

22nd October, 1992

MINUTES OF SPECIAL CONVOCATION

Thursday, 22nd October, 1992
9:00 a.m.

PRESENT:

The Treasurer (Allan M. Rock), Arnup, Bastedo, Brennan, Campbell, Carter, Copeland, Cullity, Curtis, Elliott, Feinstein, Finkelstein, Hill, Kiteley, Lamek, Lamont, Lerner, Murray, D. O'Connor, Richardson, Somerville, Strosberg, Thom, Topp, Weaver and Yachetti.

.....

.....

IN PUBLIC

.....

DISCIPLINE COMMITTEE

Re: MARIO GIANGIOPPO, North York

Mr. Labow made an application to be removed from the record as counsel for Mr. Giangiooppo. Mr. Giangiooppo indicated that he wished to retain new counsel.

There was no objection by Society's counsel and the application was granted.

Counsel and the solicitor retired.

.....

Re: FRANCIS JAMES ALTIMAS, Orleans

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

The Society's counsel, Mr. Gavin MacKenzie requested an adjournment on consent to the Special Convocation in November.

The adjournment was granted.

Counsel retired.

.....

Re: PETER ROBERT RAMSAY, New Liskeard

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

22nd October, 1992

Mr. MacKenzie requested an adjournment on consent to the Special Convocation in November.

The adjournment was granted.

Counsel retired.

.....

Re: BRUCE JOHN DALEY, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. MacKenzie requested an adjournment on consent to the Special Convocation in November.

The adjournment was granted.

Counsel retired.

.....

Re: NORMAN EDWARD JOSEPH ROY, Oakville

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. Copeland did not participate.

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

Convocation had before it the Report of the Discipline Committee dated 1st October, 1992, together with an Affidavit of Service sworn 10th October, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail on 6th October, 1992 (marked Exhibit 1) together with the Acknowledgment, Declaration and Consent signed by the solicitor 22nd October, 1992 (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

Earl J. Levy, Q.C., Chair
Paul Copeland
K. Julaine Palmer

22nd October, 1992

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

Stephen Waisberg and Gavin MacKenzie
for the Society

NORMAN EDWARD JOSEPH ROY
of the Town
of Oakville
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 8, 1992
September 10, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 17, 1992, Complaint D38/92 was issued and on June 1, 1992, Complaint D93/92 was issued against Norman Edward Joseph Roy alleging that he was guilty of professional misconduct.

The matter was heard in public on July 8, 1992 and September 10, 1992, before this Committee composed of Earl J. Levy, Q.C., Chair, Paul Copeland and K. Julaine Palmer. Mr. Roy attended the hearing and was not represented. Mr. Waisberg appeared on July 8, 1992 and Mr. MacKenzie appeared on September 10, 1992 on behalf of the Law Society.

DECISION

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

Complaint D38/92

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending April 30, 1991 a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the regulation made pursuant to the Law Society Act.

Complaint D92/92

2. a) He failed to reply to the Law Society regarding a complaint by his former client, Ms. Christine Arrowsmith, despite letters dated February 18, 1992, March 24, 1992, May 5, 1992 and a telephone request on May 11, 1992.
- b) He failed to comply with his Undertaking to the Law Society, dated March 17, 1992, that he would respond promptly to all communications from the Law Society; in respect of written communications, within one week of receipt of such communications, and in the case of telephone communications, within three days of receipt thereof.

22nd October, 1992

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D38/92 and D93/92 and is prepared to proceed with a hearing of these matter on July 8, 1992.

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 D32/92 and D93/92 and admits the particulars contained therein.

IV. FACTS

4. The Solicitor was called to the Bar on April 7, 1982 and practices as a sole practitioner.

COMPLAINT D38/92 - Failure to File

5. The Solicitor's fiscal year end is April 30. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending April 30, 1991, as required by S.16(2) of Regulation 573 under The Law Society Act.

6. A Notice of Default in Annual Filing, dated November 2, 1991 was forwarded to the Solicitor by the Law Society.

7. By registered mail dated December 3, 1991, the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day applied on filings made after their due dates and on defaults in filings. The late filing levy began to accrue on December 18, 1991. When this levy amounted to \$1,500.00 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 may be brought before the Discipline Committee for failure to file.

8. In order to avoid suspension the Solicitor paid the late filing levy on March 17, 1992 and continued in the practise of law. He did not, however, file the required forms.

9. As a Form 3 is a report of a public accountant respecting the compliance of the Solicitor's books and records with the regulations, the Society has no way of verifying that the Solicitor is maintaining books and records save for arranging for an audit examiner to attend at the Solicitor's practice thereby substantially increasing the costs of the audit branch.

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

22nd October, 1992

COMPLAINT D93/92

Particular 2a) Failure to Reply

11. By letter dated January 16, 1992, Ms. Christine Arrowsmith advised the Law Society that she had retained the Solicitor in January, 1990 concerning a separation and divorce matter. In her letter she set out a number of complaints concerning the Solicitor which are set out briefly below:

- a) The Complainant constantly tried to communicate with the Solicitor but he refused to get back to her;
- b) Although the litigation had proceeded, the Complainant received very little correspondence from the Solicitor and has not received any copies of judgments and/or actions (Orders) decided by the Court;
- c) On one occasion, the Solicitor hung-up on her during a telephone conversation;
- d) The Solicitor has discussed with another person that the Complainant's ex-husband had contacted him. The Solicitor did not relate this information to the Complainant, who raises a concern in her letter that the Solicitor has breach his Solicitor/Client confidentiality.
- e) The Complainant has requested that the Solicitor turn her file over to another lawyer, Mr. Alfred Schoor. As of the date of the Complainant's letter to the Law Society dated January 16, 1992, the Solicitor had failed to turn the file over to her new lawyer. In Mr. Schoor's letter dated April 2, 1992, addressed to the Solicitor, he confirms receipt of the contents of the Solicitor's file concerning the Complainant on January 28, 1992.

12. By letter dated February 18, 1992, the Law Society forwarded to the Solicitor a copy the letter of complaint and requested he provide his written comments to the same within two weeks. No reply was received.

13. By letter dated March 24, 1992, the Law Society forwarded to the Solicitor a copy of its February 18 letter with enclosure. The Solicitor was requested to provide his reply within fourteen days.

14. By letter dated April 16, 1992, Alfred Schoor, Ms. Arrowsmith's new solicitor, advised the Law Society of apparent negligence by the Solicitor while acting for Ms. Arrowsmith. Mr. Schoor further indicated that he had reviewed the file the Solicitor had turned over to him on January 28, 1992 and that it did not appear as if a report had ever been prepared or forward to Ms. Arrowsmith. Mr. Schoor wrote the Solicitor on February 17, 1992, March 16, 1992, April 2, 1992, and April 10, 1992 seeking reporting information. Mr. Schoor received no response to these letters. In addition, he advised the Law Society that his client was in need of the information so that she could properly file her tax returns.

15. By registered mail dated May 5, 1992, the Law Society forwarded to the Solicitor a copy of Mr. Schoor's letter of complaint and reminded the Solicitor of his obligation to respond pursuant to Rule 13. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. No reply was received.

22nd October, 1992

16. A Law Society staff employee left a telephone message with the Solicitor's secretary at his office on May 11, 1992, requesting the Solicitor respond to the Law Society's correspondence by May 12, 1992. No reply was received.

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

COMPLAINT D93/92 -

Particular 2b) Failure to Comply with an Undertaking

18. The Solicitor provided the Law Society with a written undertaking, dated March 17, 1992 which stated in part:

To respond promptly to all communications from the Law Society; in respect of written communications, within one week of receipt of such communications, and in the case of telephone communications, within three days of receipt thereof;

19. The Solicitor failed to reply to the Law Society regarding a complaint by Christine Arrowsmith, despite letters dated March 24, 1992, and May 5, 1992 and a telephone request on May 11, 1992.

V. DISCIPLINE HISTORY

20. The Solicitor received a reprimand in committee on March 18, 1992 with respect to the Solicitor's failure to reply to the Law Society, failure to comply with an undertaking to a Trust Company, and failure to file for the fiscal year ended April 30, 1990.

DATED at Toronto this 8th day of July, 1992."

RECOMMENDATION AS TO PENALTY

If by the time this matter reaches Convocation the Solicitor has filed with the Society for the fiscal year ending April 30, 1991 a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules, the Committee recommends that the Solicitor be reprimanded in Convocation. However, in the event that the report has not been filed by that time, then the Committee recommends an indefinite suspension of the Solicitor until the forms are filed.

REASONS FOR RECOMMENDATION

This matter came on for hearing on the 8th day of July, 1992. After receiving the Agreed Statement of Facts we received a joint submission from the Solicitor and counsel for the Society that a reprimand in Convocation would be an appropriate penalty provided that the Solicitor had filed the Forms 2/3 by the time the matter reached Convocation and if the Forms had not been filed by that time, that the Solicitor should be suspended.

22nd October, 1992

Concerning item (b) of Complaint D93/92, the Solicitor's undertaking to respond to the Society was dated the 17th of March, 1992. The Solicitor's failure to reply to the Society is set out in paragraphs 13-17 of the Agreed Statement of Facts. Because of the proximity in time between the undertaking and the failure to reply to the Society the Committee was reluctant to accept the joint submission in the absence of some indication that the Solicitor was prepared to comply with the requirements of the Society. For that reason we adjourned the matter.

The matter was resumed on the 10th of September, 1992. The Solicitor had filed a reply to the Society at the time of the hearing in July. By September 10th, the Society had taken no steps to indicate that the Solicitor's reply was unsatisfactory. At the resumption of the hearing, the Solicitor indicated that his Forms 2/3 were completed and would be filed immediately after the Committee's hearing.

We had before us brief medical reports from Dr. Chong, a general practitioner, and Dr. Jordan, a psychiatrist, concerning the Solicitor. Both indicated that they had been assisting the Solicitor in regard to stress management. We were advised that the Solicitor had been accepted into the Practice Review Program. As well, letters of reference from three members of the Society were filed with us.

Based on this material, and the Solicitor's apparent compliance with the requirements of the Society, the Committee was, at this point, prepared to accept the joint submission placed before it. We are of the view that failure to comply with the Undertaking given to the Society warrants a penalty more serious than a Reprimand in Committee.

Norman Edward Joseph Roy was called to the Bar and admitted as a solicitor for the Supreme Court of Ontario on the 7th day of April, 1982.

ALL OF WHICH is respectfully submitted

DATED this 1st day of October, 1992

"Paul D. Copeland"
Chair

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

There were no submissions.

The Report was adopted.

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

There were brief submissions made by Mr. MacKenzie in support of the Recommendation.

The Recommendation as to Penalty was adopted.

22nd October, 1992

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

.....

Re: TIMOTHY JAMES HILBORN, Cambridge

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Ms. Kiteley and Mr. Lamek withdrew.

Ms. Christina Budweth appeared for the Society and Mr. Marrocco and Ms. Lynn Mahoney appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 11th May, 1992 together with an Affidavit of Service sworn 19th June, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 27th May, 1992 (marked Exhibit 1) together with Acknowledgment, Declaration and Consent signed by the solicitor 22nd October, 1992 (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

Phillip M. Epstein, Chair
Brendan O'Brien, Q.C.
Mrs. Netty Graham

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

Christina Budweth
for the Society

TIMOTHY JAMES HILBORN
of the City
of Cambridge
a barrister and solicitor

Frank Morracco and Lynn Mahoney
for the solicitor

Heard: November 19, 1991
April 8, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 22, 1991, Complaint D109/91 was issued against Timothy James Hilborn alleging that he was guilty of professional misconduct.

The matter was heard in public on November 19, 1991 and April 8, 1992 before this Committee composed of Phillip M. Epstein, Chair, Brendan O'Brien, Q.C. and Mrs. Netty Graham. Mr. Hilborn attended the hearing and was represented by Frank Morracco and Lynn Mahoney. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D109/91

- 2(a) The Solicitor prepared and delivered a letter containing information which he knew to be false and which he knew was likely to be relied on by others as evidence in a civil proceeding.

Evidence

The evidence before the Committee contained an Agreed Statement of Facts.

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D109/91 and is prepared to proceed with a hearing of this matter on November 19 and 20, 1991.

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 D109/91 and admits the particulars of the allegations of misconduct contained therein. The Solicitor admits that these particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor is a sole practitioner. He was called to the bar on April 11, 1979.

5. The Solicitor was retained by a Mr. Clarence Whetham and Mrs. Lillian Dearlove in 1985 to provide legal services in respect of the purchase of their matrimonial home, 3 Dudhope Avenue, Cambridge, Ontario. At the time of the purchase, the clients decided to take title to the property as tenants in common. The clients considered taking title as joint tenants but decided against doing so.

22nd October, 1992

6. Prior to Mr. Whetham's death, and during a period while he was confined to hospital, Mrs. Dearlove called the Solicitor and advised that, the couple had decided to transfer the property to a joint tenancy. Mrs. Dearlove requested that the Solicitor prepare the Deed.

7. Mrs. Dearlove attended at the Solicitor's office, the Solicitor explained the Deed and Mrs. Dearlove executed same. Mrs. Dearlove then took the Deed to the hospital for signature by her husband.

8. The subsequent Deed transferring title to 3 Dudhope Avenue to the clients as joint tenants was registered on August 3, 1990.

9. Mr. Whetham died on or about October 23, 1990.

10. After Mr. Whetham's death the executors of the estate, the niece and nephew of Mr. Whetham, questioned the validity of the Deed registered August 3, 1990.

11. Susan Fitzhenry, a solicitor in the office of Pearson, Flynn, solicitors for Mrs. Dearlove contacted Mr. Hilborn by telephone on or about November 7, 1990. In response to questions by Ms. Fitzhenry regarding the circumstances surrounding the execution of the Deed, Mr. Hilborn advised Ms. Fitzhenry that he had attended personally to witness Mr. Whetham's execution.

12. By letter dated December 7, 1990, Pearson, Flynn, requested a written opinion as to Mr. Whetham's capacity to execute the Deed, a copy of that correspondence is attached as Exhibit 1.

13. In response to the December 7 letter, the Solicitor prepared a letter dated January 15, 1991, attached as Exhibit 2. In that letter, the Solicitor confirmed that he had attended personally on Mr. Whetham at Cambridge Memorial Hospital and related the "particulars" of the alleged discussion between himself and Mr. Whetham.

14. The executors of the estate commenced an action against Mrs. Dearlove to set aside the Deed.

15. In the course of preparation for defense of the action, the Pearson, Flynn firm met with Mrs. Dearlove on April 18, 1991. During that meeting she advised her solicitors that the contents of the Solicitor's letter were false and that the Solicitor had not attended at the hospital to have the Deed executed.

16. On April 29, 1991, Les Protopapas of the Pearson, Flynn firm spoke to the Solicitor and confirmed that the Solicitor had not attended at the hospital to have the Deed executed.

17. By letter dated April 30, 1991, Mr. Protopapas requested a written explanation as to Mr. Hilborn's actions to which the Solicitor responded by letter dated May 3, 1991 a copy of which is attached as Exhibit 3.

18. In the May 3 letter the Solicitor stated that his actions were motivated by his concern for Mrs. Dearlove and premised on his belief that the transfer of the property to joint tenancy reflected the true wishes of Mr. Whetham.

DATED at Toronto this 19th day of November, 1991."

"SUPPLEMENTARY AGREED STATEMENT OF FACTS

1. The Solicitor was called to the Bar of Ontario in 1979.
2. The Solicitor is single and has no children.

22nd October, 1992

3. The Solicitor is a sole practitioner and has had an associate for the past four years. He has a general practice, including real estate, matrimonial and young offenders' criminal work.

4. The Solicitor has no previous discipline history.

5. Approximately one week prior to August 3, 1990, Mrs. Dearlove contacted the Solicitor and said she and her husband, Clarence Whetham, had decided to transfer ownership of their home from tenants in common to joint tenants. This did not surprise the Solicitor since he had at least two prior conversations with them with respect to this transfer. Mrs. Dearlove stated that Mr. Whetham was in the hospital and she did not expect him to come out since he had fallen and broken either his leg or hip. The Solicitor inquired about Mr. Whetham's mental condition and Mrs. Dearlove told him there was no problem. The Solicitor said to call back in one week and he would have the deed prepared.

6. Mrs. Dearlove called back on August 3 and came in to the Solicitor's office to sign the deed. The Solicitor would testify that he told Mrs. Dearlove he could go to the hospital to get Mr. Whetham to sign in a couple of days. The Solicitor also pointed out that since the deed did not require witnesses, she could take it to the hospital to get it signed. The Society would not offer any evidence to the contrary regarding this conversation. She decided to take the deed herself since she was going to the hospital. Mrs. Dearlove returned the executed deed to the Solicitor who later registered it.

7. Mr. Whetham died October 23, 1990.

8. On December 14, 1990, Susan Fitzhenry, solicitor for Mr. Whetham's niece and nephew, called the Solicitor. She advised that they wanted to know about the signing of the deed. She said they were concerned about Mr. Whetham's mental capacity. The Solicitor said that Mr. Whetham understood what he had signed. The Solicitor did not tell Ms. Fitzhenry that he was present when the deed was executed but left her wondering whether he was or not.

9. The Solicitor then received a letter from Mrs. Dearlove's solicitor, Mr. Protopapas, dated December 7, 1990. The Solicitor did not respond at first because he did not want to get involved. The Solicitor thought that there would be medical records available to attest to Mr. Whetham's mental capacity. Mr. Protopapas sent one follow-up letter to the Solicitor dated January 10, 1991, a copy of which is attached hereto and marked as exhibit "A" to this Supplementary Agreed Statement of Facts. The Solicitor responded by letter dated January 15, 1991.

10. Before sending the letter, the Solicitor called Mrs. Dearlove and asked her what was going on. Mrs. Dearlove stated that the niece and nephew were trying to set aside the deed. She got a bit agitated at this prospect. She vehemently insisted that Mr. Whetham knew exactly what he was signing because they discussed it. There had been to the Solicitor's personal knowledge at least 2 previous discussions with both clients concerning joint tenancy, however, the matter had not been pursued because Mr. Whetham and Mrs. Dearlove felt the niece and nephew would be upset if this was done. Because they had always been leaning towards joint tenancy, the Solicitor told Mrs. Dearlove that if it would be of assistance, he would say that he saw the deed signed. She responded "Bless you". The Solicitor then sent the letter referred to in the foregoing paragraph.

22nd October, 1992

11. David Grant, the new solicitor for Mr. Whetham's niece and nephew, had information from his clients that Mrs. Dearlove attended at the hospital on her own when Mr. Whetham executed the deed, information which was used by Mr. Grant as the basis for obtaining a certificate of Pending Litigation on the property. Upon receiving Mr. Grant's Statement of Claim and Certificate of Pending Litigation, Mr. Protopapas sent the Solicitor's January 15, 1991 letter to Mr. Grant on March 6, 1991. When Mr. Grant received a copy of the Solicitor's letter from Mr. Protopapas, he considered initially advising his clients to discontinue the action, however, he decided to continue because he had some evidence with which to question Mr. Whetham's capacity.

12. The Solicitor believes that he wrote this letter because he felt empathy for Mrs. Dearlove and the circumstances she was in. Furthermore, he felt that Mr. Whetham did want joint tenancy based on their previous discussions. The Solicitor also had no reason to doubt the mental capacity of Mr. Whetham on the date the deed was signed as he had been told by Mrs. Dearlove that Mr. Whetham was in the hospital with a broken leg or hip. Mrs. Dearlove also assured him of Mr. Whetham's capacity prior to the Solicitor sending the letter.

13. The Solicitor also believes that he wrote the letter because he got "wrapped up in a lie". The Solicitor never intended to give false evidence in the matter and would have refused to do so had he been asked. The Solicitor believed that Mr. Whetham's medical records would be available and would prove what his capacity was to execute a deed and that the matter would ultimately be settled.

14. The Solicitor heard nothing further about the matter until the end of April, 1991, when Protopapas contacted the Solicitor by phone to advise that Mrs. Dearlove admitted to him that the Solicitor was not present for the signing of the deed. The Solicitor admitted that he had not been there. The Solicitor then wrote the letter dated May 3, 1991 containing his admission and the facts as he knew them.

Dated at Toronto this 7th day of April, 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Timothy James Hilborn be Reprimanded in Convocation.

REASONS FOR RECOMMENDATION

In this serious matter, counsel for the Law Society has recommended a reprimand in Convocation. The Committee was initially troubled by that recommendation and gave serious consideration to a more serious penalty. After much consideration, the Committee accepts the recommendation of the Society's counsel and recommends that the solicitor be reprimanded in Convocation.

The Committee views the misconduct of the Solicitor as being serious. While we accept that the Solicitor was motivated by empathy for Mrs. Dearlove and the circumstances she was in, nothing could condone this type of misconduct no matter how sympathetic the circumstances. It is to be noted, however, that clearly the Solicitor did not do the act complained of out of any desire for personal gain. We note that the Solicitor has no previous discipline history and appears to have already suffered significantly from the pre-hearing publicity.

22nd October, 1992

We were impressed with the character evidence led by the Solicitor and the fact that the Solicitor took the initiative to seek counselling. We accept the evidence that it was out of character for the Solicitor to do what is complained of in this instance and that otherwise he has had an unblemished record. We accept the Solicitor's word that had the matter proceeded further than it did, he had no intention to commit perjury or mislead a tribunal. Nevertheless, the letter that he wrote could have had very serious consequences and, hence, the need for a substantial penalty. In the circumstances of this particular case, we think that a reprimand in Convocation will have the desired result, both with respect to the Solicitor and for the profession.

Timothy James Hilborn was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 11th day of April, 1979.

ALL OF WHICH is respectfully submitted

DATED this 11th day of May, 1992

"P. Epstein"
Chair

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

There were no submissions by either counsel and the Report was adopted.

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

There were brief submissions by both counsel in support of the Recommendation.

The Recommendation was adopted.

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

.....

Re: ADI MULLAN RAMAN, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. Lamek did not participate.

