society dated December 20, 1993. The Solicitor advised the Law Society that he had sent the invoice to Mr. Cipriani but had not yet received payment.

75. By letter dated February 11, 1994 (Tab 81, Vol I, Document Book), the Law Society wrote to the Solicitor requesting an explanation as to who Mr. Cipriani was and why the Solicitor did not respond to Ms. Peddle's inquiries. The Solicitor was asked to respond within two weeks. The Solicitor did not respond.

76. On March 18 and 25, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the messages are contained at Tab 82, Vol I of the Document Book.

77. By registered mail dated May 20, 1994 (Tab 83, Vol I, Document Book), 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 signed for and delivered on May 25, 1994.

78. By letter dated May 29, 1994 (Tab 72, Vol I, Document Book), the Solicitor advised that Mr. Cipriani was the client for which the invoice related to. The Solicitor further advised that another solicitor took over the file and Ms. Peddle was advised of this.

79. On August 4, 1994, the Law Society spoke with Michael Kleinman, the solicitor who took over the file, and was advised that he did not provide an undertaking to protect Ms. Peddle's account. Mr. Kleinman further advised that he did not recall seeing the invoice in the file and his account to the client did not reference Ms. Peddle's invoice. A copy of the transcribed and handwritten notes of the telephone conversation with Mr. Kleinman are contained at Tab 84, Vol I of the Document Book.

80. By letter dated August 26, 1994 (Tab 85, Vol I, Document Book), the Law Society advised the Solicitor about its conversation with Mr. Kleinman. The Solicitor was advised further that he was responsible for Ms. Peddle's account and was referred to Rule 13, Commentary 6 of the Rules of Professional Conduct.

81. By registered mail dated October 20, 1994 (Tab 40, Vol I of the Document Book), 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 signed for and delivered on October 24, 1994. The Solicitor did not respond.

82. On October 26, 1994, the Solicitor called the Law Society and left a message advising that he would respond by the following week. A copy of the message slip is contained at Tab 86, Vol I of the Document Book.

83. On November 9, 1994, the Law Society called Ms. Peddle who advised that payment had not yet been received from the Solicitor. A copy of the notes of the telephone conversation is contained at Tab 87, Vol I of the Document Book.

84. By letter dated November 22, 1994 (Tab 44, Vol I, Document Book), the Solicitor advised the Law Society that the transcript had been required for the appeal and that he did not handle the appeal.

85. By letter dated January 12, 1995 (Tab 45, Vol I, Document Book), the Solicitor was advised that unless he showed that he was not responsible for payment of Ms. Peddle's account, he was expected to remit payment. The Solicitor was requested to respond within two weeks.

86. To date, the Solicitor has not responded to the Law Society regarding a complaint by Charmaine Peddle and has not paid the outstanding account.

Particular 2d) He entered into an arrangement with his client, Denis Keane, for the payment of fees on a contingent basis.

Particular 2e) He failed to account to his client, Denis Keane, for retainers received for various legal matters.

87. The Solicitor was retained by Denis Keane on a number of matters, including an estreatment hearing, a real estate transaction and a civil matter. Mr. Keane paid the Solicitor \$2,500.00 to represent him on the bail matter. Mr. Keane stated that the Solicitor did not attend at the hearing. Mr. Keane subsequently retained another solicitor. The Solicitor did not provide an account for the \$2,500.00 retainer.

88. Mr. Keane paid the Solicitor \$350.00 with respect to a real estate transaction. Mr. Keane subsequently retained another solicitor to complete the transaction as the Solicitor did not take any steps in this matter. The Solicitor did not provide an account for the \$350.00 retainer.

89. With respect to the action involving the Royal Bank, Mr. Keane had negotiated a bank draft in the amount of \$6,300.00 payable to a Mr. Anderson who had passed away a year before the draft was issued. Mr. Keane cashed the draft for the deceased's roommate who had not endorsed the cheque. It was later discovered that the draft had a forged endorsement. Mr. Keane retained the Solicitor to assist him in recovering the said amount from the Royal Bank.

90. By letter dated April 16, 1993 (Tab 1, Vol II, Document Book), the Solicitor advised Mr. Keane that his fee in this matter would be \$1,500.00. The Solicitor further advised that if the action was unsuccessful, no fee would be charged.

91. By letter dated April 20, 1993 (Tab 2, Vol II, Document Book), the Solicitor advised Mr. Keane that he would be unable to act until he was provided with a retainer.

92. By letter dated April 22, 1993 (Tab 3, Vol II, Document Book), the Solicitor advised Mr. Keane that any monies paid to the Solicitor as a retainer would be returned to Mr. Keane if he was unsuccessful in obtaining payment from the Royal Bank.

93. Mr. Keane paid the Solicitor a \$1,500.00 retainer. The Solicitor, however, took no steps in this matter.

94. By letter received by the Law Society on January 17, 1994 (Tab 4, Vol II, Document Book), Mr. Keane made a complaint to the Law Society regarding the Solicitor's failure to represent him during the three matters for which he was retained.

Particular 2f) vi) He failed to reply in a meaningful manner to the Law Society regarding a complaint by Denis Keane.

95. By letter dated February 8, 1994 (Tab 5, Vol II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Keane's letter and requested his comments within two weeks. The Solicitor did not respond.

96. On March 18 and 25, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the messages are contained at Tab 82, Vol I of the Document Book.

97. By registered mail dated April 6, 1994 (Tab 6, Vol II, Document Book), 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.

98. By letter received by the Law Society on April 6, 1994 (Tab 7, Vol II, Document Book), Mr. Keane again set out his complaint about the Solicitor.

99. By letter dated April 12, 1994 (Tab 8, Vol II, Document Book), the Solicitor advised the Law Society that he was retained to act for Mr. Keane in an estreatment hearing, a civil matter and a real estate matter. With respect to the estreatment hearing, the Solicitor advised that Mr. Keane was not satisfied with the proposed settlement and retained other counsel to represent him. The Solicitor further advised that Mr. Keane was billed for all work completed at amounts agreed to by Mr. Keane.

100. By letter dated May 17, 1994 (Tab 9, Vol II, Document Book), the Law Society advised the Solicitor that Mr. Keane did not receive any accounts from the Solicitor. The Solicitor was asked to provide the Law Society with copies of the accounts within two weeks. The Solicitor did not respond.

101. By registered mail dated October 20, 1994 (Tab 40, Vol I of the Document Book), 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 signed for and delivered on October 24, 1994. The Solicitor did not respond.

102. By letter dated November 22, 1994 to the Law Society (Tab 44, Vol I, Document Book), the Solicitor advised that he waived his fees and enclosed copies of his accounts. The accounts were not attached to the Solicitor's letter.