Mr. MacKenzie appeared for the Society and Mr. Peter Rosenthal appeared for the solicitor who was present.

22nd October, 1992

Convocation had before it the Report of the Discipline Committee dated 24th September, 1992, together with an Affidavit of Service sworn 10th October, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail on 1st October, 1992 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor on 22nd October, 1992 (marked Exhibit 2). The Acknowledgment was amended by adding the words "as at December 31st, 1992" to the end of the sentence in paragraph (e). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the DISCIPLINE COMMITTEE is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Michael G. Hickey, Q.C., Chair
J. James Wardlaw
K. Julaine Palmer

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

Gavin MacKenzie
for the Society

ADI MULLAN RAMAN
of the City
of Toronto
a barrister and solicitor

Peter Rosenthal
for the solicitor

Heard: October 30, 1990
November 22, 1990
January 24, 1991
March 28, 1991
September 11, 1991
January 23, 1992
May 28, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 3, 1990, Complaint D129/90 was issued against Adi Mullan Raman, alleging that he was guilty of professional misconduct.

The matter was heard in public on October 30, 1990, November 22, 1990, January 24, 1991, March 28, 1991, September 11, 1991, January 23, 1992 and May 28, 1992, before this Committee composed of Michael G. Hickey, Q.C., Chair, J. James Wardlaw, Q.C. and K. Julaine Palmer. The Solicitor appeared at the hearing and was represented by P. Rosenthal. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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

Complaint D129/90

2. a) he failed to co-operate in an investigation under s.18(1) of the Regulation under the Law Society Act with respect to trust accounts maintained by him;
- b) he failed to comply with s.15(2)(a) of the Regulation under the Law Society Act by not having his books, records and accounts posted during the period from in or about November 1, 1989 to in or about March 31, 1990;
- c) he breached his written undertaking to the Law Society dated November 1, 1989 to deliver to the Law Society monthly trust listings and reconciliations for the months of November and December, 1989 and the months of January to May, 1990;
- d) he failed to file with the Law Society Form 2/3's for his fiscal years ending December 31, 1986 and December 31, 1987 which had been signed by a licensed public accountant, and he breached an undertaking which he gave to the Law Society on November 1, 1989 to rectify that omission; (Regulation, S.16(2));
- e) he failed to file a Form 2/3 for his fiscal year ending December 31, 1988;
- f) he engaged in the practice of law at the following times when his rights and privileges were suspended for non-payment of annual fees and levies:

November 24, 1989 to February 5, 1990
February 24, 1990 to April 27, 1990
- g) he failed to pay an Errors and Omissions deductible of \$5,000.00 and accrued interest arising out of a claim made by his former client Ram Ramnarine.
- h) he failed to pay a \$14,092.55 loan owing to the Bank of Montreal and guaranteed by the Law Society of Upper Canada, that was in relation to Errors and Omissions deductibles owing to the Law Society, which resulted in the Law Society being required to honour the guarantee and pay the debt.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D129/90 and is prepared to proceed with a hearing of this matter on September 11, 1991.

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 D129/90 and admits the particulars contained therein.

IV. FACTS

Fail to Co-operate with Audit Investigation
Fail to Maintain Books and Records
Breach of Undertaking
Particulars 2(a), (b) & (c)

4. This Agreed Statement of Facts is submitted as the entirety of the evidence.

5. The Society commenced an audit of the Solicitor's books and records in July, 1989. At that time the following concerns were noted:

- (a) monthly trust listings were three months in arrears. They had been completed only to February 28, 1989 when they should have been completed to May 31, 1989;
- (b) there were overdrawn client trust ledger accounts totalling \$16,135.51 as of February 28, 1989. As at May 31, 1989, the overdrawn trust ledger accounts totalled \$16,720.01. These overdrawn client trust ledger accounts related to the Solicitor's law practice trust account #1141-11;
- (c) the Solicitor had been co-mingling his own funds with those of his clients in his account #534-110-2.

6. The Auditor assigned to the case, Margot Ferguson, wrote the Solicitor on September 28, 1989 requesting that he:

- (a) remove all personal funds from account #534-110-2. A similar problem had also been brought to the Solicitor's attention during an audit in December, 1985. The Solicitor had written the Auditor a letter in February, 1986 promising that he would cease depositing personal funds to a law practice trust account;
- (b) forward to the Auditor within two weeks, i.e., by October 15, 1989, his trust listing as at September 30, 1989;
- (c) ensure that there were no overdrawn client trust ledger accounts as at September 30, 1989.

The letter is at page 14 of the Application Record.

22nd October, 1992

7. The Solicitor did not provide the Auditor with the information requested in the September 28, 1989 letter. The Auditor and Counsel for the Society thought that the Solicitor would more likely co-operate promptly in the investigation if he were required to give the Discipline Committee an undertaking to that effect. Consequently, when the Solicitor requested an adjournment of an unrelated discipline hearing, Counsel for the Society consented on condition that the Solicitor give a written undertaking to co-operate in the Audit investigation. The Solicitor executed an Undertaking to the Discipline Committee on November 1, 1989 to do the following, inter alia:

- (a) to file with the Society for a period of one year his monthly trust listings and bank reconciliations no later than the twenty-first day following each month end;
- (b) to cooperate promptly and fully with any and all current and future Law Society inquiries or investigations;
- (c) to ensure that all books and records relating to his practice were maintained on a current basis;
- (d) to remove all personal funds from his law practice trust accounts;
- (e) to ensure that all books and records relating to his law practice were delivered to a public accountant licensed to practice in Ontario and to cooperate with the said accountant in preparing and filing his Form 2/3's for his 1986 and 1987 fiscal years. The Solicitor had submitted Form 2/3's for those years but they had been returned to him because the Form 3's were signed by someone who was not a licensed public accountant;
- (f) to pay, or to make arrangements with a financial institution for payment of, an outstanding Errors and Omissions Insurance deductible of \$5,000.00.

A copy of the Undertaking is at pages 33-36 of the Document Brief.

8. The Solicitor immediately breached the Undertaking by failing to send the Society his monthly trust listings and bank reconciliations for the months of November and December, 1989. Consequently, Ms. Ferguson resumed her investigation on January 30, 1990 to determine whether the Solicitor had complied with the Undertaking he executed on November 1, 1989.

9. The Solicitor's breach of his undertaking to deliver monthly trust listings and reconciliations resulted from:

- (a) the Solicitor's bookkeeper not having prepared these listings because of a dispute between the Solicitor and his bookkeeper as to payment of the bookkeeper's accounts since July 7, 1989;
- (b) the Solicitor not having retrieved his books and records from his bookkeeper's office and prepared the monthly trust listings and bank reconciliations himself.

10. The Solicitor delivered some books and records to Ms. Ferguson on or about February 5, 1990, but they constituted less than half of the records which Ms. Ferguson had requested. Consequently, Ms. Ferguson wrote the Solicitor on February 9, 1990 requesting delivery of the remaining records by February 14, 1990. Ms. Ferguson's February 9, 1990 letter to the Solicitor is at page 47 of the Document Brief.

22nd October, 1992

11. The Solicitor's rights and privileges were suspended on February 24, 1990 for non-payment of the annual fee. However, the Solicitor continued practicing.

12. The Solicitor failed to respond to Ms. Ferguson's letter dated February 9, 1990 and another letter from the Audit Department was sent to him by both registered mail and by courier on March 9, 1990.

13. The Solicitor then wrote his bookkeeper, Jerome Roberts. Mr. Roberts responded to the Solicitor by a letter dated March 23, 1990 which stated in part:

" In response to your letter dated March 22, 1990 and further to our discussion of the same date I have repeatedly requested that you retrieve your records from our office.

In keeping with our records you are in arrears since July 7, 1989.

[The letter then states that accounts totalling \$15,200.00 were submitted to Mr. Raman for the period from January 1, 1987 to November 30, 1989, and that Mr. Raman still owes \$2,200.00 of that amount.]

As you are aware the fees billed on this account are outstanding for 22 weeks prior to November 30, 1989. We intend to provide no further service to you and have repeatedly requested that you retrieve your records.

This is still another plea for you to collect your records at your earliest convenience."

The Solicitor responded in a letter of March 23, 1990, which stated in part:

"You know that you had never sent me any bills nor had ever mentioned it for the simple reason it was agreed that you would complete the returns for 1987, 1988, and 1989 for \$13,000."

14. The Solicitor continued practising after his rights and privileges were suspended on February 24, 1990. When the Solicitor failed to have himself reinstated by March 15, 1990, one of the Society's Staff Trustees, David McKillop, telephoned him and reminded him that he had been suspended for non-payment of the annual fee. The Solicitor claimed no knowledge of the suspension but promised to send a cheque out that day to cover his annual fees. He failed to do so, and Mr. McKillop telephoned him again on March 26 and March 29, 1990. On the latter occasion, the Solicitor promised to personally deliver a cheque to the Law Society's offices the following day, March 31, 1990.

15. As the cheque still had not been delivered, on April 5, 1990 Mr. McKillop obtained an ex parte order from the Supreme Court of Ontario under s. 43 of the Law Society Act appointing him as Trustee of the Solicitor's law practice. This was done because, in the Society's view, it was desirable in order to protect the interests of the Solicitor's clients. The Solicitor was served with the order on the following day. The Trusteeship Order is at page 57 of the Document Brief.

16. When Mr. McKillop served the Trusteeship Order on the Solicitor on April 6, 1991, the Solicitor gave Mr. McKillop a cheque drawn on the Solicitor's account #534-110-2 to cover the outstanding annual fees. Mr. McKillop then investigated whether the cheque could be negotiated because it was drawn on an account which was frozen by the Trusteeship Order.

22nd October, 1992

17. Mr. McKillop informed the Solicitor on April 24, 1990 that his cheque could not be accepted because until the Solicitor had submitted the books and records requested the Audit Department could not determine who was entitled to the funds in Mr. Raman's account #534-110-2. The Solicitor then paid his annual fee on April 27, 1990, and his rights and privileges were then immediately reinstated.

18. The Solicitor's rights and privileges were suspended for 4½ of the five months between November 24, 1989 and April 27, 1990. He continued practising throughout that period.

19. To enable the investigation of the Solicitor's books and records to be continued, Mr. McKillop took possession on April 24, 1990 of whatever books and records remained at the Solicitor's office. They were only a portion of the Solicitor's books and records -- the remainder were still at the Solicitor's bookkeeper's office, despite the letter which the Solicitor's bookkeeper, Mr. Roberts, sent to the Solicitor on March 23, 1990 requesting that the Solicitor retrieve all his records.

20. On May 8, 1990, approximately ten days later after the Solicitor had his rights and privileges reinstated, he picked up the books and records which Mr. McKillop had gathered from the Solicitor's office on April 24, 1990. The Solicitor promised Mr. McKillop that he would deliver those books and records to his Chartered Account, Gitu Parikh. Later, on June 18, 1990, the Solicitor retrieved the remaining books and records from the office of his bookkeeper, Mr. Roberts, and he then delivered those remaining books and records to Mr. Parikh the following day.

21. Notwithstanding the delivery of those books and records, Mr. Parikh informed the Solicitor and the Law Society by letter dated August 14, 1990, that the Solicitor's books and records for 1989 were still incomplete, in that bank reconciliations for four months of that year and trust account balances for three months of that year were not included in the material which the Solicitor delivered to Mr. Parikh. A copy of Mr. Parikh's August 14, 1990 letter is at page 61 of the Document Brief. The Solicitor says that his bookkeeper is responsible for the incompleteness of the books and records in that he failed to compute the bank reconciliations.

22. There was no reference in Mr. Parikh's August 14, 1990 letter to the Solicitor's books and records for the period from January 1, 1990 to April 5, 1990.

23. Complaint D129/90 was served on the Solicitor during the first week of August, 1990. It alleged that the Solicitor had failed to maintain his books and records in accordance with section 15 of the Regulation under the Law Society Act and in accordance with his undertaking to the Discipline Committee dated November 1, 1989 by failing to:

- (a) post his books, records and accounts posted between November 1, 1989 and March 31, 1990;
- (b) deliver to the Law Society monthly trust listings and reconciliations from November, 1989 to and including May, 1990;
- (c) file properly completed Form 2/3's for 1986, 1987 and 1988.
- (d) complaint D129/90 also alleged that the Solicitor had failed to repay an Errors & Omissions guaranteed loan of \$14,092.55, as well as an E. & O. deductible of \$5,000.00. It also alleged that the Solicitor practiced for two separate periods totalling 4½ months while under suspension.

22nd October, 1992

24. Following issuance of Complaint D129/90, Ms. Ferguson asked Mr. Parikh to send her the Solicitor's books and records because Mr. Parikh was not working on them anyway. Mr. Parikh did so on August 14, 1990.

25. The Solicitor took no steps to complete the remaining reconciliations and trust account balances since he assumed that Ms. Ferguson's request for them in August, 1990 constituted a "seizure" of his books and records, and that he would not be able to continue working on them until Ms. Ferguson was ready to return them to him. He informed the Society of this assumption by letter dated August 16, 1990, but that letter did not come to Ms. Ferguson's attention until October 29, 1990 because of Law Society staff error. The Solicitor's August 16, 1990 letter is at page 77 of the Document Brief.

26. As soon as Ms. Ferguson learned that the Solicitor had assumed that he could not bring his books and records up to date until the Law Society released them, she arranged to have the Solicitor's books and records returned to him immediately. That was done on November 1, 1990.

27. The Solicitor picked up his books and records from the Society on November 1, 1990 in order to have his 1989 Form 2/3 prepared.

28. Complaint D129/90 was originally scheduled to be heard on October 10, 1990, but it was adjourned at that time to enable the parties hereto to endeavour to negotiate a joint submission as to misconduct and penalty.

29. Between October, 1990 and March, 1991, the parties hereto conferred with a panel of the Discipline Committee under Convocation's guidelines for negotiated resolutions of discipline matters. In accordance with the practice of the Society, it is agreed by the parties hereto that the matters discussed before that panel should remain confidential and should not be put before the Committee hearing this matter. The meetings are referred to simply to explain the hiatus between October, 1990 and the date of this hearing.

30. Following issuance of Complaint D129/90, the Solicitor rectified some of the deficiencies referred to above.

Purpose of the Investigation

31. The Auditor feels that the investigation is necessary in order to determine:

- (a) why and when the shortages noted in February, 1989 arose;
- (b) whether there were any other shortages;
- (c) the extent to which the Solicitor co-mingled his personal funds with trust funds, and whether he did so to defeat an execution by Revenue Canada for tax arrears, or to defeat other creditors;
- (d) who is entitled to the \$126,741.30 remaining in his two trust accounts. These funds have been sitting in the accounts since April 5, 1990. The Society cannot release them until the Solicitor completes and produces books and records for 1990 to show who is entitled to them. Three clients have submitted claims to the Society totalling \$117,736.40. One of the clients says that he has suffered considerable financial hardship because of the delay.

22nd October, 1992

Form 2/3's
Particulars 2(d) & (e)
Fiscal Year Ending December 31, 1986

32. The Solicitor submitted his Form 2/3 for his fiscal year ending December 31, 1986 during the month of November, 1987. It was then almost three months late, but the Society had agreed to that extension.

33. The Form 2/3 was returned to the Solicitor by a letter dated November 25, 1987 which requested that he provide certain information missing from the Form 3 (Accountant's Report). The letter is at page 6 of the Document Brief.

34. The Solicitor returned the Form 2/3 to the Society in November, 1988 after the Society had written six follow-up letters requesting it. The letters are at pages 13 to 17 and page 21 of the Document Brief.

35. However, the Form 2/3 was again returned to the Solicitor by letter dated November 29, 1988 because the Form 3 had been completed by a person who is not a licensed public accountant in Ontario. The accompanying letter asked the Solicitor to retain a licensed public accountant immediately to inspect the Solicitor's books and records and to complete the Form 3. The letter is at page 22 of the Document Brief.

36. The Society's Auditors wrote three follow-up letters to the Solicitor requesting that the Form 3 be properly completed and filed, but the Solicitor did not respond to any of the letters. The Solicitor says that he referred the letters to his accountant. The letters are at pages 25, 27 and 29 of the Document Brief.

37. The Solicitor was reprimanded in Committee for this and other misconduct on February 7, 1990.

38. The Solicitor eventually filed the Form 2/3 for this period on November 22, 1990 after the hearing for Complaint D129/90 had been scheduled. However, the Audit Department wrote the Solicitor a letter on November 25, 1987 requesting additional information with respect to that Form 2/3. The Solicitor failed to reply to that letter, and to follow-up letters dated February 25, 1988, March 25, 1988, April 26, 1988, May 25, 1988, August 25, 1988, October 26, 1988, November 29, 1988, February 24, 1989 and March 31, 1989.

Fiscal Year Ending December 31, 1987

39. The Solicitor submitted his Form 2/3 for his fiscal year ending December 31, 1987 in September, 1988, approximately two months late. It was returned to him by letter dated September 30, 1988 because it had been completed by someone who was not a licensed public accountant in Ontario. The letter is at page 19 of the Document Brief.

40. The Society's Auditors wrote four follow-up letters to the Solicitor requesting that the Form 3 be properly completed and filed, but the Solicitor did not respond to any of the letters. The Solicitor says he referred the letters to his accountant. The letters are at pages 24, 24, 26, 28 and 30 of the Document Brief.

41. The Form 3 has still not been filed.

42. The Solicitor was reprimanded in Committee for this and other misconduct on February 7, 1990.

Breach of Undertaking

43. As was indicated in paragraph 7 on page 3 above, the Solicitor executed a written undertaking to the Discipline Committee on November 1, 1989 to ensure that all books and records relating to his law practice were delivered to a public accountant licensed to practice in Ontario and to cooperate with the said accountant in preparing and filing his Form 2/3's for his 1986 and 1987 fiscal years.

44. The Solicitor delivered his books and records to his accountant, Mr. Parikh on or about June 19, 1990 for the purpose of having Mr. Parikh complete the Form 3's for 1986 and 1987. However, as noted above, some of the information required by Mr. Parikh was not provided, and consequently, the Form 3 for 1987 has still not yet been filed.

45. The remaining information required by Mr. Parikh is not missing. The remaining information can be computed from books and records which have been completed.

Fiscal Year Ending December 31, 1988

46. This Form 2/3 was due June 30, 1989. It was eventually filed on January 24, 1991, after the hearing for Complaint D129/90 had been scheduled. However, the Audit Department wrote the Solicitor on November 27, 1990 requesting additional information about that Form 2/3, but the Solicitor did not respond to that letter or to follow-up letters from the Audit Department dated December 27, 1990, January 28, February 27 and March 27, 1991. The Solicitor says that he referred these letters to his bookkeeper.

Practising Under Suspension
Particular 2(f)

47. The Solicitor's rights and privileges as a member were suspended for approximately 4½ of the 5 months from November 24, 1989 to April 27, 1990 on account of his failure to pay fees and levies owing to the Society. The Solicitor continuously practised throughout the period he was suspended.

48. The suspensions were for the following reasons: from November 24, 1989 to February 5, 1989 for failure to pay the Errors & Omissions levy; approximately 2½ weeks after he paid that levy and was reinstated, he was suspended again on February 24, 1990, for failure to pay the annual membership fee. He remained suspended for that reason for approximately the next three months until April 27, 1990.

49. The Solicitor was duly notified of each suspension. In addition to the customary notices sent by the Secretary, the Society sent letters and the Solicitor received telephone calls from Staff Trustee David McKillop informing the Solicitor that he was practising while under suspension. The letters are at pages 38 and 42 of the Application Record. From April 13 to April 30, 1990, the Solicitor's office was closed due to a rent dispute with his landlord. The lock on his office door was changed and the Solicitor did not have access to all of his mail, though certain correspondence was provided to him by Mr. McKillop.

50. Mr. McKillop became concerned when a month or so passed after the suspension on February 24, 1990 without the Solicitor reinstating himself. In order to ensure that the Solicitor's clients' interests were protected, the Mr. McKillop obtained an ex parte Court Order on April 5, 1990 appointing him the Trustee of the Solicitor's law practice. The Solicitor became reinstated approximately three weeks later.

22nd October, 1992

51. The Solicitor was suspended for the same reasons for eight brief periods in the three years between December, 1986 and November 24, 1989 when the two suspensions referred to in paragraph 47 on page 16 herein commenced.

Failure to Pay E. & O. Deductible
Particular 2 (g)

52. The Society's Errors and Omissions Fund paid a claim against the Solicitor brought by a former client, Ram Ramnarine. The Solicitor owed the E. & O. fund his deductible of \$5,000.00 plus interest of \$2.05 per day since March 24, 1989.

53. The Solicitor was reprimanded in Committee for this and other matters on February 7, 1990.

54. When the Solicitor was reprimanded in Committee for this matter, he was endeavouring to make arrangements with the Society's Department of Finance for it to guarantee a bank loan to enable him to repay the deductible. The Solicitor was awaiting information from the Finance Department but it was not provided. At this stage, no reliable information can be obtained as to why the Solicitor did not receive a reply from the Finance Department. It can, however, be said that the Solicitor likely would not have qualified for a guarantee from the Society because he had already defaulted on a previous loan for deductibles and the Society was called upon to honour its guarantee to repay that loan. The circumstances of that loan are summarized in paragraph 55 below. The circumstances under which the Solicitor eventually repaid the deductible and the loan are summarized in paragraph 56 below.

Failure to Pay E. & O. Loan
Particular 2(h)

55. The Solicitor made arrangements with the Bank of Montreal in 1988 to borrow \$14,092.55 in order to pay four E. & O. deductibles totalling that amount. The Errors & Omissions Department guaranteed repayment of the loan in accordance with its standard practice. The Solicitor defaulted on the loan later in 1988 and the Society was called on to honour its guarantee. The E. & O. Fund then repaid the loan, with interest and legal costs.

56. The Solicitor repaid the E. & O. loan and the deductible referred to in paragraphs 54 and 55 above on November 19, 1990, after Complaint D129/90 had been scheduled for hearing.