103. By letter dated January 12, 1995 (Tab 45, Vol I, Document Book), the Solicitor was advised that the accounts had not been enclosed in his letter to the Law Society and was requested to provide the enclosures within two weeks. The Solicitor did not respond.

104. To date, the Solicitor has not responded to the Law Society regarding a complaint by Denis Keane and has not provided copies of his accounts for services rendered.

Particular 2c) iv) He failed to fulfil a financial obligation incurred in relation to his practice to Victory Verbatim Reporting Services in the amount of \$702.19.

105. The Solicitor retained Victory Verbatim Reporting Services to attend at an examination on July 8, 1993. Victory Verbatim attended and on July 9, July 13 and August 13, 1993, invoices were sent to the Solicitor for the attendances and the transcript in the amount of \$702.19 (Tabs 10-12, Vol II, Document Book). The Solicitor did not pay the invoices.

106. By letter dated November 15, 1993 (Tab 13, Vol II, Document Book), Robyn Arndt-Pease of Victory Verbatim enclosed copies of the accounts to the Solicitor and requested payment in full by November 22, 1993. The Solicitor did not respond.

107. By letter dated July 25, 1994 (Tab 14, Vol II, Document Book), Ms. Arndt-Pease made a complaint to the Law Society regarding the Solicitor's failure to pay the outstanding accounts.

Particular 2f) vii) He failed to reply to the Law Society regarding a complaint by Robyn Arndt-Pease.

108. By letter dated August 12, 1994 (Tab 15, Vol II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Arndt-Pease's letter dated July 25, 1994 and requested his comments within two weeks. The Solicitor did not respond.

109. On September 12, 1994, the Law Society called the Solicitor and left a message for him to return the call. On September 16, 1994, the Solicitor called and left a message for the Law Society that he was not in the office that afternoon but should be in the following week. On September 20, 1994, the Law Society called the Solicitor and left a message for him. On September 28, 1994, the Solicitor called and left a message advising that he was returning the call. A copy of the transcribed and handwritten notes of the telephone conversation are contained at Tab 16, Vol II of the Document Book.

110. By registered mail dated October 20, 1994 (Tab 40, Vol I of the Document Book), 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 signed for and delivered on October 24, 1994. The Solicitor did not respond.

111. By letter dated November 22, 1994 (Tab 44, Vol I, Document Book), the Solicitor advised the Law Society that he was not counsel in this matter.

112. By letter dated January 12, 1995 (Tab 45, Vol I, Document Book), the Law Society asked the Solicitor to advise who counsel was in this matter. The Solicitor did not respond.

113. To date, the Solicitor has not responded to the Law Society regarding a complaint by Robyn Arndt-Pease and has not paid the outstanding accounts.

Particular 2f) viii) He failed to reply in a meaningful manner to the Law Society regarding a complaint by Michael Code.

114. The Solicitor represented Allan Taylor in a criminal matter which was scheduled to proceed to trial commencing October 14, 1993. The trial was then adjourned to March 14, 1994. The Crown Attorney's office discovered that the Solicitor was suspended for non-payment of his annual fees on November 1, 1993. The Solicitor was reinstated on February 21, 1994 but was suspended again on February 25, 1994 for non-payment of the filing levy. The Crown Attorney brought an application returnable on March 11, 1994 to remove the Solicitor as solicitor of record. The Solicitor did not attend and the matter was put over to March 14, 1994, the day of the trial. The Solicitor did not attend on that day and an order removing the Solicitor as solicitor of record was granted. The trial was adjourned to allow Mr. Taylor to retain new counsel.

115. By letter dated April 12, 1994 (Tab 17, Vol II, Document Book), Michael Code, Assistant Deputy Attorney General, made a complaint to the Law Society regarding the Solicitor's conduct. Mr. Code advised that during the period when the Solicitor was suspended, he continued discussions with the Crown as counsel for Mr. Taylor.

116. By letter dated April 28, 1994 (Tab 18, Vol II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Code's letter dated April 12, 1994 and requested his comments within two weeks. The Solicitor did not respond.

117. On July 5 and July 18, 1994, the Law Society called the Solicitor and left messages for him to return the calls. On July 19, 1994, the Solicitor called the Law Society and left a message advising that he would respond to the Law Society by July 22, 1994. The Solicitor did not respond. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 19, Vol II of the Document Book.

118. By registered mail dated August 11, 1994 (Tab 20, Vol II, Document Book), 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 Department. The Law Society's letter was signed for and delivered on August 12, 1994.

119. By letter dated August 30, 1994 (Tab 21, Vol II, Document Book), the Solicitor advised the Law Society that he was retained by Mr. Taylor in September 1992 for a bail hearing. The Solicitor advised that he attended the preliminary hearing on behalf of Mr. Taylor and advised him that he would not proceed to trial unless he was provided with funds. The Solicitor advised Mr. Taylor of the above in writing.

120. By letter dated September 8, 1994 (Tab 22, Vol II, Document Book), the Law Society asked the Solicitor to provide copies of the letters he had written to Mr. Taylor. The Solicitor was also asked for explanations for his failure to attend at court on March 11 and 14, 1994 and his activities during the suspension period. The Solicitor did not respond.

121. On November 16 and 29, 1994, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the messages are contained at Tab 23, Vol II of the Document Book.

122. By registered mail dated February 7, 1995 (Tab 24, Vol II, Document Book), 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 signed for and delivered on February 9, 1995. The Solicitor did not respond.

123. To date, the Solicitor has not responded to the Law Society regarding a complaint by Michael Code.

Particular 2f) ii) He failed to reply in a meaningful manner to the Law Society regarding a complaint by David Lunan.

124. The Solicitor acted for David Lunan with respect to a motor vehicle accident which occurred on April 27, 1990. A statement of claim was issued against the defendants, Messrs. Williams, Hercules and Ramasir. The Solicitor was provided with settlement funds in the amount of \$12,353.00 on or about July 27, 1993 (Tab 25, Vol II, Document Book). A Final Release was executed by Mr. Lunan. However, Mr. Lunan did not release Mr. Williams (Tab 26, Vol II, Document Book) and was advised by the Solicitor that a separate action had been commenced against Mr. Williams. No such action was commenced.

125. By letter which was received by the Law Society on July 8, 1994 (Tab 27, Vol II, Document Book), David Lunan made a complaint to the Law Society regarding the Solicitor's failure to keep him updated regarding the status of the claim and for failing to follow his instructions.

126. By letter dated July 19, 1994 (Tab 28, Vol II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Lunan's letter and requested his comments within two weeks. The Solicitor did not respond.

127. On August 24 and September 9, 1994, the Law Society called the Solicitor and left messages for him to return the calls. A copy of the transcribed and handwritten notes of the messages are contained at Tab 29, Vol II of the Document Book.

128. By letter dated March 17, 1995 (Tab 30, Vol II, Document Book), the Law Society wrote to the Solicitor requesting confirmation that he received the settlement funds in the amount of \$12,353.00. The Solicitor was also asked to confirm that he had commenced an action against Mr. Williams. The Solicitor did not respond.

129. By letter dated June 26, 1995 (Tab 31, Vol II, Document Book), the Law Society wrote to the Solicitor requesting that he produce his records in relation to Mr. Lunan's matter in order to verify where the settlement funds had been deposited. The Solicitor was asked to respond within fourteen days, failing which, the matter would be referred to the Discipline Department. The Solicitor did not respond.

Particular 2g) He failed to answer letters dated March 16, April 14 and June 19, 1995 from Vasken Khabayan, a solicitor, requesting the release of David Lunan's file.

130. Mr. Lunan subsequently retained Vasken Khabayan to take over the file. By letters dated March 16, April 19 and June 14, 1995 (Tab 32-34, Vol II, Document Book), Mr. Khabayan wrote to the Solicitor requesting that he release Mr. Lunan's file to him. The Solicitor did not respond to Mr. Khabayan's letters.

131. By letter dated September 1, 1995 (Tab 35, Vol II, Document Book), Mr. Khabayan made a complaint to the Law Society regarding the Solicitor's failure to respond to his letters requesting the release of Mr. Lunan's file.

132. By letter dated September 11, 1995 (Tab 36, Vol II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Khabayan's letter dated September 1, 1995 and requested his comments within two weeks. The Solicitor did not respond.

133. On October 16 and 20, 1995, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 37, Vol II of the Document Book.

134. By registered letter dated October 25, 1995 (Tab 38, Vol II, Document Book), 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 signed for and delivered on October 26, 1995. The Solicitor did not respond.

135. To date, the Solicitor has not responded to the Law Society regarding complaints by David Lunan and Vasken Khabayan. The Solicitor has not delivered Mr. Lunan's file to Mr. Khabayan.

Particular 2i) In representing his client, David Lunan and Mr. Lunan's two children, he breached an escrow agreement made on or about January 24, 1991, with Lyons, Goodman, Iacono, Smith & Berkow to hold in trust settlement funds of \$9,865.00, in that he released the said funds from trust on February 1, 1991 and on May 31, 1991.

136. This particular relates to Complaint D187/94. The Solicitor received the settlement cheque in the amount of \$9,685.00 on or about January 30, 1991. The funds were deposited into the Solicitor's trust account on February 1, 1991. The Solicitor was asked to hold the funds in escrow until the infant settlement had been approved. However, on February 1, 1991, the Solicitor disbursed \$5,000.00 to Mr. Lunan and \$2,000.00 to himself. Subsequently, on May 31, 1991, the Solicitor disbursed a further \$300.00 to Mr. Lunan. A copy of the Solicitor's client ledger is contained at Tab 39, Vol II of the Document Book. As stated in paragraph 15, the action was not finalized until December 7, 1992 at which time Judgment was obtained and the action was dismissed.

Particular 2f) ix) He failed to reply to the Law Society regarding a complaint by Frank P. Lento.

137. Frank P. Lento commenced an action against the Solicitor and other parties on behalf of Giuseppe Garcea. Mr. Lento stated that the Solicitor acted for Mr. Garcea without being retained and without receiving instructions. As a result of the Solicitor's actions, judgment was obtained against Mr. Garcea.

138. By letter dated May 4, 1995 (Tab 40, Vol II, Document Book), Mr. Lento made a complaint to the Law Society regarding the foregoing.

139. By letter dated May 12, 1995 (Tab 41, Vol II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Lento's letter dated May 4, 1995 and requested his comments within two weeks. The Solicitor did not respond.

140. By letter dated October 26, 1995 (Tab 42, Vol II, Document Book), the Law Society again wrote to the Solicitor requesting his comments with respect to Mr. Lento's complaint. The Solicitor did not respond.

141. On November 17 and 23, 1995, the Law Society called the Solicitor and left messages for him to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 43, Vol II of the Document Book.

142. By registered mail dated November 30, 1995 (Tab 44, Vol II, Document Book), 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 signed for and delivered on December 1, 1995. A copy of the confirmation of delivery is also contained at Tab 44, Vol II of the Document Book.

143. To date, the Solicitor has not responded to the Law Society regarding a complaint by Frank P. Lento.

Particular 2h) He failed to file with the Law Society within six months of the termination of his fiscal years ending January 31, 1994 and January 31, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

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

145. A Notice of Default in Annual Filing, dated August 5, 1994 was forwarded to the Solicitor by the Law Society. A copy of the Notice is contained at Tab 45, Vol II of the Document Book.

146. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated September 7, 1995. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was signed for and delivered on September 14, 1994. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item are contained at Tab 46, Vol II of the Document Book. The Solicitor did not reply to this correspondence.

147. The late filing fee began to accrue on September 23, 1994.

148. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending January 31, 1995, as required by S.16(2) of Regulation 708 under the Law Society Act.

149. A Notice of Default in Annual Filing, dated August 16, 1995 was forwarded to the Solicitor by the Law Society. A copy of the Notice is contained at Tab 47, Vol II of the Document Book.

150. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated September 18, 1995. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was signed for and delivered on September 22, 1995. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item are contained at Tab 48, Vol II of the Document Book. The Solicitor did not reply to this correspondence.

151. The late filing fee began to accrue on October 3, 1995.

152. To date, the Solicitor has not filed for the fiscal years ended January 31, 1994 and January 31, 1995.

Particular 2j) In representing his client, Laila Remtulla, in connection with a claim arising from a motor vehicle accident:

- i) he breached an escrow agreement made on or about October 1, 1993, with Lerner & Associates, to hold in trust settlement funds of \$49,650.00, in that he released the said funds from trust on October 13, 1993; and

- ii) he failed to comply with the order of Madam Justice Lang of the Ontario Court (General Division) made December 13, 1994, by failing to pay \$1,500.00 into court to the credit of the infants, Irfaan Remtulla and Saira Remtulla, and by failing to pay the costs ordered to be paid by him personally in the amount of \$1,250.00.

153. Laila Remtulla was involved in a motor vehicle accident on May 26, 1990. She initially retained Norman Pickell to act on her behalf. A statement of claim was issued which included a claim under the *Family Law Act* on behalf of Ms. Remtulla's husband and her two children. A statement of defence was filed by Lerner & Associates on behalf of the defendants in the action. Ms. Remtulla subsequently retained the Solicitor although Mr. Pickell continued to represent her husband and children. Settlement discussions commenced and by letter dated October 1, 1993 (Tab 49, Vol II, Document Book), Matthew Duffy of Lerner & Associates confirmed the terms of settlement with the Solicitor. Mr. Duffy advised the Solicitor that a cheque had been requisitioned and asked that the Solicitor hold the funds in escrow pending receipt of a Release, signed by the adult plaintiffs, and an Order dismissing the action without costs and dealing with the claims of the minor plaintiffs.