V. JOINT SUBMISSION AS TO PENALTY

57. In consideration of the Solicitor admitting the allegations of misconduct in Complaint D129/90 and in consideration of his signing the Agreed Statement of Facts herein, the parties have jointly agreed to request that the committee recommend that Convocation order as follows:

- (a) That the Solicitor be reprimanded in Convocation.
- (b) That the Solicitor pay costs in the amount of \$5,000.
- (c) That Convocation accept the following undertaking from the Solicitor:

22nd October, 1992

That he rectify the deficiencies in his books and records as identified in the memorandum dated March 27, 1991, and attached as Appendix "B" to this agreed statement of facts, by no later than November 30, 1991, except to the extent it is not possible for him to do so, in which case he shall provide the Society by November 30, 1991, with an explanation as to why it is not possible for him to do so.

DATED at Toronto this 11th day of September, 1991."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Adi Mullan Raman be granted permission to resign, such resignation to commence on the 31st day of December, 1992.

REASONS FOR RECOMMENDATION

When the complaint came before this Committee on the 11th of September, 1991, with the Agreed Statement of Facts, there was a finding of professional misconduct and a joint submission which called for, among other things, an Undertaking from the Solicitor to rectify the deficiencies in his books and records to the extent that it was possible to do so by November 30th, 1991. The Committee was then of the view that rather than have the Solicitor give an Undertaking it would be preferable to adjourn the matter until after November 30th, 1991 to give the Solicitor an opportunity to satisfy the matters which were delinquent. When the hearing resumed on the 23rd of January, 1992, the Committee heard viva voce evidence that the Solicitor's books and records were still not up to date. The matter was adjourned once again to May 28th, 1992 when a new joint submission as to penalty was submitted to the Committee that the Solicitor be given permission to resign effective December 31st, 1992 which would enable him to complete his Undertakings with respect to his books and records.

There was no evidence before the Committee that the Solicitor misappropriated any of his client's funds for his own use or benefit or was guilty of any dishonesty. Rather, this is a case of extreme dereliction in the maintenance of his books and records and the inability of the Solicitor to make satisfactory arrangements to have his books and records brought up to date and to provide trust account listings and reconciliations as required by the Society's auditors.

The Solicitor is 67 years of age and wishes to retire in any event and the Committee was of the view that the public interest would best be served if the Solicitor withdrew from the profession. The Solicitor has co-operated with the Society in turning over his books and records to help resolve the outstanding matters.

For these reasons the Committee accepted the joint submission permitting the Solicitor to resign effective on the 31st day of December, 1992.

22nd October, 1992

Adi Mullan Raman was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 22nd day of March, 1968.

ALL OF WHICH is respectfully submitted

DATED this 24th day of September, 1992

"M. Hickey"
Chair

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

Carried

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

There were no submissions.

The Recommendation was adopted.

Counsel and the solicitor retired.

.....

Re: ARTHUR CHUNG, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Messrs. Copeland, Hill and Topp did not participate.

Ms. Christina Budweth appeared for the Society and the solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 28th September, 1992 together with an Affidavit of Service sworn 10th October, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail on 1st October, 1992 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor on 22nd October, 1992 (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

Paul Copeland, Chair
K. Julaine Palmer
S. Casey Hill

22nd October, 1992

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

Christina Budweth
for the Society

ARTHUR CHUNG
of the City
of Toronto
a barrister and solicitor

Michel Bouchard
for the solicitor

Heard: August 25, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 1, 1992, Complaint D56/92 was issued against Arthur Chung alleging that he was guilty of professional misconduct.

The matter was heard in public on August 25, 1992, before this Committee composed of Paul Copeland, Chair, K. Julaine Palmer and S. Casey Hill. Mr. Chung attended the hearing and was represented by Michel Bouchard. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D56/92

2. a) he failed to honour his undertaking dated December 1, 1988 given to Greg McConnell to pay Mr. McConnell's fees as determined by an assessing officer of the Supreme Court of Ontario;
- b) he personally guaranteed mortgage #C604608 for which his client, Te Hung Chung, was the mortgagor, contrary to the provisions of Rule 23;
- c) he failed to reply to the Law Society regarding a complaint by Shoppers Trust Company despite letters dated December 19, 1991 and February 13, 1992;
- d) he failed to honour his undertaking dated April 10, 1991 given to Shoppers Trust Company, mortgagee, to provide a statutory declaration by the vendors regarding a survey of a property known municipally as 42 Big Red Avenue, Toronto;
- e) he failed to reply to the Law Society regarding a complaint by Joseph B. Pollock despite letters dated October 18, 1991 and January 9, 1992 and telephone messages left on December 10, 1991, December 12, 1991 and January 16, 1992;

22nd October, 1992

- f) he failed to honour his undertaking dated December 21, 1989, to Duc Kien Quach and Joseph B. Pollock to discharge three mortgages, which undertaking was given to facilitate the closing of the sale of property municipally known as 1E Badgerow Avenue, Toronto;
- g) he failed to comply with his undertaking dated September 13, 1990 to the Law Society by his failure to respond to written communications from the Law Society within one week of receipt and to respond to telephone communications from the Law Society within two business days, regarding the ongoing investigations of complaints by Shoppers Trust Company and Joseph B. Pollock.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

- 1. The Solicitor admits service of Complaint D56/92 and is prepared to proceed with a hearing of this matter on July 14, 1992.

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 D56/92 and admits the particulars contained therein. The Solicitor also admits that the particulars in the complaint together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

- 4. The Solicitor was called to the Bar on April 6, 1983. He practices as a sole practitioner in the City of Toronto.

Particular 2a) - He failed to honour an undertaking to Greg McConnell

- 5. The Solicitor provided Greg McConnell, a solicitor, with an undertaking, dated December 1, 1988, to facilitate the transfer of Mr. Te Hung Chung's (Peter Chung) file from Mr. McConnell to the Solicitor. The Solicitor's undertaking given in his letter dated December 1, 1988, stated:

My office undertake (sic) with personal liability to pay your fees determined by an assessing officer of the Supreme Court of Ontario. We have been instructed to arrange for such an assessment as soon as possible....

A Copy of the Solicitor's December 1 letter is attached as Exhibit "A" to this Agreed Statement of Facts.

- 6. Mr. McConnell's account was assessed on March 21, 1990 by Master Sedgwick.

22nd October, 1992

7. By letter dated April 5, 1990, Mr. McConnell forwarded to the Solicitor a copy of Master Sedgwick's Certificate of Assessment which indicated the total amount due of \$10,647.30. A copy of the Certificate of Assessment is attached as Exhibit "B" to this Agreed Statement of Facts.

8. By letter dated April 24, 1990, Mr. McConnell forwarded to the Solicitor a copy of the documents received or generated during the course of his retainer, although his account, as assessed, had not been paid.

9. Mr. McConnell issued a Writ of Seizure and Sale against Peter Chung on June 6, 1990.

10. By letter dated June 11, 1990, Mr. McConnell forwarded to the Solicitor a copy of the Writ of Seizure and Sale and requested the Solicitor comply with his undertaking.

11. By letters dated July 26, 1990 and November 12, 1990, Mr. McConnell advised the Solicitor that he had taken steps to enforce the judgment.

12. By letter dated April 30, 1991, Mr. McConnell demanded the Solicitor forward payment for the amount of judgment plus interest, as his attempts to collect from Mr. Peter Chung had been unsuccessful. A copy of Mr. McConnell's April 30 letter is attached as Exhibit "C" to this Agreed Statement of Facts.

13. By letter dated May 17, 1991, Mr. McConnell advised the Law Society of his unsuccessful attempts to have the Solicitor satisfy his undertaking.

14. By letter dated June 5, 1991, the Law Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to provide his comments to the same within fourteen days.

15. By letter dated July 24, 1991 the Solicitor advised the Law Society that his undertaking dated December 1, 1988 was "unfortunate in its wording". The Solicitor stated that his client had planned to sell the former matrimonial home in order to pay Mr. McConnell's fees; however, the property had not been sold and was still on the market. The Solicitor advised that he was making arrangements with his client to pay the debt and hoped to be able to advise Mr. McConnell's office of the same very shortly. A copy of the Solicitor's July 24 letter is attached as Exhibit "D" to this Agreed Statement of Facts.

16. By letter dated May 2, 1992, the Solicitor advised the Law Society that he had on April 30, 1992 forwarded to Mr. McConnell a bank draft in the sum of \$3,500.00 in payment of the outstanding account.

17. By letter dated May 4, 1992, Mr. McConnell advised the Solicitor that he would accept \$1,750.00 in full settlement of the accounts provided that payment was received on or before May 15, 1992.

18. It appears that the letters referred to in paragraphs 17 and 18 above "crossed" in the mail.

19. By letter dated May 6, 1992, the Solicitor requested that Mr. McConnell forward to him the statement of account and the acknowledgement of receipt by facsimile transmission that day. Upon receipt of the same, the Solicitor would deliver to Mr. McConnell, within two banking days, and upon verification of the balance, a bank draft in the amount of \$1,750.00.

22nd October, 1992

20. Mr. McConnell's account was paid in full on May 12, 1992.

Particular 2b) - He personally guaranteed a mortgage for a client

21. A Charge registered against property municipally known as Lot 106, Plan M-871, Parcel 106-1, Section M-1871 of the City of Scarborough, in the Municipality of Toronto, on October 23, 1989 indicated as an Additional Provision the following:

The repayment of interest and principal of the subject mortgage is personally and irrevocably guaranteed by Arthur K. Chung, Barrister and Solicitor, of 63 Elm Street, Toronto, Ontario, M5G 1.2.(sic)

A copy of registered Charge is attached as Exhibit "E" to this Agreed Statement of Facts.

22. The Solicitor has advised the Law Society that he did not realize that a solicitor was not to guarantee a mortgage or other instrument securing indebtedness on behalf of his client.

23. The Discharge of Instrument number C604408 was registered on April 30, 1992 as Instrument C772196, shortly after the formal complaint in this matter was served.

Particular 2c) - Failure to Reply to the Law Society
regarding a complaint by Shoppers Trust Company

Particular 2d) - Failure to honour an undertaking to Shoppers Trust Company.

24. In order to facilitate the closing of real property, known municipally as 42 Big Red Avenue, Scarborough, Ontario, the Solicitor provided his client, Shoppers Trust Company, with a personal undertaking dated April 10, 1991 to:

...produce a Statutory Declaration by the Vendors of teh (sic) above noted property attesting to the fact that no additions or deletions have been made to the subject property since they too (sic) possession of same in 1975; and to provide insurance details on the subject property within two days of closing.

A copy of the Solicitor's April 10 undertaking is attached as Exhibit "F" to this Agreed Statement of Facts.

25. By letter dated May 25, 1991, the Solicitor forwarded to Michael Semple of the law firm Semple, Jones, who had acted on behalf of the vendor, a Statutory Declaration. The Solicitor requested that the firm have their client execute the Declaration and return it to the Solicitor as soon as possible. A copy of the Solicitor's May 25 letter is attached as Exhibit "G" to this Agreed Statement of Facts.

26. By letter dated June 11, 1991, Shoppers Trust Company complained to the Law Society that the Solicitor's undertaking had not been satisfied despite several unsuccessful attempts to obtain the Solicitor's compliance.

27. A Law Society staff employee left telephone messages at the Solicitor's office on June 19, 1991 and June 25, 1991 requesting the Solicitor return the calls. The calls were not returned.

22nd October, 1992

28. By letter dated July 12, 1991, the Solicitor referred Mr. Michael Semple of the law firm Semple, Jones to his letter dated May 25, 1991. The Solicitor requested Mr. Semple have his clients execute the Declaration and return the same to his office as soon as possible. A copy of the Solicitor's July 12 letter is attached as Exhibit "H" to this Agreed Statement of Facts.

29. By facsimile transmission dated July 12, 1991, the Law Society received from the Solicitor's office, a copy of two letters written to Michael Semple of the firm Semple, Jones, dated May 25, 1991 and July 12, 1991.

30. By letter dated July 30, 1991, the Law Society requested the Solicitor confirm with the Society once the Statutory Declaration had been received and forwarded to Shoppers Trust Company. No reply was received.

31. Shoppers Trust advised the Law Society by telephone on September 9, 1991 that a Statutory Declaration had not been received.

32. By letter dated September 17, 1991, the Law Society requested the Solicitor advise it of the progress which had been made in obtaining the Statutory Declaration. The Solicitor was requested to respond within two weeks. No reply was received.

A copy of the Law Society's September 17 letter is attached as Exhibit "I" to this Agreed Statement of Facts.

33. A Law Society staff employee left telephone messages for the Solicitor at his office on November 19, 1991 and November 26, 1991 requesting the Solicitor return the calls. The calls were not returned.

34. By registered mail dated November 28, 1991, the Law Society reminded the Solicitor of his obligation to comply with his undertaking pursuant to Rule 14. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee.

35. By letter dated December 5, 1991, the Solicitor advised the Law Society that to date, he had not been successful in having the Declaration executed. The Solicitor further advised the Law Society that should he be unable to locate the vendor within two weeks or so, he would be prepared to assist Shoppers Trust in getting a survey completed for the property.

36. By letter dated December 19, 1991, the Law Society requested the Solicitor advise of his progress in locating the vendors. No reply was received.

37. By registered mail dated February 13, 1992, the Law Society requested the Solicitor comply with his outstanding undertaking. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. No reply was received.

38. By letter dated March 16, 1992, the Solicitor advised the Law Society that he had delivered that same day, to Shoppers Trust a copy the survey regarding the property in question.

39. The Solicitor has had nor further contact with Shoppers Trust and has not complied with his undertaking. Shoppers Trust is now in receivership.

Particular 2e) - he failed to reply to the Law Society regarding a complaint Joseph B. Pollock

Particular 2f) - he failed to honour his undertaking dated December 21, 1989 to Duc Kien Quach and Joseph B. Pollock

22nd October, 1992

40. The Solicitor, while acting on behalf of the vendor, provided Duc Kien Quach, the purchaser, and Joseph B. Pollack, Mr. Quach's solicitor, with an undertaking on December 21, 1989, given to facilitate the closing of real property municipally known as 1E Badgerow Avenue, Toronto. The Solicitor's personal undertaking stated:

...to register a discharge of the following mortgages registered against title and to advise you of discharge particulars within thirty days of closing.

1. Instrument Number 761090 Charge in favour of the Toronto-Dominion Bank in the principal sum of \$60,000.00.
2. Instrument Number CA12209, a Charge in favour of the Toronto-Dominion Bank in the principal sum of \$317,000.00.
3. Instrument Number CA22427, a Charge in favour of Central Guaranty Trust Company in the principal sum of \$142,000.00.

A copy of the Solicitor's December 21 undertaking is attached as Exhibit "J" to this Agreed Statement of Facts.

41. Mr. Pollack wrote to the Solicitor by letter dated May 30, 1990, and requested the Solicitor provide him with the particulars of Discharges forthwith. No reply was received.

42. By letter dated July 20, 1990, Mr. Pollock requested the Solicitor provide him with the Discharge particulars. No reply was received.

43. By letter dated August 2, 1990, Mr. Pollock advised the Solicitor that should he not receive a reply to his July 20 letter, the matter would be referred to the Law Society. No reply was received.

44. By letter dated October 2, 1990, Mr. Pollock requested the Solicitor provide him with the Discharge particulars of Instrument Numbers 761090 and CA12209. No reply was received.

45. By letter dated November 12, 1990, Mr. Pollock advised the Solicitor that should he not provide him with the Discharge particulars of Instrument Numbers 761090 and CA12209 within one week the matter would be referred to the Law Society.

46. By letter dated April 16, 1991, the Solicitor provided Mr. Pollock with a copy of the discharge of instrument number CA22427.

47. By letter dated April 18, 1991, Mr. Pollock advised the Solicitor that the Discharge enclosed with his April 16 letter, was not the correct one. Mr. Pollock requested that the Solicitor advise him of the Discharge particulars of Instrument Numbers 761090 and CA12209 immediately. No reply was received.

48. By letter dated January 10, 1991, Mr. Pollock advised the Law Society of the above noted unsuccessful attempts to obtain a response from the Solicitor regarding his undertaking dated December 21, 1989.

49. By letter dated January 24, 1991, the Law Society forwarded to the Solicitor a copy of the letter of complaint, with enclosure, and requested the Solicitor provide his written comments to the same within two weeks. No reply was received. A copy of the Society's January 24 letter is attached as Exhibit "K" to this Agreed Statement of Facts.

22nd October, 1992

50. A Law Society staff employee left telephone messages for the Solicitor at his office on February 6, 1991, February 13, 1991 and February 15, 1991 requesting that he return the calls. The calls were not returned.

51. By registered mail dated February 21, 1991, the Law Society reminded the Solicitor of his obligation to reply pursuant to Rule 13. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. A copy of the Society's February 21 letter is attached as Exhibit "L" to this Agreed Statement of Facts.

52. By facsimile transmission on February 25, 1991, the Solicitor advised the Law Society that both the mortgages in question had been paid in full. He stated that the Land Registry office had destroyed some of the mortgage discharges, which the Solicitor indicates was their normal practice. The Solicitor stated that he, therefore, had written to the mortgagee, (the Toronto Dominion Bank) requesting it confirm the repayment. The Solicitor further advised that he anticipated receiving the confirmation in the near future and would then be in a position to satisfy the complaint. A copy of the Solicitor's facsimile transmission on February 25, is attached as Exhibit "M" to this Agreed Statement of Facts.

53. By letter dated March 12, 1991, Mr. Pollock advised the Law Society that the Solicitor had not provided discharge particulars regarding Instruments No. 761090 and CA 12209. A copy of Mr. Pollock's March 12 letter is attached as Exhibit "N" to this Agreed Statement of Facts.

54. By letter dated April 8, 1991, the Law Society requested the Solicitor provide confirmation that he had complied with his December 2 undertaking. The solicitor was reminded of his obligation pursuant to Rule 14.

55. Under cover of letter dated April 16, 1991, the Solicitor provided Mr. Pollock with a copy of the Discharge of Charge regarding Charge No. CA22427.

56. By letter dated April 26, 1991, the Law Society requested the Solicitor confirm with the Society once this matter had been resolved. No reply was received. A copy of the Society's April 26 letter is attached as Exhibit "O" to this Agreed Statement of Facts.

57. A Law Society staff employee left a telephone message for the Solicitor at his office on July 30, 1991 requesting that he return the call. The call was not returned.

58. By letter dated August 27, 1991, the Law Society requested the Solicitor advise of the status of the two outstanding discharges within two weeks. No reply was received. A copy of the Society's August 27 letter is attached as Exhibit "P" to this Agreed Statement of Facts.

59. A Law Society staff employee spoke with the Solicitor by telephone on October 7, 1991. The Solicitor advised that he would send his response the next day by facsimile transmission.

60. By letter dated October 11, 1991, the Solicitor advised the Law Society that he had forwarded two discharges to the Toronto-Dominion Bank for execution. The Solicitor advised that he expected to be in receipt of the executed discharges within the next week or so and upon receipt, he would advise the Law Society forthwith. A copy of the Solicitor's October 11 letter is attached as Exhibit "Q" to this Agreed Statement of Facts.

61. By letter dated October 18, 1991, the Law Society requested the Solicitor confirm that the discharges had been registered. No reply was received.

22nd October, 1992

62. A Law Society staff employee left telephone messages for the Solicitor at his office on December 10, 1991 and December 12, 1991 requesting he return the calls. The calls were not returned.

63. By registered letter dated January 9, 1992, the Law Society reminded the Solicitor of his obligation to comply with his undertaking, pursuant to Rule 14. The Solicitor was advised that should a reply not be received within seven days, the matter could be referred to the Discipline Committee. A copy of the Society's January 9 letter is attached as Exhibit "R" to this Agreed Statement of Facts.

64. Tracey, a employee of the Solicitor's office advised the Law Society by telephone on January 16, 1991 that the Solicitor would be calling the Society that afternoon. No call was received from the Solicitor.

65. By letter dated March 19, 1992, the Solicitor provided the Law Society with a copy of his letter dated May 12, 1991 (sic) to the Toronto-Dominion Bank advising it that should a registerable Discharge not be received by "Tuesday of next week", the Solicitor would retain counsel to proceed with a court action on his behalf. A copy of the Solicitor's March 19 letter is attached as Exhibit "S" to this Agreed Statement of Facts.

66. Paul Cameron, Manager of the Toronto-Dominion Bank, had provided the Solicitor with a letter dated May 12, 1992, in which Mr. Cameron assured the Solicitor that a discharge would be available for pick-up on May 13, 1992. The Solicitor stated that he would register the discharge as soon as he received it on May 13, 1992.

67. By letter dated May 30, 1992, the Solicitor advised the Law Society that he received a copy of the registered Discharge regarding "Discharge of Toronto dominion Bank Mortgage on 1E Badgerow, Toronto". The Discharge was registered on May 29, 1992 as Instrument #CA192111. A copy of the Solicitor's May 30 letter is attached as Exhibit "T" and attached to this Agreed Statement of Facts.

68. Mr. Pollock advised the Law Society by telephone on June 10, 1992 that he had not, as of that date, been advised by the Solicitor of the Discharge particulars regarding the two mortgages held by the Toronto-Dominion Bank.

Particular 2g) - his failure to comply with his undertaking to the Law Society, dated September 13, 1990.

69. The Solicitor provided the Law Society with an written undertaking, dated September 13, 1990, which stated in part:

To respond to written communications from the Law society within one week of the receipt of the letter and to respond to telephone communications from the Law Society within two business days;

A copy of the Solicitor's September 13 undertaking is attached as Exhibit "U" to the Agreed Statement of Facts.

70. The Solicitor breached his undertaking to the Society by failing to reply regarding a complaint by Shoppers Trust Company despite letters dated December 19, 1991 and February 13, 1992.

71. The Solicitor again breached his undertaking by failing to reply to the Law Society regarding a complaint by Joseph B. Pollock despite letters dated October 18, 1991 and January 9, 1992 and telephone messages left on December 10, 1991, December 12, 1991 and January 16, 1992.