154. By letter dated October 5, 1993 (Tab 50, Vol II, Document Book), Mr. Duffy forwarded the settlement cheque in the amount of \$49,650.00 to the Solicitor. The Solicitor was asked to hold the funds in escrow pending receipt of the Release and an Order dismissing the action without costs and dealing with the claims of the minor plaintiffs. The Solicitor was reminded that the amount was in settlement of the entire action and that unless he had the agreement of all parties, the funds would not be disbursed.

155. Ms. Remtulla signed the Release on October 6, 1993 (Tab 51, Vol II, Document Book). The Solicitor deposited the funds into his trust account on October 13, 1993 as evidenced by the Solicitor's client ledger contained at Tab 52, Vol II of the Document Book. The Solicitor then attended at the Law Society to have the cheques drawn on his trust account co-signed. J. Stanley Jenkins, Counsel with the Audit and Investigation Department, co-signed two cheques dated October 13, 1993; one payable to Laila Remtulla in the amount of \$35,000.00 and the other payable to the Solicitor in the amount of \$14,650.00 for his fees. A copy of the cheques are contained at Tab 53 of the Document Book. The Solicitor did not advise Mr. Jenkins of the escrow terms regarding the settlement and as a result, the funds were disbursed.

156. On February 21, 1994, Mr. Duffy called the Solicitor who confirmed that the settlement was for \$50,000.00. In March 1994, Mr. Duffy called the Solicitor who advised that he was having difficulty obtaining instructions from Mr. Remtulla. The Solicitor advised that he would substitute Ms. Remtulla as the litigation guardian of the children and then obtain court approval of the infant settlement.

157. By letter dated April 11, 1994 (Tab 54, Vol II, Document Book), Mr. Duffy wrote to the Solicitor requesting the settlement documents. The Solicitor did not provide Mr. Duffy with the settlement documents.

158. The Solicitor was served with a Notice of Motion (Tab 55, Vol II, Document Book) returnable on June 15, 1994 that would compel the return of the settlement funds or grant an Order for Judgment in the terms of the settlement. After receiving the Notice, the Solicitor contacted Mr. Duffy and it was agreed that Ms. Remtulla would receive \$48,500 and the children would receive \$1,500.00. The monies for the children was to be paid into court by the Solicitor. By letter dated June 13, 1994 (Tab 56, Vol II, Document Book), Mr. Duffy confirmed the agreement and requested the Solicitor to hold the \$1,500.00 in escrow pending the Motion to name Ms. Remtulla as Litigation Guardian and the filing of a Notice of Change of Solicitor, at which time the monies would be paid into court. The Solicitor did not advise Mr. Duffy that the funds had already been disbursed.

159. By letters dated July 4, August 10, August 17, September 13 and October 18, 1994 (Tabs 57-61, Vol II, Document Book), Mr. Duffy wrote to the Solicitor requesting the Release and the Order dismissing the action. In Mr. Duffy's October 18, 1994 letter, the Solicitor was advised that if the documentation was not received by October 21, 1994, Mr. Duffy would bring a motion to enforce judgment. The Solicitor did not respond to Mr. Duffy's correspondence.

160. On October 3, 1994, the Solicitor's uncle, Mel Canton, attended at the Law Society to have a trust cheque payable to Ms. Remtulla co-signed. Ms. Remtulla did not cash the cheque previously which at that time was stale-dated. The Law Society declined to sign the trust cheque and requested confirmation that the sum of \$35,000.00 had remained in trust since October 13, 1993. The Law Society subsequently received confirmation from the Solicitor's accountant that the monies had been in the Solicitor's trust account.

161. The Solicitor was served with a Motion for judgment on the terms of the settlement returnable on December 13, 1994. The Solicitor attended the motion as counsel for Ms. Remtulla. The Honourable Madam Justice Lang granted the judgment and ordered that \$1,500.00 be paid into court to the credit of the children. The court also ordered costs to the defendants in the amount of \$2,500.00, payable by Ms. Remtulla and the Solicitor personally in the amount of \$1,250.00 each. A copy of the judge's endorsement is contained at Tab 62, Vol II of the Document Book.

162. On December 15, 1994, Mr. Canton attended at the Law Society at which time the cheque payable to Ms. Remtulla was co-signed. The Solicitor, however, did not reveal the order made on December 13, 1994.

163. The Solicitor did not pay the \$1,500.00 into the court. As a result, Lerner & Associates brought a motion returnable on June 5, 1995. The court ordered that the infant plaintiffs would recover \$750.00 each and that the monies were to be paid into court out of the funds held in trust by the Solicitor as ordered by the Honourable Madam Justice Lang on December 13, 1994. A copy of the Judgment is contained at Tab 63 of the Document Book.

164. To date, the Solicitor has not paid the infant settlement into court.

V. PRIOR DISCIPLINE

165. On January 11, 1995, the Solicitor was reprimanded in committee for failing to file for the fiscal year ended January 31, 1993 failing to reply to the Law Society regarding monthly trust bank statements, reconciliations and trust listings.

DATED at Toronto, this 7th day of September, 1997."

Re: Complaint D146/98

"STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D146/98 and is prepared to proceed with a hearing of this matter on January 20, 1999.

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 D146/98 with his counsel and admits the particulars contained therein. The Solicitor admits that the particulars, together with the facts as hereinafter set out, constitute conduct unbecoming a barrister and solicitor.

IV. FACTS

4. The Solicitor was called to the Bar in 1985 and practised as a sole practitioner in Toronto. He has been administratively suspended since December 2, 1994.

5. Prior to October 1996, the Solicitor was a patient at the Homewood Sanitarium, undergoing treatment for his heroin addiction. At the Sanitarium, he met another patient, Dr. James Dobbin. The Solicitor became friends with Dr. Dobbin.

6. The Solicitor's girlfriend, Valerie Phillips, was charged with forcible confinement. Following a jury trial, she was found guilty of that offence and remanded on bail pending a sentencing hearing scheduled to proceed on October 29, 1996.

7. It has been found by a court that the Solicitor faxed a letter to Ms. Phillips' counsel, Ken Smith. This letter purportedly was from Dr. Dobbin and reported that Valerie Phillips was pregnant and should not be sent to jail. However, the letter suggested that should a jail sentence be inevitable, the sentencing should be delayed until she gave birth.

8. On October 29, 1996, Ken Smith disclosed the letter to the Crown Attorney prosecuting Valerie Phillips. The Crown Attorney was concerned about the legitimacy of the letter and instructed the investigating police officer to contact Dr. Dobbin's office.

9. The police officer's initial conduct was with an employee at Dr. Dobbin's office. That contact revealed that the letter was likely a forgery. This information was reported to Mr. Justice Epstein, the presiding judge. It has been found by a court that Mr. Justice Epstein directed that no one speak to Dr. Dobbin until the police officer had an opportunity to interview him the next day, and that the Solicitor was aware of the information relayed to the court and of Mr. Justice Epstein's prohibition against contacting Dr. Dobbin as he was in the court at the time.

10. It has been found by a court that the Solicitor then contacted Dr. Dobbin by telephone and requested that he inform the police that Valerie Phillips was his patient and that he would not be in a position to discuss the matter with the police due to doctor/patient confidentiality. Dr. Dobbin refused to agree.

11. It has been found by a court that the Solicitor then requested Dr. Dobbin create a bogus file for Valerie Phillips containing information to the effect that he had examined her and found her to be pregnant. Dr. Dobbin refused to comply with this request.

12. It has been found by a court that the Solicitor then threatened Dr. Dobbin that he would make him look bad in court.

13. As a result of his actions, the Solicitor was charged with numerous criminal offences. On June 18, 1998, he pleaded not guilty and proceeded to trial before a judge sitting without a jury on all counts.

14. On June 30, 1998, the Solicitor was convicted of the following criminal offences:

- i) that he, during the period from and including the 19th day of September in the year 1996, to and including the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct the course of justice by being a party to preparing a false document for presentation to the Ontario Court (General Division) in an effort to gain an advantage for Valerie Phillips at her sentencing hearing, contrary to the Criminal Code;

- ii) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct the course of justice by counselling Dr. James Dobbin, M.D. Ph.D to refuse to provide information concerning Valerie Phillips to the police who were engaged in an investigation concerning Valerie Phillips with the knowledge and consent of the Court, contrary to the Criminal Code;
- iii) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct the course of justice by counselling Dr. James Dobbin, M.D. Ph.D to lie to the police concerning the nature of his relationship with Valerie Phillips, while the police were engaged in an investigation concerning Valerie Phillips with the knowledge and consent of the Court, contrary to the Criminal Code;
- iv) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct the course of justice by counselling Dr. James Dobbin, M.D. Ph.D to create false medical records for Valerie Phillips, while the police were engaged in an investigation concerning Valerie Phillips with the knowledge and consent of the Court, contrary to the Criminal Code; and
- v) that he, on or about the 20th day of November in the year 1996, in the Municipality of Metropolitan Toronto, being at large on his recognizance entered into before a justice, and being bound to comply with a condition of that recognizance directed by the said justice, did fail without lawful excuse to comply with the said condition, to wit: report, in person to the Reporting Centre - 60 Richmond Street East, Toronto, on each and every Wednesday between the hours of 9:00 a.m. and 9:00 p.m. to the officer-in-charge, contrary to the Criminal Code.

15. The Solicitor was found guilty of the following criminal offences:

- i) that he, during the period from and including the 19th day of September in the year 1996, to and including the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did knowingly make a false document, to wit: a document dated the 17th day of October, 1996 purportedly authored by Dr. James Dobbin, M.D. Ph.D, with the intent that it be acted upon as genuine and did thereby commit forgery, contrary to the Criminal Code;
- ii) that he, during the period from and including the 19th day of September in the year 1996, to and including the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did attempt to cause the Ontario Court (General Division) to act upon a forged document, to wit: a document dated the 17th day of October, 1996 purportedly authored by Dr. James Dobbin, M.D. Ph.D regarding Valerie Phillips, as if it were genuine, contrary to the Criminal Code;
- iii) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct Shawn Genovy, a Police Officer engaged in the execution of his duty to investigate a letter regarding Valerie Phillips, purportedly from Dr. James Dobbin, M.D. Ph.D, dated October 17, 1996, to wit: by counsel line Dr. James Dobbin, M.D. Ph.D to refuse to provide information regarding Valerie Phillips to the police, contrary to the Criminal Code;
- iv) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct Shawn Genovy, a Police Officer engaged in the execution of his duty to investigate a letter regarding Valerie Phillips, purportedly from Dr. James Dobbin, M.D. Ph.D dated October 17, 1996, to wit: by counselling Dr. James Dobbin, M.D. Ph.D to lie to the police concerning the nature of his relationship with Valerie Phillips, contrary to the Criminal Code; and

- v) that he, on or about the 29th day of October in the year 1996, at the Municipality of Metropolitan Toronto, did wilfully attempt to obstruct Shawn Genovy, a Police Officer engaged in the execution of his duty to investigate a letter regarding Valerie Phillips, purportedly from Dr. James Dobbin, M.D. Ph.D dated October 17, 1996, to wit: by counselling Dr. James Dobbin, M.D. Ph.D to create false medical records for Valerie Phillips, contrary to the Criminal Code.

A copy of the indictment is attached hereto as Exhibit 1.

16. In finding the Solicitor guilty, Mr. Justice Humphrey noted that he had testified in his own defence and that it was a "disaster". The Judge further noted the Solicitor's "account of the events is absolutely preposterous", and he found the Solicitor's explanation "totally incredible". A copy of the Reasons for Judgment of Mr. Justice Humphrey are attached hereto as Exhibit 2.

17. The matter was remanded to July 28, 1998 for the purposes of sentencing. At that time, Mr. Justice Humphrey imposed a conditional sentence of 18 months upon the Solicitor and placed him on probation for a period of 3 years. A copy of the Order of Conditional Sentence is attached hereto as Exhibit 3 and of the Probation Order is attached hereto as Exhibit 4.

18. In passing sentence upon the Solicitor, Mr. Justice Humphrey stated as follows:

"This is a highly unusual case. The accused is now 37 years of age. He was called to the Bar in 1985. He is now under suspension, and the Discipline Committee which heard complaints against him have reserved their decision. As a former Bencher and a member of the Discipline Committee, I am quite certain that when these convictions are added to the convictions that he already has, that he will be disbarred. He has many previous convictions involving dishonesty that have attracted jail terms. He has been a very dishonest and disreputable person. I believe that his conduct was fuelled by the drug heroin. He has been addicted for years, and was so when he committed the offences for which I have found him guilty.

....

The accused fuelled by his heroin addiction led the life of a criminal, attracting numerous convictions for dishonest conduct. He was a menace to Society. His family abandoned him and his past conduct makes him completely undeserving of a break of any kind.

....

I was very disappointed that the accused supposedly in his recovery mode saw fit to plead not guilty and to lie his way out of it, but I suppose recovery is a slow and uncertain process."