22nd October, 1992

V. DISCIPLINE HISTORY

72. The Solicitor was found guilty of professional misconduct on September 13, 1990 for breach of his undertaking to the Society, failing to produce books and records and for failing to file Forms 2/3 for the fiscal years ended December 31, 1987 and December 31, 1988. The Solicitor received a reprimand in committee on that occasion and in connection therewith provided the Society with a written undertaking dated September 13, 1990, a copy of which is attached as Exhibit "U" to this Agreed Statement of Facts.

DATED at Toronto this 10th day of July, 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that provided the Undertaking given in Exhibit 3, (copy attached), is fulfilled, (that being to produce a current survey of a property at his expense), the Committee will accept the recommendation of the counsel for the Law Society with respect to penalty, that penalty is a suspension of one (1) month and payment of costs in the sum of \$2,500.00. However, in the event that this Undertaking has not been fulfilled by the time this matter is reached in Convocation, then the Committee recommends an indefinite period of suspension of the Solicitor, in addition to the one month definite suspension, until the survey has been delivered.

REASONS FOR RECOMMENDATION

The Solicitor is 51 years old and was called to the bar in 1983. The Solicitor graduated from Osgoode Hall Law School in 1978 and completed one year of research in family law and computer law in the U.S.A. the following year. He served under articles in 1979. In 1980 he commenced the Bar Admission Course, but contracted a form of cancer and withdrew from the course. He reentered the course in 1982 and was called to the bar in 1983.

The Solicitor's practice is mainly family law, with some real estate and immigration law. He is a sole practitioner, although at the time of some of the incidents, he had an employed associate. He has also employed part-time solicitors in the past. All of the complaints have a real estate component to them, including particular (a), the breach of payment of fees as determined after assessment. (In that case, it was submitted that the Solicitor's expectation was that the fees would be paid from the sale of the client's home, when the real estate market fell and the property could not be sold).

All of the particulars of the complaint had been satisfactorily dealt with as of the date of the hearing before the Committee, apart from particular (d), the solution to which was still pending at that date.

The Law Society counsel took the position before the Committee that because of three factors, the penalty which should be imposed upon the Solicitor was a suspension of one month plus costs payable to the Society in the sum of \$2,500.00. These factors were:

1. the extremely lengthy periods of time required to complete the undertakings given by the Solicitor;

22nd October, 1992

2. his previous discipline history in 1990, set out at paragraph 72 of the Agreed Statement of Facts; (at which time an undertaking was given to the Law Society that has been breached in the context of this complaint); and
3. the short time the Solicitor has been at the bar.

The Law Society's counsel characterized the Solicitor's behaviour as denoting "an appalling disrespect for the honouring of undertakings". We concur with this view. It is only by the prompt fulfilment of appropriate undertakings sparingly given that the profession is able to carry on the practice of law in a responsible and civilized manner.

The Committee also considered that due to the repetitive nature of the Solicitor's difficulties with undertakings, the Solicitor might benefit from the attention of the Practice Review Program. Depending upon whether the Solicitor exhibits an intention to remain in practice for some time (instead of retiring), he may be accepted by that program.

Counsel for the Solicitor submitted that the appropriate penalty was a reprimand of the Solicitor. The Solicitor was prepared to give an undertaking not to practice real estate law. His counsel submitted that since early 1992 he has not accepted any more real estate work and has referred even the real estate component of family law files to outside solicitors. The Society did not seek such an undertaking from the Solicitor.

The Committee considers that the giving of such an undertaking would not be an appropriate sanction for the complaints which were the subject of this hearing. We are also of the view that a reprimand is not a sufficient penalty in the light of the three factors outlined by the Law Society's counsel above. It is the Committee's decision that provided the undertaking given in Exhibit 3, the August 19, 1992 letter, is fulfilled (that being to produce a current survey of a property at his expense), the Committee will accept the recommendation of the counsel for the Law Society with respect to penalty. However, in the event that this undertaking has not been fulfilled by the time this matter is reached in Convocation, then the Committee recommends an indefinite period of suspension of the Solicitor, in addition to the one month definite suspension, until the survey has been delivered.

Arthur Chung was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 6th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 28th day of September, 1992

"J. Palmer"
Chair

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

There were no submissions and the Report was adopted.

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Recommendation as to Penalty contained in the Report, that is, that the solicitor be suspended for 1 month and pay the costs of \$2,500, be adopted.

22nd October, 1992

There were brief submissions by counsel for the Society. Ms. Budweth advised that the solicitor had fulfilled an undertaking given at the time of his hearing and urged Convocation to accept the Recommendation of a 1 month suspension.

The Recommendation was adopted.

The solicitor asked Convocation to defer his suspension until November so that he could get his affairs in order.

It was moved by Mr. Yachetti, seconded by Mr. Strosberg that the effective date for suspension be November 1st, 1992.

Carried

Counsel and the solicitor retired.

.....

Re: MARIO GIANGIOPPO, North York

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Messrs. Cullity and Topp did not participate.

Ms. Christina Budweth appeared for the Society and the solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 1st October, 1992 together with an Affidavit of Service sworn 10th October, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 5th October, 1992 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor on 22nd October, 1992 (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

Denise Bellamy, Chair
Maurice C. Cullity, Q.C.
K. Julaine Palmer

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

Christina Budweth
for the Society

MARIO GIANGIOPPO
of the City
of Oshawa
a barrister and solicitor

Mr. Isbister, Q.C.
for the solicitor

Heard: July 14, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 4, 1991, Complaint D200/91 was issued against Mario Giangioppo, alleging that he was guilty of professional misconduct and on January 17, 1992 Complaint D5/92 was issued and on March 2, 1992, Complaint D22/92 was issued.

The matters were heard in public on July 14, 1992 before this Committee composed of Denise Bellamy, Chair, Maurice C. Cullity, Q.C. and K. Julaine Palmer. Mr. Giangioppo attended the hearing and was represented by Philip D. Isbister, Q.C. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D200/91

2. a) He failed to reply to the Law Society regarding a complaint by William H. Roberts, despite letters dated July 30, 1991 and September 18, 1991 and telephone requests on August 16, 1991, August 20, 1991 and September 4, 1991.
- b) He engaged in the practice of law during the period of March 28, 1991 to June 11, 1991 while under suspension by the Law Society regarding non-payment of his annual fees.
- c) He failed to reply to the Law Society regarding the complaint by Mr. and Mrs. Balnis despite letters dated July 11, 1991 and September 18, 1991 and telephone requests on July 31, 1991, August 20, 1991, September 4, 1991, September 11, 1991 and September 25, 1991.
- d) He failed to reply to the Law Society regarding a complaint by J. Bruce Klassen despite letters dated September 19, 1991 and October 24, 1991 and a telephone conversation on October 7, 1991, and a telephone message on October 21, 1991.
- e) He failed to honour a financial obligation to J. Bruce Klassen incurred in connection with his practice.
- f) He failed to reply to the Law society regarding a complaint by Lorne M. Koropatwa, despite letters dated July 22, 1991, September 4, 1991 and September 30, 1991 and telephone requests on August 12, 1991, August 20, 1991, September 19, 1991, September 20, 1991 and October 9, 1991.

Complaint D5/92

2. a) He failed to reply to the Law Society regarding a complaint by Mr. Santoianni, despite letters dated September 20, 1991 and November 19, 1991 and telephone messages left on October 8, 1991, October 16, 1991, November 1, 1991 and November 6, 1991.
- b) He failed to reply to the Law Society regarding a complaint by Mr. Battiston, despite letters dated September 25, 1991 and November 19, 1991 and telephone messages left on November 1, 1991 and November 6, 1991.
- c) He failed to reply to the Law Society regarding a complaint by Mr. Grillo, despite letters dated October 15, 1991 and November 28, 1991 and telephone messages left on November 1, 1991, November 11, 1991, November 14, 1991, November 19, 1991, November 20, 1991 and November 25, 1991.
- d) He failed to reply to the Law Society regarding a complaint by Mr. Edward, despite letters dated October 11, 1991 and November 15, 1991 and telephone messages left on October 29, 1991, November 1, 1991 and November 5, 1991.

Complaint D22/92

2. a) He failed to comply with an undertaking dated April 15, 1991 given to fellow solicitor, Maurice Vaturi, to facilitate the closing of a real estate transaction of property municipally known as 17 Joel Swirsky Blvd, in the City of North York.
- b) He failed to reply to the Law Society regarding a complaint by Maurice Vaturi, a fellow solicitor, despite letters dated December 13, 1991, January 9, 1992 and January 22, 1992, and a telephone request on January 3, 1992.
- c) He failed to reply to the Law Society regarding a complaint by Giovanni Di Santo despite letters dated November 15, 1991, December 13, 1991 and January 8, 1992, and telephone messages left on November 25, 1991 and November 26, 1991.

Evidence

Part of the evidence before the Committee was contained in the following Agreed Statements of Facts:

Agreed Statement of Facts D200/91

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D200/91 and is prepared to proceed with a hearing of this matter on July 14, 1992.

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.

22nd October, 1992

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D200/91 and the agreed statement of facts with his counsel, Philip D. Isbister, Q.C., and admits the particulars contained therein. The Solicitor admits that the particulars detailed in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on April 7, 1982.

5. The Solicitor has been suspended numerous times since his call to the bar, the sequence of suspensions is summarized below:

<u>SUSPENDED</u>	<u>REINSTATEMENT DATE</u>	<u>REASON</u>
February 25, 1983	Records department has no record of the date of reinstatement.	
May 25, 1984	June 6, 1984	E&O levy
November 22, 1985	November 27, 1985	E&O levy
November 28, 1986	December 8, 1986	E&O levy
February 27, 1987	March 3, 1987	Annual Fees
November 27, 1987	December 4, 1987	E&O levy
February 26, 1988	March 8, 1988	Annual Fees
November 25, 1988	December 6, 1988	E&O levy
May 25, 1990	June 7, 1990	E&O levy
November 23, 1990	January 30, 1991	E&O levy
March 28, 1991	June 11, 1991	Annual Fees
November 29, 1991	December 17, 1991	E&O levy

6. The Solicitor admits the receipt of all correspondence, complete with enclosures, set out in the agreed statement of facts with the exception of the failure of the Society to enclose a copy of a letter of complaint as disclosed in paragraphs 28 and 29.

Particulars 2(a) - Fail to Reply
 2(b) - Practise While Suspended

7. By letter dated April 2, 1991 the Law Society advised the Solicitor that his right to practise was suspended effective March 28, 1991, a copy of the Society's April 2 letter is attached as Exhibit 1 to this agreed statement of facts.

8. On or about June 7, 1991, the Society received a letter of complaint from William H. Roberts wherein Mr. Roberts advised the Society that he had received a letter from the Solicitor wherein the Solicitor stated that he was acting for the purchaser on a certain real estate transaction. Mr. Roberts provided the Society with a letter from the Solicitor dated May 17, 1991.

9. A copy of Mr. Roberts letter was forwarded to the Solicitor under cover of letter dated June 19, 1991, a copy of the Society's letter, inclusive of enclosures, is attached as Exhibit 2 to this agreed statement of facts.

10. On June 28, 1991 the Solicitor corresponded further with Mr. Roberts advising him of the reinstatement of his right to practice as of June 11, 1991. A copy of the Solicitor's June 28 letter to Mr. Roberts is attached as Exhibit 3 to this agreed statement of facts.

22nd October, 1992

11. By letter dated July 2, 1991, the Solicitor responded to the Society's June 19 letter. He enclosed therewith a copy of Exhibit 3. A copy of the Solicitor's July 2 letter to the Society is attached as Exhibit 4 to this agreed statement of facts.

12. By letter dated June 13, 1991 the Society confirmed the Solicitor's re-instatement. A copy of the Society's June 13 letter is attached as Exhibit 5 to this agreed statement of facts.

13. The Society corresponded further with the Solicitor by letter dated July 30, 1991, a copy of which is attached as Exhibit 6 to this agreed statement of facts.

14. After the expiry of the two week period for response given in the Society's July 30 letter, a staff member of the Society telephoned the Solicitor on August 16, August 20 and September 4, 1991 to enquire as to when the Society could expect a reply from the Solicitor. Messages were left for the Solicitor to return these calls. No response was received by the Society.

15. A further letter, dated September 18, 1991, was sent to the Solicitor by registered mail. In that letter the Solicitor was reminded of his obligations pursuant to Rule 13 of the Rules of Professional Conduct. A copy of the Society's September 18, 1991 correspondence is attached as Exhibit 7 to this agreed statement of facts.

16. The Solicitor replied to the Society by letter dated April 10, 1992, a copy of which is attached as Exhibit 8 to this agreed statement of facts.

Particular 2(c) - Fail to Reply re: Balnis

17. The Society received a letter of complaint from Mr. and Mrs. Balnis on or about June 12, 1991. The complainants alleged that the Solicitor had provided them with a report certifying that a certain mortgage loan made by them had been secured by a valid second mortgage on a property. They alleged that subsequent investigation revealed that, as a result of the fact that the property was subject to pre-existing encumbrances, they had only a third mortgage.

18. By letter dated July 11, 1991, the Society provided the Solicitor with a copy of the Balnis' complaint and asked that he provide his comments in respect thereof, in writing, within a period of two weeks. A copy of the Society's July 11 letter, complete with enclosures, is attached as Exhibit 9 to this agreed statement of facts.

19. A staff member of the Society telephoned the Solicitor's office on July 31, 1991, August 20, 1991, September 4, 1991, September 11, 1991 and September 25, 1991. The staff member spoke with the Solicitor's secretary who advised she would relay the Society's messages to the Solicitor. No response was received to these calls.

20. A second letter was sent to the Solicitor, by registered mail, on September 18, 1991. In that letter the Solicitor was reminded of his obligations to reply to the Society pursuant to Rule 13 of the Rules of Professional Conduct. A copy of the Society's September 18 correspondence as well as the registered mail card evidencing receipt are attached as Exhibit 10, collectively, to this agreed statement of facts.

22nd October, 1992

21. The Solicitor provided a reply to the Society by way of letter dated April 10, 1992, a copy of which is attached as Exhibit 11 to this agreed statement of facts. The letter was not fully responsive to the Balnis letter of complaint in that about the failure to provide the mortgagees with a second mortgage at the outset as promised was not explained or even addressed.

Particular 2(d) - Failing to Reply to the Society Re: Complaint by Bruce Klassen

2(e) - Failing to Honour a Financial Obligation Incurred in Relation to his Practice

22. J. Bruce Klassen wrote to the Society on August 7, 1991 complaining that the Solicitor had failed to pay two invoices for title searches performed by Mr. Klassen.

23. After leaving several telephone messages for the Solicitor, which were not returned, the Society wrote to him on September 19, 1991 enclosing a copy of Mr. Klassen's letter. A copy of the Society's September 19 letter, complete with enclosures, is attached as Exhibit 12 to this agreed statement of facts.

24. After the expiry of the two week period for reply noted in Exhibit 12, a staff member of the Society called the Solicitor's office to enquire about when the Society could expect a reply. The staff member spoke to the Solicitor on October 7, 1991 at which time the Solicitor undertook to respond to the Society by October 18, 1991. The Solicitor did not provide a reply within this time frame.

25. A telephone message was left for the Solicitor on October 21, 1991 by a staff member of the Society. The Solicitor did not return this call.

26. A second letter was sent to the Solicitor, by registered mail, on October 24, 1991. In that letter the Solicitor was advised of his obligations pursuant to Rule 13. A copy of the Society's October 24 letter as well as a copy of the registered mail card evidencing receipt thereof are attached collectively as Exhibit 13 to this agreed statement of facts.

27. The Solicitor forwarded a cheque in the amount of \$71.50, representing the monies owing to Mr. Klassen, under cover of letter dated April 10, 1992.

Particular 2(f) - Failure to Reply to the Complaint of Lorne M. Koropatwa

28. By letter dated May 27, 1991, Lorne M. Koropatwa, manager of a branch of the Bank of Nova Scotia in Calgary, Alberta advised the Society that two trust cheques issued from the Solicitor's account had been returned non sufficient funds. By letter dated July 22, 1991, the Society corresponded with the Solicitor advising him of the allegations against him, a copy of the Society's July 22 correspondence, complete with enclosures, is attached as Exhibit 14 to this agreed statement of facts.

29. After the expiry of two weeks, a staff member of the Society spoke to the Solicitor's secretary to enquire about when a reply could be expected. The secretary advised that a response would be received by the Society no later than August 29, 1991.

30. On September 3, 1991, the Solicitor telephoned the Society to advise that he required an extension until September 18, 1991 because he had never received a copy of letter of complaint.

22nd October, 1992

31. On September 4, 1991 a further copy of the letter of complaint was faxed to the Solicitor. Two further telephone calls were made to his office on September 19 and September 20, 1991 by a staff member of the Society. The calls were not returned.

32. A second letter was sent to the Solicitor on September 30, 1991. In that letter the Solicitor was reminded of his obligations pursuant to Rule 13 of the Rules of Professional Conduct. A copy of the Society's September 30 letter is attached as Exhibit 15 to this agreed statement of facts.

33. A staff member of the Society called the Solicitor again on October 9, 1991 and left a message for the Solicitor to return the call. He did not do so.

34. The Solicitor replied to the Society by letter dated April 10, 1992, a copy of which is attached as Exhibit 16 to this agreed statement of facts. This complaint has been the subject of a full audit investigation.

DATED at Toronto this 10 day of July, 1992."

Agreed Statement of Facts D5/92

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D5/92 and is prepared to proceed with a hearing of this matter on July 14, 1992.

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 D5/92 and the agreed statement of facts with his counsel, Philip D. Isbister, Q.C., and admits the particulars contained therein. The Solicitor admits that the particulars detailed in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on April 7, 1982.

5. The Solicitor admits the receipt of all correspondence, complete with enclosures, set out in the agreed statement of facts.

Particulars 2(a) - Fail to Reply re complaint of Gino Santoianni

6. Gino Santoianni wrote to the Society on September 10, 1990 complaining of the Solicitor's conduct in respect of a loan transaction.

7. The Society wrote to the Solicitor on September 20, 1991 enclosing a copy of Mr. Santoianni's letter of complaint and requesting a response thereto. A copy of the Society's September 20 letter, complete with enclosure, is attached as Exhibit 1 to this agreed statement of facts.

22nd October, 1992

8. A staff member of the Society called the Solicitor's office on October 8, 1991 and left a message requesting that the Solicitor return the call. The call was not returned.

9. On or about October 16, 1991, a staff member of the Society had a telephone conversation with a staff member of the Solicitor's office wherein the Society employee was advised that the Solicitor required an extension for the time required to respond to Mr. Santoianni's complaint until October 30, 1991. This extension was granted and confirmed in the letter from the Society of October 16, 1991.

10. When the Solicitor's reply had not been received by October 30, staff members of the Society left telephone messages for the Solicitor on November 1 and November 6, 1991. These calls were not returned.

11. By letter dated November 19, 1991, the Society again wrote to the Solicitor requesting his response to the earlier communications and reminding him of his obligation pursuant to Rule 13 of the Rules of Professional Conduct. A copy of the Society's November 19 letter, complete with a copy of the registered mail receipt card indicating that the Solicitor received the letter on November 20 are attached as Exhibit 2, collectively, to this agreed statement of facts.

12. The Solicitor replied to the Society by letter dated April 9, 1992, received by the Society April 27, 1992, a copy of which is attached as Exhibit 3 to this agreed statement of facts.

Particular 2(b) - Failure to Respond re complaint of Mr. Eddy J. Battiston

13. By letter dated September 10, 1991, Mr. Battiston complained, on behalf of his client's Bruno and Sabia Frutti, respecting the Solicitor's conduct in the placement of a mortgage on the Frutti's property.

14. By letter dated September 25, 1991, a staff member of the Society wrote to the Solicitor, enclosing a copy of Mr. Battiston's letter, and requested his comments in respect thereof within two weeks. A copy of the Society's September 25 letter, complete with enclosures, is attached as Exhibit 4 to this agreed statement of facts.

15. A staff member of the Society had telephone conversations with the Solicitor's office on October 9 and 10, 1991. The staff member was advised that the Solicitor was ill and had not yet had an opportunity to reply but would do so by October 30, 1991.

16. Further telephone messages were left for the Solicitor on November 1 and November 6, 1991. The Solicitor did not return these calls.

17. By letter dated November 19, 1991, the Society re-stated its efforts to contact the Solicitor regarding the Battiston complaint and requested his response to earlier communications within seven days. The Solicitor was reminded of his obligations pursuant to Rule 13. A copy of the Society's November 19 correspondence, complete with registered mail receipt card evidencing receipt, is attached, collectively, as Exhibit 5 to this agreed statement of facts.

18. The Solicitor replied to the Society by way of letter dated April 9, 1992, received by the Society April 24, 1992, a copy of which is attached as Exhibit 6 to this agreed statement of facts. Also attached as part of Exhibit 6 is a copy of the Society's letter to the Solicitor dated September 16, 1991.

Particular 2(c) - Failure to Respond re complaint of Sal Grillo

19. By letter dated September 25, 1991, Mr. Grillo complained to the Society on behalf of his clients Mr. and Mrs. Petriello respecting the Solicitor's involvement in a mortgage transaction with the Petriello's. A copy of Mr. Grillo's letter of complaint is attached as Exhibit 7 to this agreed statement of facts.

20. By letter dated October 15, 1991, the Society wrote to the Solicitor, enclosing a copy of Mr. Grillo's letter of complaint. The Solicitor was asked to provide his comments thereto within a period of two weeks. A copy of the Society's October 15 letter is attached as Exhibit 8 to this agreed statement of facts.

21. A staff member of the Society telephoned the Solicitor on November 1, 1991 to enquire as to when the Society could expect a reply. A telephone message was left for the Solicitor to return the call, he did not do so.

22. Telephone calls were made to the Solicitor's office by a staff member of the Society on November 11, November 14, November 19, November 20 and November 25, 1991. Neither the Solicitor nor his staff answered the telephone on the aforesaid days.