A copy of the Reasons for Sentence of Mr. Justice Humphrey is attached hereto as Exhibit 5.

V. DISCIPLINE HISTORY

19. On January 11, 1995, the Solicitor was found guilty of professional misconduct for failing to file his Forms 2/3 with the Law Society within six months of the termination of his fiscal year ending January 31, 1993 and failing to reply to communications from the Law Society requesting that he provide the Society with monthly trust bank statements, reconciliations and trust listings for a ten month period preceding December, 1991, despite letters sent and a telephone call made. The Solicitor was reprimanded in Committee and gave a verbal Undertaking to the Committee to produce, within a 10 day period from the date of the hearing, certain files to LPIC and his Forms and trust reconciliations to the Society. It is the Society's position that the Solicitor has not fully complied with that Undertaking.

[Paragraph 20 of the Statement of Facts set out the Complaints D187/94, D99/96, D117/96 and D232/96 on which a finding of professional misconduct had been made by this panel on November 10, 1997, but for which the recommendation as to penalty had not yet been delivered.]

DATED at Toronto this 20th day of January, 1999.”

FINDINGS OF THE COMMITTEE

The Member admitted the particulars of all Complaints and that the particulars constituted disciplinary offences except for particular 2(d) in Complaint D99/96 alleging a contingency fee arrangement as follows:

- 2(d) he entered into an arrangement with his client, Denis Keane, for the payment of fees on a contingent basis.

The evidence in support consists of three letters, brief in content, from the Member to the same client stating, in essence, that the Member's fee was \$1500, but that if the action was unsuccessful, no fee would be charged. Counsel for the Society states this falls clearly within the definition of a contingency fee as defined in the Solicitor's Act s. 28. We were also referred to a most enlightening analysis of the rule, both in historical and practical terms, contained in the article "Contingent Fees" by Bruce K. Arlidge reported in 1973-74 Vol. 6 of the Ottawa Law Review. Further, the exemption for class action proceedings, the public and judicial urgings for pro bono legal services and the current climate for the practice of law were noted.

Taking all into consideration, this Committee was unanimous in its decision not to make a finding on this particular.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Stuart Elliot Rosenthal be suspended for a period of eighteen months following which he is to be reinstated to the practice of law only if he has satisfied the Secretary of the Law Society that he is fit to practise law by the production of a psychiatric report from his treating psychiatrist.

REASONS FOR RECOMMENDATION

Stuart Rosenthal's life changed forever on June 10, 1990. On that date, his brother who suffered from a history of mental illness, took his own life, having spent the evening before with Stuart. According to the Solicitor's father and others, the Solicitor blamed himself for this event and soon after, was plunged into depression followed by turning to drugs, specifically heroin.

The evidence that the Committee heard was consistent; that prior to this event, the Solicitor was an extremely able, competent and intelligent lawyer who was, as well, compassionate to others.

According to one witness, Todd Gottlieb, who practised in association with the Solicitor, "There was not a smarter guy I've met". In his opinion, "Two hundred percent of the Solicitor's problems were ascribed to the heroin addiction". He noticed a deterioration in the Solicitor's attitude, as he dealt with people with drug problems he recognized the signals. He approached the Solicitor and the Solicitor admitted eventually that he had a drug problem and eventually sought rehabilitation.

The Committee heard the evidence of Dr. Ken Koffer, who is a clinical psychologist and has worked with the Solicitor, who observed changes in the Solicitor as he became more drug dependent, and has observed his behavioural changes as he has attempted rehabilitation. He has noted that the Solicitor has recently reconnected with his father and has started to come to grips with his dependency. He noted that there was a tendency in the Solicitor to relapse and that the gradual deterioration of the Solicitor was accompanied by a denial of his problem.

The Committee was most impressed with the expert evidence of Dr. Maris Andersons, who has considerable experience with drug dependency in professionals. His analysis was that the problems of the Solicitor were clearly all connected with his heroin dependency and that the prognosis for the recovery of the Solicitor was good. Specifically, he noted that if the Solicitor had the opportunity to return to practice within the framework of a suspension order, followed by a period of monitoring of the Solicitor's progress, that this would give a goal to the Solicitor that would be helpful in his rehabilitation.

The Committee heard from the Solicitor's father, who gave emotional and moving evidence that made it quite clear that the Solicitor has strong family support and people who care about him to assist him in his rehabilitation. As indicated above, his father saw the immediate cause of the heroin addiction as the tragedy of his other son's suicide and the effect that had on Stuart. Apparently, according to the Solicitor and others, he was introduced to heroin while dealing with his depression which came about following his brother's suicide.

Convocation has made it clear that absent mitigating circumstances, the type of misconduct that the Solicitor has engaged in would normally result in a finding of ungovernability that should result in the Solicitor being given permission to resign or being disbarred. The Solicitor's situation is such that we find significant mitigating circumstances, specifically, his heroin addiction. We note that there was a broad range of misconduct and dishonest misconduct which fell short of misappropriation. That may very well have been, as Ms. Cowie urged us to find, because the Solicitor was for some time under the supervision of the Law Society and the Law Society staff had co-signing authority on the Solicitor's account. The Solicitor, on the other hand, noted that situation as one that in his mind gave him a false sense of security.

The Committee certainly cannot find that but for that situation, there would have been misappropriation, and the lack of misappropriation is a significant factor here.

The evidence is clear that those who know the Solicitor are unanimous in their view of him as an excellent lawyer, a bright and contributing figure who has much to offer. His life has taken a very tragic turn and he must accept a large degree of responsibility for that. At the same time, the rehabilitation of the Solicitor, if it can be accomplished, will result in the profession and the Solicitor being better off than if the Law Society were to simply give up on the Solicitor and remove him from the practice of law.

The Committee is not naive as to the roadblocks ahead of the Solicitor in his rehabilitation attempts and are aware that he still has other hurdles to surpass. Given the record of the Solicitor prior to his involvement with drugs, given his potential and the high esteem in which others held him prior to his descent into drug induced problems, it is the view of the Committee that his professional life is worth the effort of all to save. It is the view of the Committee that the profession and the best interests of society would be best served by stressing the rehabilitation of the Solicitor over a deterrent penalty that would emphasize punishment over the the salvation of the Solicitor.

Stuart Elliot Rosenthal was called to the Bar on April 18, 1985.