23. A second letter was sent to the Solicitor by the Society by way of registered mail on November 28, 1991. In that letter the Solicitor was reminded of his obligations pursuant to Rule 13 and advised that if his written reply was not received within seven days the matter would be referred to the chair of discipline. A copy of the Society's November 28 letter is attached as Exhibit 9 to this agreed statement of facts.

24. The Solicitor replied to the Society by letter dated April 9, 1992, received by the Society April 24, 1992, a copy of which is attached as Exhibit 10 to this agreed statement of facts.

Particular 2(d) - Failure to Respond re complaint of C.P. Edward

25. Mr. Edward wrote to the Society on September 12, 1991, complaining that the Solicitor had failed to honour a financial obligation to Mr. Edward's firm incurred in relation to the Solicitor's practice. The Society wrote to the Solicitor on October 11, 1991, enclosing a copy of Mr. Edward's letter of complaint. The letter requested that the Solicitor provide his comments regarding Mr. Edward's complaint within a period of two weeks. A copy of the Society's October 11 letter, complete with enclosures, is attached as Exhibit 11 to this agreed statement of facts.

26. On October 29 and November 1, 1991, a staff member of the Society telephoned the Solicitor and left detailed messages on his telephoning answering machine for him to contact the Society regarding the Edward complaint. On November 5, 1991, the same staff member spoke to the Solicitor's receptionist and requested that she advise the Solicitor to return the Society's calls. The Solicitor did not return any of these calls.

27. The Society corresponded with the Solicitor again on November 15, 1991. That letter set out the Society's earlier efforts to contact the Solicitor. The Solicitor was also reminded of his obligations pursuant to Rule 13. A copy of the Society's November 15 letter, complete with a copy of the registered mail receipt card evidencing receipt, are attached, collectively, as Exhibit 12 to this agreed statement of facts.

22nd October, 1992

28. By letter dated April 10, 1992, received in the offices of the Law Society April 27, 1992, the Solicitor replied to the Society's correspondence. Under cover of his April 10 letter he also provided a copy of a letter to the complainant Mr. Edward. A copy of the Solicitor's letter to the Society complete with enclosures together with Mr. Edward's letter of April 24, 1992 and the Society's response of May 26, 1992 are attached, collectively, as Exhibit 13 to this agreed statement of facts.

DATED at Toronto this 10 day of July, 1992."

Agreed Statement of Facts D22/92

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D22/92 and is prepared to proceed with a hearing of this matter on July 14, 1992.

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 D22/92 and this agreed statement of facts with his counsel, Philip D. Isbister, Q.C., and admits the particulars contained therein. The Solicitor also admits that the particulars detailed in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar April 7, 1982 and practices as a sole practitioner.

5. The Solicitor admits the receipt of all correspondence, complete with enclosures, set out in the agreed statement of facts.

PARTICULARS 2a) - Failure to Comply with an Undertaking to a Fellow Solicitor, Maurice Vaturi and

2b) - Failure to Reply, regarding the complaint of Maurice Vaturi

6. The Solicitor provided Maurice Vaturi with his personal undertaking on April 15, 1991 to facilitate the closing of a real estate transaction involving property municipally known as 17 Joel Swirsky Blvd, in the City of North York. The Undertaking stated, in part:

...I further personally undertake to pay utilities to the date of closing and to forward a copy of payment if requested. I also undertake to provide ASAP a tax bill to the Purchasers and to pay taxes as per adjustments. I also undertake to provide the Vendors' Direction Re Funds....

A copy of the Solicitor's undertaking is attached as Exhibit "1" to this agreed statement of facts.

22nd October, 1992

7. By letter dated April 16, 1991, Mr. Vaturi requested the Solicitor provide him with the following documents in furtherance of the undertaking, forthwith:

1. Confirmation that the outstanding utilities have been paid to the date of closing;
2. City of North York Tax Bill;
3. Direction regarding funds executed by your client;

A copy of Mr. Vaturi's April 16 letter, is attached as Exhibit "2" to this agreed statement of facts.

8. By letter dated May 1, 1991, Mr. Vaturi advised the Solicitor that the 1991 February and March interim tax instalment payments totalling amount of \$2,100.00 had not been paid. The Solicitor was further advised that penalties of \$178.75 had accrued. The Solicitor was requested to provide Mr. Vaturi with proof of payment forthwith. A copy of Mr. Vaturi's May 1 letter is attached as Exhibit "3" to this agreed statement of facts.

9. By letter dated July 3, 1991, Mr. Vaturi insisted the Solicitor attend immediately to the payment of the outstanding taxes pursuant to his personal undertaking given on closing. The Solicitor was advised that the total amount outstanding, including interest, to the end of July, 1991 was \$2,233.21. The Solicitor was requested to provide Mr. Vaturi with proof of payment. A copy of Mr. Vaturi's July 3 letter is attached as Exhibit "4" to this agreed statement of facts.

10. By letter dated September 26, 1991, Mr. Vaturi advised the Solicitor that unless the outstanding taxes are paid, the matter would be reported to the Law Society. A copy of Mr. Vaturi's September 26 letter is attached as Exhibit "5" to this agreed statement of facts.

11. By facsimile transmission dated November 26, 1991, the Solicitor advised Mr. Vaturi that the taxes on 258 Maxwell Street are twice as high as the amount stated on the listing agreement. The Solicitor stated that the taxes on 17 Joel Swirsky Blvd would not be adjusted until all these items were resolved. A copy of the Solicitor's November 26 facsimile note, complete with enclosure, is attached as Exhibit "6" to this agreed statement of facts.

12. To clarify the aforementioned paragraph, the Solicitor was the purchaser of Mr. Vaturi's clients' property, being 258 Maxwell Street while Mr. Vaturi's clients were the purchasers of the Solicitor's property, being 17 Joel Swirsky Blvd. The transactions were essentially a "swap" of properties.

13. By letter dated November 28, 1991, Mr. Vaturi advised the Solicitor that the closing Joel Swirsky Blvd had taken place based on reliance on the Solicitor's personal undertaking. Mr. Vaturi informed the Solicitor that the City of North York was threatening to place a lien on his clients' property. In light of the Solicitor's position, Mr. Vaturi, undertook, on behalf of his clients, to assist the Solicitor in collecting any refund should his appeal be granted. A copy of Mr. Vaturi's November 28 letter, complete with enclosures, is attached as Exhibit "7" to this agreed statement of facts.

14. Maurice Vaturi wrote to the Law Society by letter dated October 25, 1991, complaining of the Solicitor's conduct in respect to his outstanding personal undertaking. A copy of Mr. Vaturi's October 25 letter is attached as Exhibit "8" to this agreed statement of facts.

22nd October, 1992

15. The Law Society wrote to the Solicitor on December 13, 1991, enclosing a copy of Mr. Vaturi's letter of complaint and requesting a response thereto. A copy of the Law Society's December 13 letter is attached as Exhibit "9" to this agreed statement of facts.

16. A staff member of the Law Society spoke with the Solicitor by telephone on January 3, 1992. The Solicitor advised that he had responded directly to Mr. Vaturi. The Solicitor was requested to reply to the Law Society's letter of October 25, on or before January 5, 1992.

17. The Solicitor forwarded to Mr. Vaturi, by facsimile transmission on December 24, 1991, a copy of the registered discharge of mortgage. The Solicitor further advised Mr. Vaturi that he was claiming for misrepresentation on the listing for the 258 Maxwell Street taxes by the vendors or their agents. The Solicitor stated he was prepared to litigate the matter with Mr. Vaturi's clients. A copy of the Solicitor's December 24 letter, complete with enclosure, is attached as Exhibit "10" to this agreed statement of facts.

18. By letter dated January 6, 1992, Mr. Vaturi advised the Solicitor that his litigation against Mr. Vaturi's clients, should by no means be a set off to the Solicitor's personal undertaking. Mr. Vaturi reminded the Solicitor of his obligations pursuant to a personal undertaking. Mr. Vaturi urged the Solicitor to reconsider his position. A copy of the Mr. Vaturi's January 6 letter is attached as Exhibit "11" to this agreed statement of facts.

19. The Law Society wrote to the Solicitor on January 9, 1992 reminding him of his obligations with respect to a personal undertaking, as well as, his obligation to reply to correspondence from the Law Society. The Solicitor was requested to provide his response no later than ten days from the date of this letter. A copy of the Law Society January 9 letter is attached as Exhibit "12" to this agreed statement of facts.

20. By letter dated January 22, 1991, the Law Society again wrote to the Solicitor requesting his response to its earlier communications and reminding him of his obligation pursuant to Rule 13 of the Rules of Professional Conduct. A copy of the Law Society's January 22 letter, complete with a copy of the registered mail receipt card indicating that the Solicitor received the letter on January 24, 1992, are attached as Exhibit "13" to this agreed statement of facts.

21. By letter dated April 9, 1992, received in the office's of the Society, April 27, 1992, the Solicitor provided a response to the Society's correspondence as well as provided a letter addressed directly to the Complainant. A copy of the Solicitor's April 9, 1992 letter complete with enclosure together with Mr. Vaturi's letter of April 28, 1992 to the Solicitor as well as the Society's letter of May 26, 1992 to Mr. Vaturi are attached, collectively, as Exhibit "14" to the agreed statement of facts.

22. The Society has received independent confirmation from Mr. Vaturi that the undertaking has been complied with.

23. The complaint of Mr. Vaturi and the closing of 17 Joel Swirsky Blvd. are not the subject of an errors and omissions claim against Mr. Giangiooppo with the Society.

22nd October, 1992

PARTICULAR 2c) - Fail to Reply, re: complaint of Giovanni Di Santo

24. Giovanni Di Santo wrote to the Law Society on October 20, 1991 complaining of the Solicitor's conduct in respect to a real estate transaction. The Solicitor had acted on behalf of Mr. Di Santo with respect to the purchase of property, municipally known as 79 Whitley Avenue, in the City of North York during the month of April, 1991. Subsequent to the closing, Mr. Di Santo received notification from the Tax Department of the City of North York that the property taxes for 1990 and the early part of 1991 were in arrears.

25. The Law Society wrote to the Solicitor on November 15, 1991 enclosing a copy of Mr. Di Santo's letter of complaint and requesting a response thereto. No reply was received. A copy of the Law Society's November 15 letter, complete with enclosure, is attached as Exhibit "15" to this agreed statement of facts.

26. A staff member of the Law Society called the Solicitor's office on November 26, 1991 and left a message requesting that the Solicitor return the call. The call was not returned.

27. The Law Society wrote to the Solicitor again on December 13, 1991 enclosing a copy of the complainant's letter dated October 20, 1991 and the Law Society's letter dated November 15, 1991. The Solicitor was requested to provide his response to the enclosed correspondence within ten days. No reply was received. A copy of the Law Society's December 13 letter is attached as Exhibit "16" to this agreed statement of facts.

28. Mr. Di Santo, by letter dated December 17, 1991, provided the Law Society with a copy of the NSF cheque given to the City of North York to pay the tax arrears. The NSF cheque was issued by the Solicitor and drawn on his trust account. A copy of the Mr. Di Santo's December 17 letter, complete with enclosures, is attached as Exhibit "17" to this agreed statement of facts.

29. The Law Society, by registered mail dated January 8, 1992, provided the Solicitor with a copy of the complainant's letters dated October 20, 1991 and December 17, 1991. The Solicitor was reminded of his obligation pursuant to Rule 13 of the Rules of Professional Conduct. A copy of the Law Society's January 8 letter, complete with a copy of the registered mail receipt card indicating that the Solicitor received the letter on or about January 14, 1992 are attached as Exhibit "18" to this agreed statement of facts.

30. The Solicitor replied to the Society by letter dated April 9, 1992, received by the Society, April 27, 1992, a copy of which is attached as Exhibit "19" to this agreed statement of facts.

31. The closing of 17 Whitley Avenue, North York, and the Solicitor's actions in respect thereof are not the subject of an errors and omissions claim with the Society.

DATED at Toronto this 10 day of July, 1992."

RECOMMENDATION AS TO PENALTY

The Committee accepts the joint submission of Counsel that the Solicitor be reprimanded in Convocation and ordered to pay the sum of \$2,000.00 towards the Society's costs.

REASONS FOR RECOMMENDATION

The Committee accepts the submission of counsel for the Law Society that the Solicitor was helpful in reaching the three Agreed Statements of Fact and thereby a full hearing with extensive and lengthy evidence was avoided. In accepting the joint submission of counsel, the Committee was mindful of the fact that the Solicitor signed an undertaking not to practise on April 13, 1992 and had not practised since then, at the time of the Committee hearing, a period of three months. The Solicitor was cooperative and amenable to the attendance of the staff trustee. The Solicitor has no previous discipline history.

The counsel for the Solicitor could offer no excuse for the Solicitor's failure to respond and characterized this lack of response as "stupid". The Solicitor has made the appropriate replies and satisfied the outstanding undertakings.

Mario Giangiooppo was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 7th day of April, 1982.

ALL OF WHICH is respectfully submitted

DATED this 1st day of October, 1992

"J. Palmer"
Chair

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

There were no submissions and the Report was adopted.

It was moved by Mr. Strosberg, seconded by Mr. Lerner that the Recommendation as to Penalty contained in the Report, that is, that the solicitor be reprimanded and pay the costs of \$2,000, be adopted.

Brief submissions were made by counsel for the Society in support of the Recommendation.

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

It was moved by Mr. Campbell, seconded by Mr. Brennan that the solicitor enter into arrangements with counsel for the Society to pay his outstanding obligations to the Law Society.

It was moved by Mr. Somerville, seconded by Ms. Kiteley that the solicitor be suspended for 2 months.

Withdrawn

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

The Treasurer raised the concerns of Convocation.

The solicitor agreed with the suggestion that he undertake Practice Review prior to returning to practice and to discuss with Society's counsel arrangements to reduce his financial obligations to the Society. The solicitor indicated he did not intend to practice until such time as his financial position allowed it.

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

22nd October, 1992

The Recommendation was adopted with an undertaking that the solicitor not to return to practice until he had completed Practice Review.

Mr. Campbell's motion was not put.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision. The solicitor agreed to give his undertaking not to engage in practice until such time as he had completed Practice Review.

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

.....

Re: JAMES FREDERICK HARRIS GRAY, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Messrs. Topp and Cullity withdrew from Convocation.

Mr. Gavin MacKenzie appeared for the Society and Mr. Paul Jewell appeared for the solicitor who was present.

Counsel asked Convocation to consider a procedural matter on whether the matter be heard in camera.

Submissions were made.

Mr. MacKenzie asked that the Report be amended by deleting the last six words in the second paragraph on page 13 and inserting the words "decided to receive the Agreed Statement of Facts in public but otherwise the hearing be held in camera."

Counsel agreed to proceed in public with the option to proceed in camera should the need arise.

Counsel asked that pages 13 through 17 not be distributed as part of the Report of the Discipline Committee.

Convocation had before it the Report of the Discipline Committee dated 10th September, 1992, together with an Affidavit of Service sworn 10th October, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 17th September, 1992. It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Report as amended together with the Affidavit of Service be filed as Exhibit 1. The Acknowledgment, Declaration and Consent signed by the solicitor on 22nd October, 1992 was filed as Exhibit 2. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

22nd October, 1992

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

J. James Wardlaw, Q.C., Chair
Rino C. Bragagnolo, Q.C.
Fatima Mohideen

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

Gavin MacKenzie and Christina Budweth
for the Society

JAMES FREDERICK HARRIS GRAY
of the City
of Toronto
a barrister and solicitor

Paul Jewell
for the solicitor

Heard: November 5, 1991
January 8, 1992
July 23, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 19, 1991, Complaint D117/91 was issued against James Frederick Harris Gray alleging that he was guilty of professional misconduct.

The matter was heard in camera (with the exception of the Agreed Statement of Facts which was in public), on November 5, 1991, January 8, 1992 and July 23, 1992, before this Committee composed of J. James Wardlaw, Q.C., Chair, Rino C. Bragagnolo, Q.C. and Fatima Mohideen. Mr. Gray attended the hearings and was represented by Paul Jewell. Gavin MacKenzie and Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D117/91

2. (a) During the years 1988 to 1991 inclusive he misappropriated \$239,680.29 more or less from his mixed trust account and from estate bank accounts over which he had power of attorney.

22nd October, 1992

- (b) In July and August, 1990, he breached an undertaking to hold settlement funds for his clients Donna Keels and Michael Keels in his mixed trust account pending court approval of the settlement, by transferring all but \$389.69 of the settlement funds from his mixed trust account to his general account for his own use.
- (c) On or about December 17, 1987, he transferred \$3,000 from his mixed trust account to his general account for his own use without delivering a statement of account to his clients Jack Price and June Stewart, executors of the estate of John Colin Price, until November 11, 1988, contrary to section 14 (8)(c) of Regulation 573 under the Law Society Act, R.S.O. 1989, ch. 233 as amended; and
- (d) He arranged for and allowed his office administrator, Marisa DeBrincat, to sign cheques on his trust account contrary to section 14(10) of Regulation 573 under the Law Society Act, R.S.O. 1980, ch. 233, as amended.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D117/91 and is prepared to proceed with a hearing of this matter on January 8, 1992.

II. IN PUBLIC/IN CAMERA

2. The Solicitor will make an application of at the commencement of the hearing that the matter should be heard in camera pursuant to Section 33 of the Law Society Act. The Society will oppose this application on the basis that the matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed the Complaint D117/91 and this agreed statement of facts with his counsel, Paul Jewell, and he admits the particulars of the allegations of professional misconduct contained therein.

IV. FACTS

4. The Solicitor was called to the Bar on September 18, 1959. He is a sole practitioner in the City of Toronto.

Particular 2(a)

5. During the years 1988 to 1991, the Solicitor transferred approximately \$239,680.29 from trust accounts and from estate bank accounts over which he had Power of Attorney by transferring monies to his law firm's general account to satisfy the ongoing obligations of his practice including obligations to beneficiaries of estates.

22nd October, 1992

6. In January and February, 1991, the Solicitor repaid \$194,118.13 of the monies referred to in paragraph 5. The Solicitor repaid part of the shortage by obtaining mortgage financing on his residence and paying the proceeds of that financing into his general account. In addition, he transferred money from the general account back to trust accounts and billed clients for legal services provided in instances where money to satisfy accounts had been withdrawn from trust before bills were rendered.

7. The Solicitor has now repaid all amounts owing either by injecting further monies into various trust accounts or by rendering the appropriate fee billings.

Douglas and Howard Drysdale

8. In 1988 the Solicitor acted for Douglas and Howard Drysdale on their sale of a property known as Part Lot 26 and Lot 27, Concession 9, Township of Whitchurch-Stouffville. Deposits totalling \$500,000 were made by the purchaser, Terracan Properties Inc., to the real estate agent, Canada Trust, who invested the money in a term deposit with interest for the benefit of the Drysdals.

9. The sale did not close in July, 1990, and Canada Trust paid \$27,000 of the funds held in trust to the Solicitor in trust to be held by him as retainer for his fees.

10. The Solicitor invested \$24,000 of the \$27,000 in a term deposit and transferred \$3,000 to his general account. He subsequently redeemed the term deposit and deposited the proceeds with interest of \$220.93 to his trust account. \$24,000 of those funds were transferred to his general account during the next six months in a series of five transfers. The balance of his trust account was \$220.93.

11. The Drysdals expected the Solicitor to be holding the \$27,000 in trust for them and that a portion of those funds would be applied to fees properly billed from time to time.

12. The Solicitor stated that he transferred the money in anticipation of fees to be billed on the file. The clients expected that the fees would be less than \$27,000 and expected that the difference with accrued interest would be returned to them or applied as they directed.

13. The Solicitor has now made full restitution to the Drysdals by issuing fee billings and by transferring \$20,139.12 into the Drysdals' trust account to compensate for the remainder of the shortfall.

Donna and Michael Keels

14. On June 30, 1990 the Solicitor received \$4,605.15 into his mixed trust account as partial payment on account of settlement funds received for damages to Michael Keels, a minor, resulting from an accident at school. The settlement funds were to be held in trust in escrow until the requisite court approval of the infant settlement claim had been obtained.

15. On October 31, 1990, the Solicitor received the balance of the settlement funds of \$389.69.

22nd October, 1992

16. On July 13, 1990, \$396.10 was transferred from trust to the Solicitor's general account and on August 10, 1990, a further \$4,209.05 was transferred. The balance in the trust account was \$389.69.

17. At the time of these transfers, the Solicitor had not yet received court approval of the settlement.

18. The improper transfer of funds in the Keels matter consisted of \$4,605.15, being the difference between the total funds received and the amount still being held in trust.

19. The sum of \$4,394.84 has now been paid into court to the credit of the minor. Legal fees totalling \$1,224.31 were owing by the litigation guardian to the Solicitor, this amount is being repaid at the rate of \$100 per month. Complete restitution has now been made in the Keels matter.

Estate of John Colin Price

20. The Solicitor was the solicitor of this estate.

21. On November 14, 1988, the Solicitor received \$35,062.32 into his mixed trust account, being the balance of the estate bank account. The Solicitor paid \$17,531.16 to each of the two beneficiaries of the estate in accordance with the terms of the will, as an interim distribution.

22. On December 17, 1987 a \$3,000 payment was made to the Solicitor's firm; on December 31, 1987, a \$4,000 payment was made to the firm; and on February 17, 1988 a final \$5,000 payment was made to the firm.

23. The estate was invoiced for legal fees and disbursements to December 17, 1987, in the amount of \$3,000 by invoice #5219 on November 11, 1988. The \$3,000 payment to the Solicitor's firm on December 17, 1987, can be reconciled with invoice #5219. However, the transfer of fees took place 11 months prior to rendering the account.

24. The Solicitor prepared a final account to the estate in the amount of \$7,110.52 on May 4, 1990, also bearing invoice #5219. A separate account in the amount of \$844.20 was also prepared.

25. On May 4, 1990 the Solicitor made the final distributions to each of the beneficiaries of \$2,022.64 from his general account. The Solicitor calculated the amount payable to the beneficiaries by adding the total of his fees billed, which is \$7,954.72 and deducting that amount from the \$12,000 he had previously removed from the estate bank account. That amount was then divided into two.

26. In this instance, the entire amount improperly transferred has been repaid.

Estate of Ruth Mary Dalton

27. In 1981, the Solicitor prepared the Will of Ruth Mary Dalton. He became the solicitor of her estate when she died in 1988.

28. From mid-1988 to July, 1989, the Solicitor transferred \$4,566.25 from the estate account, of which he had sole signing authority, to his general account.

22nd October, 1992

29. On July 14, 1989, the proceeds of the estate bank account of \$41,493.88 were deposited to the Solicitor's trust account. On December 22, 1989, the Solicitor transferred \$35,000 from the trust to his general account. On June 22, 1990, the Solicitor transferred \$238.34 back from his general to his trust account.

30. In January, 1991, the Solicitor made distributions to the beneficiaries of the estate and paid expenses of the estate from his general bank account totalling \$39,327.51. The Solicitor also issued a fee billing invoice #9927 in the amount of \$3,191.33 to the estate after being contacted by the Law Society.

31. The executor received all the fee billings posted to the client ledger account, and the distribution of monies to the beneficiaries has been confirmed. Accordingly, the full amount, \$39,327.51, improperly transferred, has been repaid.

Estate of Lawrence McDaid

32. In 1979 the Solicitor prepared the will of Lawrence McDaid, in which will he was named as the sole executor.

33. Mr. McDaid died in 1989. At that time the Solicitor opened an estate bank account over which he had sole signing authority.

34. Capital receipts totalling \$19,612.26 were received by the Solicitor and deposited directly in his general account. Other capital receipts were deposited into the trust account. The Solicitor transferred a total of \$12,338.27 from his trust account to his general account from November, 1989 to July 27, 1990. The Solicitor's improper transfer from this estate totals \$31,950.53.

35. The Solicitor rendered an account in the amount of \$2,703.25 as fee billings in this matter. The executor of the estate has provided confirmation of the receipt of this billing. In 1991 the Solicitor completed repayment to the estate by making distributions to the beneficiaries from his general account.

36. The entire amount of the monies improperly transferred from the estate has been repaid.

Estate of Audrey Isobel Farrar

37. In 1988 the Solicitor became the solicitor of the estate of Audrey Farrar. During 1988 he took \$6,676.79 from the estate bank account and deposited that money into his general bank account.

38. In May, 1989, the estate bank account was closed and the balance of \$79,460.83 was transferred into the Solicitor's mixed trust account. From August, 1989, to November, 1990, the Solicitor transferred a total of \$64,889.76 from his mixed trust account to his general account. During the same period he billed the estate a total of \$2,176.79. Accordingly, the Solicitor improperly transferred \$69,389.76 from the estate during the period August, 1989 to November, 1990.

39. In 1991 the Solicitor repaid the estate \$63,278.55 by making distributions to the beneficiaries from his general account. He billed the estate an additional \$6,194.23 in January, 1991. Confirmation of the receipt of the fee billing has been made by the executrix of the estate.

22nd October, 1992

40. The total amount improperly transferred by the Solicitor has been repaid.

Estate of Hazel Irene Harper

41. The Solicitor became the solicitor for the estate of Hazel Harper in October, 1987, when Ms. Harper died.

42. In July, 1989, the Solicitor received proceeds of the estate bank account of \$61,894.02 into his mixed trust account. During the period July, 1989, to November, 1990, he transferred a total of \$47,342.72 from his mixed trust account to his general account.

43. During this same period he billed the estate \$1,272.76. The receipt of fee billings has been confirmed by the executor. Accordingly, the Solicitor improperly transferred \$46,069.96.

44. In 1991 the Solicitor repaid the estate the monies he had improperly transferred by making a distribution to the beneficiaries from his general bank account. In fact, as a result of a bookkeeping error, the Solicitor actually disbursed \$20,000 in excess of the amount properly owing to the beneficiaries.

Estate of Pradeep Panangaden

45. In August, 1990, the Solicitor became the solicitor of the estate of Pradeep Panangaden when Mr. Panangaden died.

46. From September, 1990, to January 18, 1991, the Solicitor transferred \$17,133.55 from the estate bank account to his general account.

47. During the same period the Solicitor billed the estate \$7,946.39. The executor of the estate has confirmed receipt of the fee billings of \$7,840.89.

48. Subsequently, the Solicitor made additional fee billings. Accordingly, fee billings have been made for the entire amount improperly transferred from the Solicitor's account during the period and in the manner detailed in paragraph 46 above.

Estate of Elizabeth Mary Paisley

49. Elizabeth Paisley died intestate in January, 1988. The Solicitor was engaged by Wendy Corman, a niece of the late Ms. Paisley, to locate the next of kin of Ms. Paisley. The Solicitor advised Mrs. Corman that she was not a beneficiary because she was not a "blood relative".

50. The Solicitor commenced a search for the whereabouts of Ms. Paisley's next of kin but was unable to locate them.

51. In February, 1989, the Solicitor received \$8,000 in trust for the benefit of Ms. Paisley's estate as proceeds from a fire insurance claim. He also received \$27.07 being a refund of cable television charges and \$47.03 being a refund from Eaton's department store.

52. During the period February, 1989 to November, 1990 the Solicitor transferred the entire trust funds which he had received from his mixed trust account to his general account.

22nd October, 1992

53. During its investigation the Society found fee billings in the Solicitor's file purportedly billed to Wendy Corman. Mrs. Corman did not receive any of the fee billings.

54. In 1991 the Solicitor repaid \$3,335.09 to his trust account leaving \$6,251.49 which was improperly transferred and not repaid. The Solicitor reported his efforts in determining the next of kin of Ms. Paisley to the Public Trustee on December 30, 1991. Fee billings in respect of this estate have now been prepared and directed to "the beneficiaries at large, as yet undetermined" and accordingly, the entire amount improperly transferred has now been repaid.

Particular 2(b) - Breach of Undertaking
Donna and Michael Keels

55. Paragraphs 13 through 17 above detail the transfer of trust funds held by the Solicitor for Michael Keels, a minor.

56. As described in paragraph 15 above, the Solicitor transferred funds which were the subject of an escrow agreement from a trust account to his general account before court approval of the settlement had been obtained (in contravention of the escrow agreement). Restitution has now been made in this matter as described in paragraph 18 above.

Particular 2(c)
Estate of John Colin Price

57. Paragraphs 18 through 24 above detail the transfer of funds by the Solicitor of monies held in trust for the estate of Mr. Price.

58. On December 17, 1987 the Solicitor transferred \$3,000 from the estate bank account to his general account. On November 11, 1988 the Solicitor prepared invoice #5219 representing legal fees and disbursements to December 17, 1987 in the amount of \$3,000. The transfer of funds representing this fee billing was made some 11 months prior to sending the fee billing. The Solicitor would give evidence that all of the fees and disbursements represented by the account had been incurred at the time of the transfer of the funds. The Society would offer no evidence to the contrary.

Particular of 2(d) -
Contravention of Section 14(10) of Regulation 573 under the Law Society Act

59. Marisa DeBrincat is the Solicitor's office manager/administrator. She has been employed by the Solicitor for 18 years.

60. Ms. DeBrincat signed most of the cheque requisitions which triggered the issuance of the trust cheques payable to the general account in respect of transfer of trust monies from the various estates. The Solicitor signed some of the trust cheques. For a period of time, Ms. DeBrincat also signed trust cheques. Neither she nor the Solicitor were aware it was improper for her to do so. The Solicitor takes full responsibility for the contravention of Section 14 (10) of the Regulation.

61. Throughout the investigation the Solicitor and his staff were fully and actively co-operative. Any representations made by the Solicitor during the investigation were determined by subsequent investigation to be accurate and the Solicitor's financial records were complete and clearly demonstrated the true state of the ledgers with respect to each client. Any assistance required in understanding the computerized accounting system used (P.C. Law) was immediately and fully given.

62. There was no indication that any of the contraventions determined resulted in increased draws on the part of the Solicitor.

63. The Solicitor complied with the request that he not contact any of the clients with respect to any of the matters under investigation. The Solicitor complied with the request that he not take any steps to rectify any of the ledgers indicating misapplication of funds until sometime during the month of August, 1991.

Prior Discipline

64. On December 18, 1980, the Solicitor was found guilty of professional misconduct for failure to reply to correspondence from the Society. The Solicitor was reprimanded in committee.

65. On November 1, 1988, the Solicitor was found guilty of professional misconduct for failing to comply with a court order respecting estate documents and failing to reply to the Society. The Solicitor was reprimanded in Convocation on November 24, 1988.

66. On February 20, 1991, the Solicitor was found guilty of professional misconduct for failing to reply to the Society and failing to diligently and conscientiously serve his clients. The Solicitor was reprimanded in committee and required to give an Undertaking that he would reply promptly to communications from the Society, other lawyers and clients in writing within one week and to respond to telephone communications within two days. In addition, the Solicitor was ordered to continue treatments with Dr. Morris or a therapist recommended by Dr. Morris. Thirdly, the Solicitor was required to assign to other lawyers in the office day to day responsibility for any new matters assumed by the office and to assign current responsibility for as many files as feasible, it being understood that the ultimate objective would be that all files would be so assigned. Fourthly, the Solicitor was to assume and maintain a supervisory role only in the law office. Finally, the Solicitor was to maintain these conditions until relieved of them by the Senior Counsel-Discipline of The Law Society of Upper Canada or his or her designate. The committee's order provided that the Solicitor could make occasional court appearances on files prepared by associates or juniors.

DATED at Toronto this 8th day of January, 1992."

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

This was a hearing to determine whether or not James Frederick Harris Gray was guilty of professional misconduct.

A member of the public was present before the hearing began. A motion was made that the matter be held in camera on the ground that intimate personal details would be disclosed. Over the objection of that member of the public, argument was held in camera. The reason was that argument itself might destroy the purpose of the in camera proceedings if that decision was made. On completion of argument your Committee, again over the objection of the member of the public, decided to hold the hearing in camera.

A submission was made by counsel for the Solicitor, during argument, that the member of the public who was objecting, had no personal interest in any of the matters in question before the Committee, either direct or indirect, but rather was harassing the Solicitor because of unhappiness with the result of a matter in which the Solicitor had acted. No evidence was adduced on that point. The complaints did not deal with that person.

22nd October, 1992

At the beginning of the hearing itself, counsel for the Solicitor made a further motion that the Committee reconstitute itself as a Section 35 Committee and deal with the matter as a hearing to determine whether the Solicitor was incapable of practice by reason of mental illness. Your Committee reserved judgement until it heard the evidence.

The facts were submitted to the Committee in the form of an Agreed Statement of Facts, a medical brief, and viva voce evidence given by Dr. Andrew I. Malcolm and Marisa Debrincat, the Solicitor's secretary. The Solicitor did not give evidence.

During the years 1988 to 1991 the Solicitor transferred money from his trust account and from estate accounts over which he had signing authority to satisfy the ongoing obligations of his practice and for personal draws. There is no doubt that most of the transfers were misappropriations for his benefit. In the normal case, there would be a finding of professional misconduct. The question is whether or not, in this case, such a finding should be made.

The evidence was that the Solicitor was and is suffering from "burnout" and reactive depression. The depression stems from the death of his daughter in 1985, and the earlier deaths of his father and his partner. It appears from the reports that he has never learned how to deal with grief arising from the death of persons close to him. The death of his daughter resulted in an inability to properly function at work. We were asked to draw the conclusion that as a result of his condition, he was incapable of appreciating the seriousness of what he was doing and therefore lacked the mens rea required to find him guilty of theft of clients funds.

There was some basis for this in the evidence of Dr. Malcolm, but not sufficient in the view of the Committee, to come to that conclusion.

Dr. Malcolm, on cross examination, admitted that while he (Dr. Malcolm) was aware of the dollar amount of the misappropriation, he had not really addressed that issue, and was thinking more in terms of making inappropriate drawings - amounts for which work had been done but for which no account had been rendered.

The following questions were asked which elicited the following responses.

"Q. Doctor, can I perhaps put it in terms that I'm told psychiatrists don't like to use, or the medical profession doesn't like to use. Was he able to tell the difference between right and wrong?

A. Well, I'm well aware of that expression and the really bottom line of it is that yes, I think he could have told the difference between right and wrong but I think that he was in such a miasma of distress at that period that that was not of paramount importance to him. That's the nature of depression. If you can sit somebody down who is very depressed and say, "Now this is this and this is this; is something right and is something wrong", they can probably say yes, but when they're not having their attention specifically drawn to a particular real issue then they are in such a floating state that they really don't address the issue that they would do if they were in a normal state. So, he wasn't functioning as though he could tell the difference between right and wrong but if you could have pinned him down, at that moment, you would have found that he was not psychotic and that he did know that it was wrong. That may be of no value to you.

22nd October, 1992

Q. Let me use an example now. Suppose that the evidence says that there is blank dollars in his trust account but the figure \$30,000.00, \$40,000.00 has been thrown, so let's just use the figure \$30,000.00. There's \$30,000.00 in his trust account that clearly doesn't belong to him. He knows that he's maybe got \$1,000.00 of work on it or \$2,000.00 of work on it and he transfers the whole \$30,000.00 to his general account. Would that be sufficient to -- sufficient bringing it to his attention that he knew that was right or wrong?

A. I believe he would know that that was not right, that it was wrong; in fact that it was a violation of the rules. I'm not so sure that he was concerned.

Q. It's more than a violation of the rule for \$2,000.

A. Yes, more than that, yes.

The admissions made in the Agreed Statement of facts formed the basis for the foregoing questions.

Marisa Debrincat's evidence was very supportive of the Solicitor as a person and as a lawyer. She was also able to give evidence on the effect of his daughter's death on him, to the point, on one occasion, of not recognizing her in a picture that was on his office credenza. When that was brought to Dr. Malcolm's attention he still said the Solicitor was not psychotic. His problem was depression.

Because of problems the Solicitor had had with a bookkeeper who had stolen money from him, Ms. Debrincat was very careful to ensure that he was aware at all times as to what was happening with his books. She met with him on a regular basis to determine what money was in the trust account, what money was in the general account and what payments had to be made. Clients money was regularly used to pay expenses and he was aware of it.

Ms. Debrincat never saw it as theft. She knew he had the resources to cover. She urged him on several occasions to do so. On one occasion he mortgaged his house for this purpose, but then used a lot of the money to buy a new car. Shortly after the Society's investigation began, he injected funds from a further mortgage on his house to completely cover the shortages. Her evidence was, however, that he was negotiating for this further loan before the investigation began.

On all of the evidence before it, the foregoing being two brief portions, the Committee cannot accept the submission that because of the Solicitor's mental condition he is not guilty of professional misconduct. He knew he was taking money from his clients accounts to pay his office expenses and for personal draws and he knew that what he was doing was wrong. We must therefore find that he is guilty of professional misconduct.

That also, of course, disposes of the motion that the Committee reconstitute itself as a section 35 Committee. That motion is denied.

DATED this 26th day of March, 1992."

RECOMMENDATION AS TO PENALTY

The Committee accepts the joint submission that James Frederick Harris Gray be granted permission to resign.

REASONS FOR RECOMMENDATION

The normal penalty for misappropriation of money is disbarment. The Committee has concluded, however, that such a penalty would not be just in the circumstances of this case. The Solicitor's actions have been largely caused by the depression over which he has no control. The Society has, in many instances, in the past, allowed a solicitor to resign if the misappropriation has been caused by a medical problem and there has been restitution. Your Committee recommends that Convocation adopt those precedents.

In making the joint submissions the Society did not ask that the Solicitor undertake not to seek readmission. Your Committee agrees that no such undertaking is required. We believe that he is fundamentally an honest and caring person. If he can demonstrate to a future Committee that he is cured, your Committee is of the view that, subject to requalification, there should be no problem with his reinstatement.

James Frederick Harris Gray was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 18th day of September, 1959.

ALL OF WHICH is respectfully submitted

DATED this 10th day of September, 1992

"J. Wardlaw"
Chair

There were no submissions.

The Report as amended was adopted.

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

There were brief submissions in support of the Recommendation.

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

It was moved by Mr. Bastedo, seconded by Mr. Hill that the Recommendation as to Penalty be adopted for the full reasons of the Committee and that those reasons be made public.

Counsel, the solicitor, the reporter and the public were recalled and were informed of the motion made.

The solicitor requested a brief adjournment to consider the matter.

Convocation adjourned for 15 minutes.

Convocation reconvened at 10:55 a.m.

Mrs. Weaver did not participate.

Counsel agreed to the public distribution of the Report and Recommendation with certain corrections. They were:

22nd October, 1992

- page 13, last line, delete the rest of the sentence after the word whether, and add the words "Section 35 had any application" so the sentence would read: "At the beginning of the hearing itself, counsel for the Solicitor made a further motion that the Committee reconstitute itself as a Section 35 Committee and deal with the matter as a hearing to determine whether Section 35 had any application."

- page 14, third full paragraph delete the words "father and his" and insert the words "and the subsequent death of his father" so the sentence would read: "The depression stems from the death of his daughter in 1985, and the earlier deaths of his partner and the subsequent death of his father."

The Recommendation as to Penalty was adopted with those reasons to be made public as amended from pages 13 through 18.

.....

Re: CHARLES CHAITON, North York

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Messrs. O'Connor, Lamek, Campbell and Ms. Curtis withdrew.

Mr. Gavin MacKenzie appeared for the Society and Mr. John Laskin and Ms. Sandra Forbes appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 8th September, 1992 together with the Affidavit of Service sworn 10th October, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 25th September, 1992 (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor on 22nd October, 1992 (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

Dennis R. O'Connor, Q.C., Chair
Carole Curtis
Mrs. Netty Graham

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

CHARLES CHAITON
of the City
of North York
a barrister and solicitor

Stephen Waisberg
for the Society

John Laskin and Sandra Forbes
for the solicitor

Heard: May 19, 1992

22nd October, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 8, 1991, Complaint D81/91 was issued against Charles Chaiton alleging that he was guilty of professional misconduct.

The hearing was heard in public on May 19, 1992 before this Committee composed of Dennis R. O'Connor, Q.C., Chair, Carole Curtis and Mrs. Netty Graham. Mr. Chaiton attended the hearing and was represented by John Laskin and Sandra Forbes. Stephen Waisberg appeared on behalf of the Law Society.

DECISION

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

2(b) He breached Rule 16 of the Rules of Professional Conduct in that:

- i) he permitted a non-lawyer to perform tasks on behalf of clients while failing to maintain a direct relationship with the clients, and
- ii) he maintained a branch law office which was not at all times effectively supervised by a lawyer.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

The Solicitor admits service of Complaint issued against him and is prepared to proceed with a hearing of this matter on May 19, 1992.

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 D81/91 with his counsel and admits the allegations contained in paragraphs 2(b) i) and 2(b) ii) thereof. The Solicitor further admits based on the agreed statement of facts set out below he has committed professional misconduct in regard to paragraphs 2(b) i) and 2(b) ii) of Complaint D81/91.

IV. FACTS

4. The Solicitor was called to the Bar in 1974. He is one of four partners in the law firm, Chaiton & Chaiton, Barristers & Solicitors, 185 Sheppard Avenue West, North York, Ontario. He practices in the area of real estate law and is the partner within the firm responsible for that area of the firm's practice.

5. As a result of information received from Carol Davidson, a former employee of the Solicitor's firm, an audit investigation was carried out by Law Society which ultimately resulted in the issuance of Complaint D81/91.

6. In April 1989 the solicitor's firm took over, as a branch office, the former real estate practice of Richard D. Wong, Barrister and Solicitor, situated at 22 Main Street South, Newmarket, Ontario.

7. Following the acquisition, the firm also retained the services of two law clerks who had worked for Mr. Wong and who were both experienced in the area of real estate law. These law clerks who were hired as employees of the Solicitor's firm were Carol Davidson and Shoanagh Rankin. In 1989 Shoanagh Rankin had approximately 20 years experience as a real estate law clerk.

8. Shoanagh Rankin remained at the branch office in Newmarket and Carol Davidson moved over to the firm's main office in North York.

9. In May, 1989, Janet Lynn Reeve, who had just completed a two year Legal Assistant Program at Centennial College, sent an unsolicited resume and job application to the Solicitor's branch office in Newmarket.

10. Ms. Reeve was interviewed by Ms. Rankin who forwarded Ms. Reeve's resume to the North York office. Ms. Rankin advised Ms. Reeve that she had been hired by the firm and Ms. Reeve commenced her employment at the branch office under the direction of Shoanagh Rankin on May 15, 1989.

11. Ms. Reeve remained employed with the firm at the branch office until the firm closed the branch office in December of 1989.

12. When Ms. Reeve commenced her employment with the Solicitor's firm, she apparently was advised by Shoanagh Rankin that a lawyer from the firm would be in attendance at the branch office for a few hours a day, two or three times a week.

13. Throughout Ms. Reeve's employment at the branch office, she never saw a lawyer from the firm attend at the branch office. The solicitor maintains that he attended the branch office infrequently but admits that such attendance was not sufficient to effectively supervise the branch office at all times. The only time that Ms. Reeve ever met the Solicitor was on four separate occasions. These occasions were non business functions outside of the branch office in Newmarket.

14. The Solicitor relied on the fact that the experienced law clerk from the branch office, Shoanagh Rankin lived in Toronto and every business day on her way to Newmarket would stop in at the main office with files she was working on to review with Solicitor. She would pick-up and deliver cheques and documents as required. All banking was done through the main office. All cheques required for transactions closing out of the branch office would be requisitioned a day prior to their being required.

15. The work carried out at the branch office was primarily residential real estate purchases, sales and mortgages. In some instances individuals (not established clients of the firm) would come into the branch office with signed Agreements of Purchase and sale. These persons would be interviewed by Ms. Rankin who would advise them as to the fees to be charged and the documentation and procedure necessary to complete their transactions. Once these individual indicated that they wished to have the firm act on their behalf, Ms. Rankin would instruct Ms. Reeve to open a file.