ALL OF WHICH is respectfully submitted

DATED this 10th day of June, 1999

Thomas J. P. Carey, Chair

DISSENT

RECOMMENDATION AS TO PENALTY

I recommend to Convocation that Stuart Elliot Rosenthal be suspended for two years and from month to month thereafter until his records have been brought up-to-date. In addition, I recommend that the Member only be allowed to recommence practice on the following conditions:

1. That he first provide to the Secretary the opinion of a psychiatrist regarding his ability to practice especially vis a vis the stages of his rehabilitation from substance addiction;
2. That he be required to continue counselling and rehabilitation as directed by his medical monitors;
3. That he be supervised by another Member of the profession who accepts the duty to report to the Secretary any concerns regarding substance addiction as well as performance of his duties as a lawyer;
4. During the term of his conditional sentence and subsequent probation period pursuant to the sentence imposed by His Honour Mr. Justice Humphrey on July 28, 1998, he be restricted from appearing in Court on criminal law matters.

REASONS FOR RECOMMENDATION

I have read the Reasons of Tom Carey, the Chair in this matter and I substantially concur with the comments therein and do not vary greatly in the final recommendation. But vary I must for I have thought long about Convocation's obligation to protect the public.

The Member has been characterized by every person who has presented before this Committee as highly intelligent and a great asset to the profession. His descent from the latter came about abruptly upon the suicide of his brother on the very same evening that the Member spent time with his brother. The Member was not only consumed with grief, but also with the guilt of not knowing if he, somehow, could have changed the course of history regarding this sorrowful event.

In his search for solace, the Member became substance addicted, mainly heroine. His ability to function competently in his practice became compromised. He sunk to the depths of criminal activity. In the findings before us, there are at least twenty-five different instances where the Member failed in his lawyerly duties. In addition, he has been convicted of twenty-four different criminal offences before four different Justices for illegal acts done between

1993 and 1996. Most of the criminal offences involve using forged prescriptions, obviously so that he could feed his drug habit. But others relate to offences directly aimed at subverting the administration of justice. They are very serious offences, all the more so because they were committed by a lawyer who well knows that the integrity of this system is maintained through the integrity of the participants.

These findings represent no slight dereliction from what is expected from a Member in good standing in the profession. When The Honourable Mr. Justice David Humphrey sentenced him on July 28, 1998 for the last set of offences, he opined that the Member would be disbarred. For the offences before him Mr. Justice Humphrey imposed a period of incarceration but granted a conditional sentence that could be served in the community followed by the maximum period of three years of probation, plus other stringent terms. Mr. Justice Humphrey quoted from the decision of Mr. Justice Wood of the British Columbia Court of Appeal in *Regina v Solomon*, reported at 79 C.R. (3d) 61 wherein it was stated that the principle of deterrence should yield to any reasonable chance of rehabilitation in the case of an offender who is a drug addict.

It is trite to point out that there are different purposes to the penalty phase of a criminal proceeding and a regulatory body's discipline proceeding. While the purpose of the penalty in criminal proceedings has moved from retribution to rehabilitation, Convocation's purpose has always been the protection of the public. Yet with these differences, many of the same factors are taken into consideration and there are some parallels of thought. For example, just as Mr. Justice Humphrey considered, we too were presented with evidence that led to no other conclusion than that all of the prohibited acts of the Member occurred because of his substance abuse. As well, we were provided with evidence from family and friends and health practitioners who verified that the Member's random drug testing showed that he had stayed clean since late 1996 and that all indicators are that his road to recovery is well established. However, just as Mr. Justice Humphrey noted, the Member "supposedly in his recovery mode" saw fit to plead not guilty and lie, shamelessly and unsuccessfully at the criminal trial on the last set of offences. This performance occurred at least six months after this Committee reserved its' decision on the initial set of complaints before it. The fact alone gave me pause to question the glowing evidence at the initial hearing before us in the fall of 1997.

However, it was the Member himself who requested and agreed that the final complaint return before us. At that time, this Committee had not rendered its' decision so the very reason of continuity and efficiency of time, there can be no doubt that a return before us was appropriate. This Committee then had the benefit of the complete picture of the Member's life and the hurdles he faced. Further, and I count this as the most beneficial, this Committee had a second opportunity to hear from Dr. Maris Andersons, M.D., C.C.F.P., Cert. A.S.A.M.

I was greatly impressed in hearing Dr. Andersons on the first time around. However, I was triply impressed hearing him the second time around. The doctor's candour was not always favourable to the Member but that made it all the more impressive. Dr. Andersons admitted that he initially did not want to get involved with the treatment of the Member because he was not convinced by the demeanour and presentation of the Member that he was committed to fighting his addiction. Yet, over time, the doctor realized that the presentation of the Member did not speak accurately to his commitment. At times during the hearing, I too had reservations about the Member's realization of the gravity of the damage he has done to the legal profession and his career in it. In the end, I am prepared to give him the benefit of the doubt in that regard. I therefore cannot accede to the Society's request that the membership of the Member be terminated, whether by disbarment or permission to resign. Rather, I have recommended a penalty that will bring home to the Member his obligations as a member of this profession and I have fashioned certain checks and balances into the penalty that I believe will protect the public interest. While doing this, I am cognizant of the primary duty of protection of the public. For those who may say that termination is the only alternative, I respond herewith that there are many Members of our Society who have displayed conduct that falls below the standard expected of them. Not all of those have their membership terminated, but rather are subject to other penalties. In all of the circumstances, I find that those penalties have been visited upon this Member in many ways, both personally and professionally. By the penalty that I suggest, the Member will be reminded that at the end of the day, the protection of the public prevails.

The Recommendation as to Penalty requires some explanation. I have recommended a suspension of two further years because I still believe that the Member needs some more time. This should not be considered a penalty by him but an opportunity to reflect after all of these weighty matters have been finalized for him. The criminal charges are not finalized, and these discipline proceedings will now be finalized. He will have no excuse of other matters occupying him, but to concentrate upon his future. Dr. Andersons had recommended on the first occasion we heard him in 1997 that he would be ready for practice again within two years. Dr. Andersons testified in January of 1999 that he believed the Member was ready to return to practice at that point. I cannot conclude same because of the intervening set of criminal charges. Those charges were further acts, very serious and must therefore count for further concern on my behalf.

I recommend the four conditions for the purpose of protection of the public. The Member has indicated he will continue on his path to recovery and maintain the medical and counselling assistance he has in place. Therefore, conditions (1) and (2) should not be a difficulty. However, I deem it necessary that conditions (3) and (4) also be imposed because they deal directly with the practice of law, from which the Member has been away some time to date. I deem it essential that he be supervised in his practice. Further, to maintain the integrity of the profession and to distance the Member from the milieu, condition (4) is essential.

DATED this 3rd day of June, 19999

Tamara Stomp, Dissenting Member

Mr. Cherniak drew attention to the fact that one of his partners was involved in the matter but that (Mr. Cherniak) had no knowledge of the matter.

There was no objection by both counsel to Mr. Cherniak participating.

It was moved by Mr. White, seconded by Mr. Porter that the Report be adopted.