16. Ms. Reeve's duties included preparing the necessary documents for the real estate closings, title searches, attending on closings and preparing reporting letters. She would close approximately twelve transactions per month and free lance conveyancers would be used monthly to close an additional two or three transactions.

17. In addition to attending on clients to review their files in preparation of closing and having the clients sign the appropriate documents necessary to close their real estate transaction, Ms. Rankin would do the following:

a) She would review title searches completed by Ms. Reeve and provide Ms. Reeve with instructions in regard to preparing letters of requisition on title. Ms. Rankin's evidence and the Solicitor's evidence is that the Solicitor would review all title searches with Ms. Rankin and instruct her on letters of requisition.

b) Ms. Reeve's evidence is that Ms. Rankin would sign requisition letters prepared either by herself or by Ms. Reeve and would fax or mail them directly from the branch office to the solicitor representing the client(s) on the other side of the real estate transaction. If Ms. Rankin had any difficulties in regard to matters of requisition on title or on any other matters, she would either call the main office or take the file to the main office to obtain instructions. Ms. Rankin's evidence and the Solicitor's evidence is that virtually all requisition letters were signed by the Solicitor; on occasion Ms. Rankin (unknown to the Solicitor) signed requisition letters.

18. Following the completion of a file, the reporting letter would be prepared by either Ms. Rankin or Ms. Reeve. In most cases Ms. Rankin would take these letters to the main office to be signed by a lawyer. On occasion reporting letters were signed by either law clerk without review by a lawyer and mailed directly from the branch office to the client.

19. On real estate closings, Ms. Reeve would provide standard "undertakings" without review by a lawyer. On occasions when she was uncertain as to whether to provide an "undertaking" or when the undertaking was out of the ordinary she would contact Ms. Rankin and obtain Ms. Rankin's instructions as to whether or not she should provide an "undertaking" on behalf of the Solicitor's firm. Ms. Rankin would then instruct Ms. Reeve. On those occasions when the Undertaking was out of the ordinary, Ms. Rankin would first check with the Solicitor at the main office prior to instructing Ms. Reeve concerning an Undertaking.

20. On one occasion when Ms. Rankin was on holidays for a week, Sabina Mandle, a secretary from the main office would come to the branch office at noon and leave at 5:00 p.m. During the mornings, Ms. Reeve would be alone in the office.

21. The branch office in Newmarket remained open for only eight months. The firm closed the office voluntarily well in advance of any Law Society investigation because it did not believe it could provide sufficient supervision.

22. There were no Errors and Omissions claims against the firm arising out of work done at the Newmarket office.

V. PAST DISCIPLINE

23. The Solicitor has no past discipline record.

DATED at Toronto this 19th day of May, 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Charles Chaiton be Reprimanded in Convocation.

REASONS FOR RECOMMENDATION

The Solicitor has signed an Agreed Statement of Facts admitting to particulars of the complaint and to a finding of professional misconduct with respect to the following two items.

- a. he permitted a non-lawyer to perform tasks on behalf of clients while failing to maintain a direct relationship with the clients, and
- b. he maintained a branch law office which was not at all times effectively supervised by a lawyer.

This is in direct contravention of Rule 16 of the Rules of Professional Conduct, the Rule regarding Delegation to Non-Lawyers. Rule 16 is detailed, and explicit. It has extensive commentaries.

The Solicitor is in contravention of the following specific portions of Rule 16:

Rule 16

1. Lawyers may in appropriate circumstances render services to their clients with the assistance of non-lawyers of whose competence they are satisfied. Though legal tasks may be delegated to such persons, the lawyer in question remains responsible for all services rendered and for all written materials prepared by non-lawyers.
2. The lawyer may permit a non-lawyer to perform tasks delegated and supervised by a lawyer so long as the lawyer maintains a direct relationship with the client ... and assumes full professional responsibility for the work. The lawyer should not permit a non-lawyer to perform any of the duties that only lawyers may perform, or do things that lawyers themselves may not do.
3. The lawyer may permit a non-lawyer to act only under the supervision of a member of the society... the burden rests upon the lawyer who uses a non-lawyer to educate the latter with respect to the duties that may be assigned to the non-lawyer, and then to supervise the manner in which such duties are carried out. The lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion.
4. Every law office, including a branch office of a law firm, must at all times be effectively supervised by a lawyer.

COMMENTARY

1. Permissible Delation
2(a) Real Estate:... the lawyer should not delegate to a non-lawyer ultimate responsibility for review of a title search report, or of documents before signing, or the review and signing of a letter of requisition, a title opinion or reporting letter to the client.
2. Non-Permissible Delation
3. The lawyer may not permit a non-lawyer to:
 - (a) accept cases on behalf of the lawyer, except that such persons may receive instructions from established clients that the supervising lawyer is advised before any work commences;
 - (d) give or accept undertakings, except with the express authorization of the supervising lawyer;
 - (m) forward to a client any documents, other than routine documents, unless they have been previously reviewed by the lawyer.

The panel received a joint submission as to penalty, and a recommendation that the penalty be a reprimand in Committee. Discipline Panels have, recently, repeatedly considered the issues surrounding the influence and weight to be given to joint submissions as to penalty.

In its consideration, we were also mindful of the fact of the somewhat less meaningful distinction between a reprimand in Committee and a reprimand in Convocation. In the past, when discipline proceedings were not held in public, a reprimand in Committee was, essentially, a private matter, the result of which, or even the existence of which, would not have attracted publicity or media attention. That was one of the valid reasons for a distinction between these penalties. With the opening of the discipline process, the public nature of discipline hearings, and the public nature of Convocation, that reasons, as an end to itself, is no longer available and is now meaningless. It may be time for the Discipline Policy Committee to re-examine the discipline process in light of the impact made on the process by the fact that the process is now public.

In deciding to impose a penalty different from the joint submission, we were mindful of, and took into consideration, the mitigating factors with respect to the misconduct complained of, among which were:

- a. The lawyer has no past discipline record.
- b. The branch office remained open for only 8 months, and was closed by the firm, voluntarily, well in advance of the Law Society investigation.
- c. No errors and omissions claims against the firm arose out of work done at the branch office.

It is beyond doubt appropriate for discipline proceedings to be structured in a way to encourage counsel to take advantage of procedures which move the matter through the process efficiently, including the use of Agreed Statements of Fact and the use of joint submissions as to penalty. Discipline Panels are entitled to operate on the basis that the parties appearing before them have canvassed the issues in question fully, have arrived at a reasoned and sensible agreement on the facts, have considered all options with respect to penalty, and, where possible, have been able to agree on an appropriate range, or even an appropriate penalty, for submission. This process assist Discipline Panels enormously, is cost-efficient, works no injustice on solicitors being disciplined, and is consistent with the protection of the public. The difficulty arises, for Discipline Panels, in determining the weight to be given to a joint submission as to penalty and further, under what circumstances the Discipline Panel should deviate from a joint submission as a penalty.

22nd October, 1992

A Discipline Panel is not bound by a joint submission as to penalty. Nor is there a presumption that a joint submission ought to be adopted. Rather, a joint submission as to penalty should have persuasive merit. The joint submission should be considered carefully by the Panel. However, the Panel has the jurisdiction to impose a penalty other than that proposed by the joint submission of counsel, and in fact, where appropriate, has a statutory obligation to impose such a penalty. The imposition of penalty is the exercise of a discretion by the Discipline Panel.

In departing from the joint submission, the over-riding issue for us was the question of whether or not a reprimand in Committee would have adequately served to both protect the public and to deter other solicitors. The behaviour complained of is such that many real estate lawyers could find themselves practising in precisely this way. The daily pressures of practice, coupled with difficult economic times, and declining real estate markets, result in increased pressures to make law practices profitable. Those pressures could result in decisions to delegate work to non-lawyers in appropriate circumstances. In other words, the particulars of this misconduct are an easy trap for lawyers to fall into as the economy worsens. We believe that the protection of the public requires a very clear message be sent to the profession regarding the inappropriateness of this behaviour.

Taking into account all the circumstances, including the joint submission as to penalty, we are of the view that a Reprimand in Convocation is the appropriate penalty.

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

ALL OF WHICH is respectfully submitted

DATED this 8th day of September, 1992

"C. Curtis"
Chair

THE LAW SOCIETY OF UPPER CANADA

DISSENT OF

REPORT AND DECISION

OF THE

DISCIPLINE COMMITTEE

IN THE MATTER OF the Law Society Act

AND IN THE MATTER OF Charles Chaiton,
of the City of North York, a
Barrister and Solicitor

Reasons for Penalty

Dissent - Dennis O'Connor

I accept the joint submission of counsel that the appropriate penalty is a reprimand in committee.

The Society proceeded on Particular 2(b) of the complaint. Particular 2(a) was withdrawn.

The facts were admitted. The misconduct related to the lack of supervision of two law clerks employed at a branch office of the firm located in Newmarket. The work carried out by the law clerks was primarily residential real estate.

There were four specific areas where lack of supervision was alleged. On some occasions Ms. Shoanagh Rankin, a very experienced law clerk, would interview new clients and would advise as to the fees to be charged and the documentation and procedure necessary to complete the transaction. It was accepted before us, that Ms. Rankin did not set the fees. There was no suggestion that any information provided by Ms. Rankin was inaccurate or that any client complained about their dealings with her. Significantly, Ms. Rankin attended at the main office every day to review matters with the solicitor and presumably would discuss any unusual matters emanating from first interviews with clients.

Paragraph 17(b) of the Agreed Statement of Fact deals with requisition letters. While the paragraph as drafted sets out two different versions of what occurred, staff counsel indicated that we should proceed on the basis that virtually all requisition letters were signed by the solicitor; however on occasion unknown to the solicitor Ms. Rankin signed requisition letters. The clear inference is that the practice and intent of the solicitor was to sign all such letters. The most that can be said is that closer supervision may have prevented the clerk from signing the occasional letter. Importantly, the solicitor reviewed all title searches.

The allegation with respect to reporting letters is similar. In most cases they were taken to the main office to be signed by a lawyer. On occasion reporting letters were signed by a law clerk without review by a lawyer. Staff counsel accepted in oral argument that this occasional practice was not known to the solicitor.

Finally with respect to real estate closings, a law clerk would provide standard undertakings without review by a lawyer. The examples mentioned in discussion with the Committee were an undertaking to register a discharge of a mortgage when funds payable to the mortgagee were received and an undertaking to readjust fuel oil. "Out of the ordinary" undertakings were checked with the solicitor.

The branch office remained open for eight months and was closed voluntarily by the solicitor's firm before any investigation commenced. The reason for closing, as set out in the Agreed Statement of Facts, was because the firm did not believe it could provide sufficient supervision. The solicitor only attended the office once or twice a month during the eight month period and admits that such attendances were not sufficient to effectively supervise the branch office at all times.

There were no complaints from clients and no harm to clients' interests was alleged.

I accept that lack of supervision of law clerks is a serious matter. In my view, the allegations in this case fall towards the lower end of the range of misconduct that one can imagine coming within Rule 16.

22nd October, 1992

It is significant that the solicitor has no previous record of discipline and is apparently highly regarded in the legal community.

This is a case where the panel received a joint submission as to penalty. While obviously not binding on us, it is important to attach significant weight to that submission. It obviously resulted from negotiations between counsel and possibly compromises with respect to the Agreed Statement of Facts and the positions taken before the panel.

Over the years, the Society has encouraged staff counsel and counsel for solicitors to develop Agreed Statements of Facts where possible. The benefits are obvious. Discipline panels expect a serious effort to be made to reduce the issues of fact and law that are in dispute. Discipline panels also expect counsel for the staff and the solicitor to make specific submissions as to penalty.

While recognizing that in some circumstances discipline panels will find it necessary to depart from a joint submission, there are sound reasons for carefully pausing before doing so. Accepting joint submissions encourages negotiation and settlement of matters in dispute. In addition, the views of two counsel representing opposite interests who have had a full opportunity of reviewing all of the facts and the various factors relevant to penalty should not be lightly rejected.

For the above reasons I accept the joint submission. Accordingly, I dissent from the recommendation that the solicitor be reprimanded in Convocation.

ALL OF WHICH is respectfully submitted

DATED this 9th day of June, 1992.

"Dennis R. O'Connor"

The Report of the Discipline Committee was adopted.

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

There were submissions by counsel.

Mr. MacKenzie supported the majority Recommendation and Mr. Laskin supported the minority Recommendation of a reprimand in Committee.

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

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

Carried

The majority motion was lost.

Mr. Strosberg would be providing written Reasons.

22nd October, 1992

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

Counsel and the solicitor retired.

.....

Re: ANTHONY MICHAEL SPECIALE, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Messrs. Lamek, Bastedo and Yachetti did not participate.

Mr. Gavin MacKenzie appeared for the Society and Mr. Eric Murray appeared on behalf of the solicitor. The solicitor was not present.

Mr. Strosberg presented the application for costs under Section 41 of the Law Society Act brought against the Society by Mr. Speciale. It was recommended that the Law Society pay costs in the amount of \$25,000 plus certain disbursements in addition to interest.

It was moved by Mr. Strosberg, seconded by Mr. Topp that the recommendation be adopted.

There were submissions by both counsel. Mr. MacKenzie opposed the recommendation of the Committee.

Questions were taken from the Bench.

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

.....

CONVOCATION RECONVENED AT 1:45 P.M.

.....

PRESENT:

The Treasurer, (Allan M. Rock), Arnup, Brennan, Carter, Copeland, Cullity, Curtis, Elliott, Hill, Kiteley, Lamek, Lamont, Lerner, Murphy, Murray, Palmer, Somerville, Strosberg, Thom, Topp and Weaver.

.....

CONTINUATION OF SPECIALE MATTER

Ms. Palmer did not participate.

There were further submissions by Mr. Murray.

Counsel, the solicitor, the reporter and the public withdrew while Convocation considered procedural matters.

It was moved by Mr. Strosberg, seconded by Mr. Lerner that the Society pay \$5,000 for the costs of appearance.

22nd October, 1992

After some discussion Mr. Lerner withdrew as seconder of the motion and the motion then failed for want of a seconder.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that a record be prepared identifying the issues with written submissions.

Neither counsel insisted on Convocation being seised.

Counsel retired.

.....

Re: YAROSLAV MIKITCHOOK, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. Perrier requested an adjournment on consent to the next Special Convocation in November.

The adjournment was granted.

Counsel and the solicitor retired.

.....

Re: RICHARD IAN KESTEN, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. MacKenzie requested an adjournment. He advised that Mr. MacLachlan no longer represented Mr. Kesten and the solicitor's whereabouts were unknown.

The matter was adjourned to the next Special Convocation in November.

Counsel retired.

.....

Re: GREGORY PETER LINTON VANULAR, Pickering

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

This matter was previously before the Special Convocation in June and was adjourned to today's date to continue.

Messrs. Lamek and Topp withdrew.

Ms. Christina Budweth appeared for the Society and the solicitor appeared on his own behalf.

The Report of the Discipline Committee filed as Exhibit 1 was adopted at the June Convocation.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

THE DISCIPLINE COMMITTEE

REPORT AND DECISION

Roger Yachetti, Q.C. (Chair)
Paul S.A. Lamek, Q.C.
Nora Richardson

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

Christina Budweth
for the Society

GREGORY PETER LINTON VANULAR
of the City
of Pickering
a barrister and solicitor

Not Represented
for the solicitor

Heard: April 15, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 19, 1991, Complaint D114/91 was issued against Gregory Peter Linton Vanular alleging that he was guilty of professional misconduct.

The matter was heard in public on April 15, 1992 before this Committee composed of Roger Yachetti, Q.C., Chair, Paul S.A. Lamek, Q.C. and Nora Richardson. Mr. Vanular attended the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D114/91

2(a) between May, 1989 and January, 1991 he exhibited a standard of conduct in dealing with clients, fellow solicitors, the public and the Law Society which was below the standard of conduct expected of a member of the legal profession, in that there were at least eight complaints to the Law Society about unreasonable delay by the Solicitor in the following:

- (i) completing work on behalf of clients;
- (ii) meeting financial obligations incurred in connection with his practice;

22nd October, 1992

- (iii) fulfilling undertakings to fellow solicitors and/or their clients;
- (iv) replying to correspondence from the Law Society concerning complaints about him.

These delays occurred after the Solicitor resumed practice after Convocation had disciplined him for identical misconduct; and the Society continues to receive further complaints about such delays.

Evidence

The evidence before the Committee is contained in an Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D114/91 and is prepared to proceed with a hearing of this matter on April 14 and 15, 1992.

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 D114/91 and this agreed statement of facts and admits the particulars of the allegations of professional misconduct specifically admitted throughout.

IV. FACTS

4. The Solicitor was called to the bar on April 9, 1981.

5. Effective March 23, 1988, Jerome Stanleigh assumed responsibility for the Solicitor's practice until approximately January 10, 1989, pursuant to a letter of understanding between Mr. Stanleigh and the Solicitor effective March 24, 1988. A copy of that letter is attached as Exhibit A to this agreed statement of facts.

Particular 2(a)(i) and (iv) - Tina Green - Failure to Serve and Failure to Reply

6. The complainant, Tina Green, retained a solicitor who shared space with the Solicitor's firm on June 8, 1987 to represent her in divorce proceedings. She provided a \$200 retainer to that lawyer on that occasion.

7. On January 20, 1988, Ms. Green met with Jerome Stanleigh. Mr. Stanleigh began sharing office space with the Solicitor in September, 1987. He did not contribute to the overhead expenses of the office. Mr. Stanleigh was paid a minimum draw in addition to a percentage of his billings. The Solicitor did not make source deductions. Mr. Stanleigh advised her he could find no record of her initial retainer. Ms. Green was able to produce her receipt and the associate advised that he would draft the Petition for Divorce together with an affidavit. At this time Ms. Green paid an additional \$400 in advance of fees.

22nd October, 1992

8. Mr. Stanleigh did not advise Ms. Green of his planned departure from the office. Further, he did not report to her that her Petition for Divorce together with supporting affidavit had been returned by the court office. In fact, he did not report to her at all after her attendance before him in October, 1988.

9. During the month of October, 1988, Ms. Green attended and met with Mr. Stanleigh to execute an affidavit in relation to her Divorce Petition. She paid further monies to Mr. Stanleigh payable to him by way of post-dated cheques being:

<u>DATE</u>	<u>AMOUNT</u>
October 6, 1988	\$ 93.00
October 12, 1988	100.00
October 21, 1988	100.00
November 4, 1988	100.00

10. Sometime later, Ms. Green telephoned to speak to Mr. Stanleigh and was advised that Mr. Stanleigh was no longer employed there. In addition she was informed that the Petition for Divorce and the affidavit in support had been returned by the court office. She was further advised that the documents would be resubmitted to the court office forthwith and she would be advised when the matter was completed. Mr. Stanleigh left on or about January 10, 1989.

11. Ms. Green advised the Law Society of the aforesaid sequence of events by letter dated November 15, 1989. At that time, the complainant had heard nothing further from the Solicitor's office since.

12. The Law Society wrote to the Solicitor, enclosing a copy of the letter of complaint and requesting his comments within two weeks on January 8, 1990. A copy of the Society's January 8 letter, complete with enclosures, is attached as Exhibit 1 to this agreed statement of facts. The Solicitor's direct involvement in the matter began at this time. At that time the file was known in the Solicitor's office under the name Gionet and could not be immediately identified by him under the name Green.

13. A Law Society staff employee had a telephone conversation with the Solicitor on March 12, 1990. The Solicitor stated that he would respond, by mail, on or before March 14, 1990. No reply was received.

14. The Solicitor did not reply to the Law Society's correspondence of January 8, 1990 until April 12, 1990 when he advised a staff member during a telephone conversation that the difficulty in filing the documents resulted from the fact that he required the marriage certificate and affidavit of service in order to make a complete filing. The Solicitor advised that he had these in the file and that he would file the requisite documents with the court immediately.

15. By letter dated April 16, 1990 the Solicitor replied to the Law Society advising that he expected the Certificate for Divorce within a month of today's date. A copy of the Solicitor's April 16 letter is attached as Exhibit 2 to this agreed statement of facts.

16. By letter dated June 15, 1990, the Law Society requested the Solicitor advise as to the status of the matter within thirty days.

17. By letter dated June 22, 1990, the Solicitor provided the Law Society with a copy of the Divorce Judgement. He stated he would be in a position "later this week" to obtain the Certificate for Divorce. A copy of the Solicitor's June 22 letter is attached as Exhibit 3 to this agreed statement of facts.

22nd October, 1992

18. By letter dated July 13, 1990, the Law Society requested the Solicitor advise as to the status of the matter within three weeks. No reply was received.

19. A Law Society staff employee telephoned the Solicitor on September 10, 1990. The Solicitor advised that he had previously mailed his response, but would send another copy by facsimile transmission. No reply was received.

20. By registered mail, dated September 13, 1990, the Law Society provided the Solicitor with a copy of their previous correspondence dated July 13, 1990. The Solicitor was referred to his obligation to reply to Law Society correspondence, under Rule 13. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. A copy of the Society's September 13 letter, complete with enclosures is attached as Exhibit 4 to this agreed statement of facts.

21. By letter dated September 20, 1990, the Solicitor provided the Law Society with a copy of the Certificate for Divorce. He stated that he had forwarded the Certificate for Divorce to the complainant.

22. The Solicitor admits that the above-stated facts constitute an unreasonable delay in replying to the Society as alleged in particular 2(a)(iv).

Particular 2(a)(ii) and (iv) - Collectrite - Failure to meet Financial Obligation and Fail to Reply

23. On March 3, 1989, News Advertiser obtained a default judgement against the Solicitor carrying on business as Vanular & Associates in the amount of \$3,377.50, plus costs and interest, a copy of the judgement is attached as Exhibit 5 to this agreed statement of facts.

24. James MacDonald, solicitor for News Advertiser, served the Solicitor with notices of judgement debtor examinations for which the Solicitor did not attend. As a result, Mr. MacDonald obtained an order against the Solicitor which provided that if he failed to attend another examination the plaintiff could move ex parte for a committal order. In result, the Solicitor was not examined but did enter into a written payment program to retire the debt.