Carried

The majority recommendation as to penalty was that the solicitor be suspended for a period of 18 months following which he is to be reinstated to the practice of law only if he has satisfied the Secretary of the Law Society that he is fit to practise law by the production of a psychiatric report from his treating psychiatrist.

Convocation, on consent, granted a Motion for the receipt of fresh evidence being the medical report from Dr. Maris Andersons.

The medical report of Dr. Andersons dated March 2nd, 2000 was filed as Exhibit 3.

There were submissions by Society's counsel in support of an increased penalty of disbarment or permission to resign.

The matter was stood down.

REPORT OF THE DIRECTOR OF EDUCATION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Education asks leave to report:

B.
ADMINISTRATION

B.1 CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, march 24th, 2000:

| | |
|--------------------------|----------------------|
| Colleen Leigh Baret | Bar Admission Course |
| Jill Alene Edwards | Bar Admission Course |
| Liza Fefer | Bar Admission Course |
| John Kennedy FitzGerald | Bar Admission Course |
| Kenneth David Hanna | Bar Admission Course |
| Omar Shabbir Khan | Bar Admission Course |
| Elia Anwar Naqvi | Bar Admission Course |
| Suzanne Bernadette Quinn | Bar Admission Course |
| Jagdeep Singh Virk | Bar Admission Course |
| Peter Wang | Bar Admission Course |
| John Micheal Whelton | Bar Admission Course |
| Raziel Zisman | Bar Admission Course |

B.2. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

b.2.1. The following applies to be certified as a foreign legal consultant in Ontario:

| | |
|----------------------|---|
| Richard James Crofts | The State of New York -Shearman & Sterling |
|----------------------|---|

B.2.2 His application is complete and he has filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 24th day of March, 2000

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It was moved by Mr. MacKenzie, seconded by Mr. Simpson that the Report of the Director of Education be adopted.

Carried

CALL TO THE BAR (Convocation Hall)

The candidates listed in the Report of the Director of Education were presented to the Treasurer and Convocation and called to the Bar and the degree of Barrister-at-law was conferred upon each of them. They were then presented by Mr. Lamont to Madam Justice Gloria J. Epstein to sign the Rolls and take the necessary oaths.

| | |
|--------------------------|----------------------|
| Colleen Leigh Barrett | Bar Admission Course |
| Jill Alene Edwards | Bar Admission Course |
| Liza Fefer | Bar Admission Course |
| John Kennedy Fitzgerald | Bar Admission Course |
| Kenneth David Hanna | Bar Admission Course |
| Omar Shabbir Khan | Bar Admission Course |
| Elia Anwar Naqvi | Bar Admission Course |
| Suzanne Bernadette Quinn | Bar Admission Course |
| Jagdeep Singh Virk | Bar Admission Course |
| Peter Wang | Bar Admission Course |
| John Micheal Whelton | Bar Admission Course |
| Raziel Zisman | Bar Admission Course |

RESUMPTION OF THE ROSENTHAL DISCIPLINE MATTER

Ms. Cowie continued with her submissions as to penalty.

There were questions from the Bench.

Convocation took a recess at 10:20 a.m. and resumed at 10:45 a.m.

Mr. Sokolov made submissions in support of the majority recommendation as to penalty.

There were questions from the Bench following submissions by counsel for the solicitor.

Ms. Cowie made submissions in reply.

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

Mr. MacKenzie did not participate in the vote.

It was moved by Mr. Wright, seconded by Mr. Crowe that the solicitor be disbarred.

Lost

It was moved by Mr. Arnup, seconded by Mr. T. Ducharme that the majority recommendation be adopted together with the conditions set out in the dissenting reasons.

Withdrawn

It was moved by Ms. Pilkington, seconded by Mr. Swaye that the solicitor be suspended until January 28th, 2003 the suspension being the equivalent to the period of probation, together with the conditions set out in the dissenting reasons and conditions (c) and (d) in the Mitchnick discipline matter.

An amendment was made by Mr. Arnup and accepted that the condition relating to providing to the Secretary the opinion of a psychiatrist be changed to "the opinion of a medical doctor".

An amendment to the motion was made by Mr. Swaye and accepted that the records requirement and the restriction against appearing on criminal law matters be deleted.

The motion was also amended by adding the condition that the solicitor be supervised by another lawyer acceptable to the Secretary for a period of 5 years and continue until the Secretary is satisfied that supervision is no longer required.

Carried

It was moved by Mr. Copeland, seconded by Mr. Gottlieb that the solicitor be suspended for a period of 18 months together with the terms set out in the Pilkington/Swaye motion.

Not Put

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended until January 28th, 2003, the suspension being the period of probation together with the following conditions:

- (1) That before he resumes the practice of law, he first provide to the Secretary the opinion of a medical doctor regarding his ability to practice especially vis a vis the stages of his rehabilitation from substance addiction;
- (2) That he be required to continue counselling and rehabilitation as directed by his medical monitors;
- (3) That he be supervised by another Member of the profession acceptable to the Secretary for a period of 5 years following his reinstatement and continue until the Secretary is satisfied that supervision is no longer required;
- (4) To attend as required for all medical treatment as directed by his attending physicians during his period of suspension and for 5 years thereafter; and
- (5) To submit himself to random drug testing during this period of suspension and for a 5 year period thereafter at the request of the Law Society of Upper Canada.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:15 P.M.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Braithwaite, Cherniak, Crowe, E. Ducharme, T. Ducharme, Gottlieb, Pilkington, Potter, Simpson, Wilson and Wright.

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IN PUBLIC

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Re: Angelina Marie CODINA - Toronto

MOTION ON JURISDICTIONAL ISSUE (seised)

Ms. Jane Ratchford and Ms. Catherine Braid appeared on behalf of the Society. The solicitor appeared on her own behalf.

Both the solicitor and Ms. Ratchford, counsel for the Society made submissions on the jurisdictional issue.

The solicitor made further submissions in reply.

There were questions from the Bench to both counsel and the solicitor.

The Treasurer announced that Convocation would reserve its decision.

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

Mr. Gottlieb withdrew.

Convocation deliberated.

It was moved by Mr. Cherniak, seconded by Mr. Crowe that Convocation hold that the Law Society lost jurisdiction by failing to demonstrate that the process leading up to these Complaints complied with section 9(1) of Regulation 708, the matter having been put in issue by the solicitor.

Not Put

It was moved by Mr. Cherniak, seconded by Mr. Crowe that the motion of the solicitor be allowed on the basis that the Law Society lacked jurisdiction to proceed with the Complaints by its failure to comply with section 9(1) of Regulation 708 and that the decision of the Discipline Committee be set aside.

Carried

Written Reasons are to follow.

CONVOCATION ROSE AT 6:00 P.M.

Confirmed in Convocation this *28* day of *April*, 2000

Ravi P. Limburg
Treasurer