25. The Solicitor's first cheque, dated July 15, 1989, submitted under the repayment agreement, in the amount of \$1,620, was returned non-sufficient funds.

26. The Solicitor advised Mr. MacDonald, by telephone, on August 4, 1989 that he would deliver a certified replacement cheque. No cheque was received.

27. The complainant, Collectrite, wrote to the Law Society by letter dated August 29, 1989 and advised of the aforementioned.

28. By letter dated September 11, 1989 the Law Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to provide his comments to the same within two weeks. No reply was received. A copy of the Society's September 11 letter, complete with enclosure is attached as Exhibit 6 to this agreed statement of facts.

29. By facsimile transmission of September 6, 1990, the Law Society retransmitted the Solicitor a copy of their correspondence dated September 11, 1989. There had not been any correspondence between the Society and the Solicitor during the period September 11, 1989 and September 6, 1989.

22nd October, 1992

30. By letter dated November 12, 1990, the Solicitor advised the Law Society that he would check his records to determine what monies had been paid to the complainant and he would advise the Law Society accordingly, if the full account had not been retired.

31. By letter dated February 27, 1991, the Law Society requested the Solicitor advise within two weeks of the result of his search of records. No reply was received.

32. A Law Society staff employee called the Solicitor by telephone on March 14, 1991. The Solicitor advised that he would send his reply by facsimile transmission that day.

33. By letter dated March 14, 1991, the Solicitor advised the Law Society that he had retired the account from \$3,200 to around \$1,800 and that he would retire it completely over the next few months.

34. By letter dated March 18, 1991, the Solicitor requested that the Solicitor advise as to the progress he was making in retiring the account. The Solicitor was requested to respond within 60 days and although he did not reply to the Law Society, he did pay the account within 60 days as confirmed by the complainant in a telephone conversation with the Law Society on October 18, 1991.

35. The Solicitor admits that the above-stated facts constitute an unreasonable delay in meeting the financial obligations incurred in connection with his practice and in replying to correspondence from the Law Society concerning complaints about him as alleged in particulars 2(a)(ii) and (iv).

Particular 2(a)(ii)(iii) and (iv) - J. Bruce Hodgson - Failure to Fulfil Undertaking given to fellow Solicitor and Fail to Reply

36. The Solicitor's office acted on behalf of the owners of property known municipally as 19 Macey Court, Unit 51, Pickering. The complainant, J. Bruce Hodgson, a fellow solicitor, acted on behalf of the purchasers of the aforementioned property. The Solicitor's office gave Mr. Hodgson an undertaking dated April 29, 1988, in relation to the closing of the transaction, to withhold the sum of \$595 from the proceeds of the sale to pay an outstanding special levy. The amount of the levy was eventually assessed at \$245. A copy of the undertaking is attached as Exhibit 7 to this agreed statement of facts.

37. By letters dated June 3, 1988, June 21, 1988, February 9, 1990, April 10, 1990 and May 29, 1990, Mr. Hodgson wrote to the Solicitor regarding the undertaking.

38. By letter dated August 24, 1990, Mr. Hodgson reported the matter to the Law Society.

39. By letter dated September 10, 1990, the Law Society forwarded to the Solicitor a copy of the letter of complainant. The Solicitor was requested to provide his comments within two weeks. No reply was received. A copy of the Society's September 10 letter, complete with enclosure is attached as Exhibit 8 to this agreed statement of facts.

40. A Law Society staff employee telephoned the Solicitor on October 5, 1990. The Solicitor advised that he would reply by the end of the week, October 8 - 12, 1990. No reply was received.

22nd October, 1992

41. By registered letter, dated November 6, 1990, the Law Society forwarded to the Solicitor a copy of their correspondence dated September 10, 1990. The Solicitor was reminded of his obligation to reply to Law Society correspondence pursuant to Rule 13. The Solicitor was advised that if a reply was not received within seven days, the matter would be referred to the chair of the discipline committee.

42. By letter dated November 13, 1990, the Solicitor advised the Law Society that he was unable to locate his file and was unaware of what had transpired. He would, as a courtesy, reimburse the complainant \$245.

43. By letter dated December 13, 1990, Mr. Hodgson advised the Law Society that this arrangement was satisfactory provided the cheque was forthcoming.

44. By letter dated January 17, 1991, the complainant advised that as of that date the cheque from the Solicitor had not been received.

45. By letter dated February 1, 1991 the Law Society forwarded the Solicitor copies of the complainant's letters dated December 13, 1990 and January 17, 1991. The Solicitor was requested to reply within two weeks.

46. By letter dated February 27, 1991, the Law Society forwarded to the Solicitor a copy of their letter dated February 1, 1991. The Solicitor was requested to provide a reply within two weeks. No reply was received.

47. A Law Society staff employee called the Solicitor by telephone on March 12, 1991. The Solicitor advised that he would reply by facsimile transmission on March 14, 1991.

48. By letter dated March 14, 1991 (sent by fax/ordinary mail) the Solicitor provided the Law Society with a copy of his correspondence to the complainant, of the same date, in which he enclosed his certified cheque in the amount of \$245.

49. By letter dated March 18, 1991 the Law Society requested that Solicitor advise as to the reason for the delay in forwarding the funds to the complainant. The Solicitor was requested to reply within two weeks. No reply was received. A copy of the Society's March 18 letter is attached as Exhibit 9 to this agreed statement of facts.

50. By letter dated March 18, 1991, the complainant advised the Law Society that he had received the Solicitor's cheque and he was satisfied.

51. A Law Society staff employee called the Solicitor by telephone on April 8, 1991. The Solicitor advised that he had not written his reply, but he would do so and send it tomorrow, by facsimile transmission. No reply was received.

52. A Law Society staff employee called the Solicitor by telephone on April 10, 1991. The Solicitor advised that due to court appearances he was unable to respond. He would reply by facsimile transmission today or tomorrow.

53. A Law Society staff employee called the Solicitor by telephone on April 11, 1991. The Solicitor advised that he would send his reply by tomorrow.

54. By letter dated April 12, 1991, received at the offices of the Law Society by facsimile transmission on April 15, 1991, the Solicitor advised that the delay in replying to the Society was due to three factors: (1) partial inadvertence on his part; (2) time restraints and time demands being placed on him from elsewhere; and (3) heavy financial demands placed on him on numerous fronts. A copy of the Solicitor's April 12, 1991 reply is attached as Exhibit 10 to this agreed statement of facts.

55. The Solicitor admits that the above-stated facts constitute an unreasonable delay in fulfilling undertakings to fellow solicitors and/or their clients and in replying to correspondence from the Law Society concerning complaints about him as alleged in particulars 2(a)(iii) and (iv).

Particular 2(a)(iii) and (iv) - Stanley Rosenfarb - Failure to Fulfil Undertaking and Fail to Reply

56. The complainant, Stanley Rosenfarb, a fellow solicitor, acted on behalf of the purchasers of Unit 47, 925 Bayly Street, Pickering. The transaction closed February 2, 1987. The Solicitor gave the complainant an undertaking dated January 31, 1987, to, among other things, payout and discharge an existing mortgage L715845. A copy of the undertaking is attached as Exhibit 11 to this agreed statement of facts.

57. On a number of occasions, the complainant and his staff had spoken to the Solicitor requesting the particulars of the discharge. There was no correspondence between Mr. Rosenfarb's office and the Solicitor's office during the period January 31, 1987 to August 10, 1989.

58. The complainant's clients sold the property in December, 1987. The complainant gave his personal undertaking to the purchasers' solicitors, Messrs. Sacks and Leich, to discharge mortgage LT158748.

59. By letter dated August 10, 1989 the complainant requested the Solicitor immediately make payment forthwith and obtain and register the discharge. The complainant advised the Solicitor that he had given his undertaking to another Solicitor to obtain the discharge. The Solicitor was advised that if he did not immediately honour the undertaking, the complainant would obtain the discharge and seek reimbursement from the Solicitor, as well as notify the Law Society of his failure to satisfy his undertaking. A copy of the complainant's August 10 letter to the Solicitor is attached as Exhibit 12 to this agreed statement of facts.

60. By letter dated September 27, 1989, the complainant advised the Solicitor, by facsimile transmission, that as he had heard nothing further from the Solicitor, the complainant would take the measures indicated in his correspondence dated August 10, 1989. The complainant did not attach a copy of Exhibit 12.

61. By letter dated June 5, 1990, the complainant advised the Law Society of the aforementioned. A copy of the complainant's June 5 letter was forwarded to the Solicitor under cover of the Society's letter of June 29, 1990. The Solicitor was asked to reply to the complaint.

62. The Society wrote to the Solicitor again on September 13, 1990 and requested a reply to its earlier correspondence. The Solicitor was advised that should he not reply within seven days, the matter would be referred to discipline.

63. By facsimile transmission of September 18, 1990, the Society reminded the Solicitor of his requirement to respond to the Society by September 20, 1990.

64. By letter dated September 20, 1990, the Solicitor provided the Law Society with a copy of the money order, in the amount of \$316.39, which he had forwarded to the complainant. The Solicitor advised that he had made attempts to obtain the funds from his client, however, he was unsuccessful. A copy of the Solicitor's September 20 letter, complete with enclosure, is attached as Exhibit 13 to this agreed statement of facts.

22nd October, 1992

65. By letter dated October 12, 1990, the complainant wrote the Solicitor and acknowledged receipt of the Solicitor's money order. The complainant advised the Solicitor of the additional costs incurred in attempting to satisfy the undertaking being:

1.	Certification of cheques	3.50
2.	Courier Charges	13.50
3.	Registration costs	22.00
4.	Preparation of discharge	<u>125.00</u>
		164.00

and asked to be reimbursed for same.

66. By letter dated October 15, 1990 the Law Society requested the Solicitor provide copies of all letters to his client in an attempt to obtain the funds. The Solicitor was also requested to provide his comments to the complainant's concern that the Solicitor breached Rule 14, Com. 5. The Solicitor was requested to reply within three weeks. No reply was received. A copy of the Society's October 15 letter is attached as Exhibit 14 to this agreed statement of facts.

67. A staff member of the Society spoke to the Solicitor on December 6, 1990 to ask when the Society could expect a reply to its correspondence. The Solicitor advised that he would reply by facsimile transmission tomorrow.

68. A Law Society staff employee spoke with the Solicitor by telephone on December 10, 1990. The Solicitor advised that he would reply by the end of the week.

69. By letter dated December 10, 1990 received by the Law Society on December 19, 1990, the Solicitor provided copies of two letters to his clients dated December 10, 1987 and February 12, 1988 which evidenced his attempt to obtain the funds to satisfy the undertaking. The Solicitor also enclosed a copy of a cheque, dated September 7, 1988, from Jerome Stanleigh & Associates to Canada Trust re: Saunders in an amount required to pay off the balance of the mortgage. The cheque did not reference a mortgage number. A copy of the Solicitor's December 10 letter complete with the enclosures referred to therein is attached as Exhibit 15 to this agreed statement of facts.

70. By letter dated March 13, 1991, the Law Society referred the Solicitor to his undertaking which stated he was to obtain and register the discharge. As it appeared the Solicitor was stating the mortgage had been paid in full, he was requested to advise the Law Society of what steps he took to obtain and register the discharge. The Solicitor was requested to reply within two weeks. No reply was received. A copy of the Society's March 13 letter is attached as Exhibit 16 to this agreed statement of facts.

71. A Law Society staff employee left a message for the Solicitor at his office on April 2, 1991.

72. A Law Society staff employee spoke with the Solicitor by telephone on April 3, 1991. The Solicitor agreed to reply by April 5, 1991, by facsimile transmission.

73. A Law Society staff employee spoke with the Solicitor by telephone on April 8, 1991. The Solicitor advised that he would respond by facsimile transmission, tomorrow.

74. A Law Society staff employee spoke with the Solicitor by telephone on April 10, 1991. The Solicitor advised that he had been in and out of court. He would send a reply by tomorrow.

22nd October, 1992

75. A Law Society staff employee spoke with the Solicitor by telephone on April 11, 1991. The Solicitor advised that his reply would be a lengthy letter. He would send his reply by tomorrow.

76. By letter dated April 10, 1991, received by the Law Society on April 12, 1991, the Solicitor provided the Law Society with a chronology of steps taken with regards to his attempts to satisfy the undertaking. A copy of the Solicitor's April 10 letter complete with enclosures is attached as Exhibit 17 to this agreed statement of facts. Under cover of letter dated April 24, 1991 the Solicitor provided Mr. Rosenfarb with a cheque in the amount of \$164.

77. The Solicitor admits that the above-stated facts constitute an unreasonable delay in fulfilling undertakings to fellow solicitors and/or their clients and in replying to correspondence from the Law Society concerning complaints about him as alleged in particulars 2(a)(iii) and (iv).

Particular 2(a)(ii) and (iv) - Peter Zeisler Graphics - Fail to Honour Financial Obligations and Fail to Reply

78. The complainant, Peter Zeisler Graphics, had regularly supplied the Solicitor's law firm with the artwork and printing for their letterheads, business cards and envelopes. As of October 31, 1988, the law firm's outstanding balance with the complainant was \$663.50. Mr. Stanleigh told the Solicitor at the time of his reinstatement that the Zeisler account had been satisfied.

79. On January 18, 1989, Glynis Vanular ordered 500 letterhead for lawyers named Mr. Ringer and Mr. Park. The costs were \$185.76.

80. The complainant received numerous promises of payment by the Solicitor's office however no funds were received.

81. By letter dated May 25, 1989 the complainant wrote to the Law Society advising of the aforementioned.

82. By letter dated June 15, 1989 the Law Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to reply within two weeks. No reply was received. A copy of the Society's June 15 letter complete with enclosure is attached as Exhibit 18 to this agreed statement of facts.

83. A Law Society staff employee telephoned the Solicitor on July 19, 1989. The Solicitor advised that he would mail his response that day. No reply was received.

84. A Law Society staff employee spoke with the Solicitor by the telephone on August 16, 1989. The Solicitor requested a copy of the Law Society's correspondence dated June 15, 1989 be forwarded to him by facsimile transmission. The Solicitor advised that he would reply by facsimile transmission. A copy of the Law Society correspondence dated June 15, 1989 was sent to the Solicitor by facsimile transmission that day.

85. A Law Society staff employee spoke with the Solicitor by telephone on August 18, 1989. The Solicitor advised that he had straightened the matter out with the complainant. He would send his reply, by facsimile transmission, on Saturday, August 19, 1989. No reply was received.

86. By letter dated August 25, 1989 the Solicitor apologized for his delay in replying. He advised that the complainant had been paid in full. A copy of the Solicitor's August 25 letter is attached as Exhibit 19 to this agreed statement of facts. The Law Society was subsequently advised by the complainant that they had received three post dated cheques from the Solicitor the last of which was deposited by them on September 1, 1989.

22nd October, 1992

87. The Solicitor admits that the above-stated facts constitute and unreasonable delay by the Solicitor in meeting the financial obligations incurred in connection with his practice and in replying to correspondence from the Law Society concerning complaints about him as alleged in particulars 2(a)(ii) and (iv).

Particular 2(a)(ii) and (iv) - Judy Hagan - Failure to Fulfil a Financial Obligation and Failure to Reply

88. On February 9, 1989, the complainant, Judy Hagan, rendered an account to John Ringer for services rendered with respect to a title search. The account was in the amount of \$100.50.

89. The complainant forwarded to the Solicitor's office a second notice of the outstanding account, dated April 25, 1989 to Mr. Ringer.

90. The complainant forwarded a third notice of the outstanding account, dated June 9, 1989 to Mr. Ringer.

91. By letter dated October 11, 1989, the complainant confirmed a telephone conversation with the Solicitor of October 5, 1989 and asked for payment of the outstanding account.

92. By letter dated December 14, 1989 the complainant advised the Law Society of the difficulties she had encountered in having the Solicitor pay the account. She further noted that she had spoken to the Solicitor three times and each time, she was assured that a cheque in payment of the account would be forwarded. She advised that she had accumulated \$9 in long distance calls and \$5.50 in postal charges and that her account now totalled \$115.

93. A Law Society staff employee spoke with the Solicitor by telephone on January 10, 1990. The Solicitor advised that he would check into the matter and payment.

94. By letter dated January 17, 1990, the Law Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to provide his comments within two weeks. No reply was received. A copy of the Society's January 17 letter, complete with enclosure, is attached as Exhibit 20 to this agreed statement of facts.

95. A Law Society staff employee called the Solicitor by telephone on March 12, 1990. The Solicitor advised that he would mail his response by March 14, 1990. No reply was received.

96. By registered mail, dated May 7, 1990, the Law Society reminded the Solicitor of his obligation to reply to the Law Society pursuant to Rule 13, Com. 3. The Solicitor was advised that if a reply was not received within two weeks, the matter would be referred to the chair of the discipline committee.

97. A Law Society staff employee spoke with the Solicitor by telephone on May 14, 1990. The Solicitor advised that he would reply by facsimile transmission, tomorrow.

98. By letter dated May 15, 1990, the Solicitor advised the Society he had now retired his account with Mrs. Hagan. In evidence of this fact the Solicitor enclosed a copy of his letter to her of that date as well as a photocopy of a bank draft in the amount of \$115 made payable to her.

22nd October, 1992

99. The Solicitor admits that the above stated facts constitute and unreasonable delay by the Solicitor in meeting the financial obligations incurred in connection with his practice and in replying to correspondence from the Law Society concerning complaints about him as alleged in particulars 2(a)(ii) and (iv).

Particular 2(a)(ii) and (iv) - York Region Collection Services Ltd. - Failure to Meet Financial Obligations and Fail to Reply

100. Between September, 1988 and April, 1990, E.G. Courier had rendered accounts to the Solicitor for services provided. As of April, 1990, the outstanding account was \$1,515.37.

101. The complainant, York Region Collection Services Ltd., on behalf of E.G. Courier, commenced an action and received default judgement against the Solicitor for \$1,515.31 plus \$80 costs on August 14, 1990.

102. By letter dated October 29, 1990, the complainant advised the Law Society of the outstanding judgement against the Solicitor. The complainant further advised that they had contacted the Solicitor on numerous occasions and each time they were promised that payment would be forthcoming. No payment was received.

103. By letter dated November 27, 1990, the Law Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to provide his comments within two weeks. No reply was received.

104. A Law Society staff employee placed a telephone call to the Solicitor on January 9, 1991. The Solicitor advised that as the complainant's name was not familiar to him, he would check to see if he could locate the matter. If he could not locate the matter he would call the Law Society back. If he did locate the matter, he would reply, by facsimile transmission, on January 11, 1991.

105. By letter dated January 17, 1990, the Solicitor advised the Law Society that he would retire the debt by January 31, 1991.

106. The complainants advised the Law Society by telephone on February 13, 1991, that the Solicitors first cheque had been returned non sufficient funds.

107. By letter dated February 27, 1991, the Law Society advised the Solicitor that his cheque had been returned for non sufficient funds and asked him to explain his failure to retire the entirety of the debt by January 31, 1991 as he had committed in his letter of January 17, 1991. A copy of the Society's February 27 correspondence is attached as Exhibit 21 to this agreed statement of facts.

108. By letter dated March 14, 1991 the complainant advised the Law Society that the Solicitor had paid the judgement.

109. By letter dated March 18, 1991, the Law Society repeated its request that the Solicitor provide an explanation for allowing his February cheque to be returned NSF. The Solicitor was requested to reply within two weeks. No reply was received.

110. On April 8, 1991 a staff member of the Society left a telephone message for the Solicitor at the Solicitor's office for him to call the Society to discuss the matter.

111. A Law Society staff employee spoke with the Solicitor by telephone on April 10, 1991. The Solicitor advised that he had been in and out of court. He would respond by facsimile tomorrow.

22nd October, 1992

112. A Law Society staff employee spoke with the Solicitor by telephone on April 11, 1991. The Solicitor advised that his reply was lengthy and he would, therefore, send his reply tomorrow.

113. By letter dated April 16, 1991, the Solicitor advised the Law Society that unexpectedly, a previously post-dated cheque to Revenue Canada in the sum of \$2,809.64 was cashed at the same time as the cheque to the complainant, thereby overdrawing the account. A copy of the Solicitor's April 16 letter is attached as Exhibit 22 to this agreed statement of facts.

115. The Solicitor admits the above stated facts constitute an unreasonable delay in meeting a financial obligation incurred in connection with his practice as alleged in particular 2(a)(ii) and an unreasonable delay in replying to the Society as alleged in particular 2(a)(iv).

Particular 2(a)(i) and (iv) - Norma Taylor - Failure to Complete Work and Failure to Reply

116. The complainant, Norma Taylor, had retained the Solicitor to act on her behalf with respect to the purchase and sale of real property in Ajax and Oshawa, respectively. The transaction closed on December 1, 1989.

117. By letter dated February 7, 1990, the complainant requested that the Solicitor respond to several questions she had regarding the transactions. She received no reply.

118. When the complainant received the sale proceeds for home from the Solicitor, the Solicitor's cheque was returned due to a deficiency in execution. There was a requirement of two signatures on the account.

119. As a result the complainant corresponded with the Solicitor on March 9, 1990 to pose additional questions respecting the transactions and to demand reimbursement for the bank charges incurred by her to date. A copy of the complainant's March 9 letter is attached as Exhibit 23 to this agreed statement of facts.

120. By additional letter dated March 9, 1990, the complainant outlined concerns to the Solicitor regarding an outstanding hydro account. A copy of the complainant's letter and enclosure is attached as Exhibit 24 to this agreed statement of facts.

121. The Solicitor advised the complainant by telephone on May 9, 1990, that should she drop by his office, he would pay her cash to cover the bank charges. The complainant requested the Solicitor mail the funds. No cheque was received.

122. By letter dated June 7, 1990, the complainant advised the Society of her various communications with the Solicitor and of her dissatisfaction with his failure to respond.

123. By letter dated June 25, 1990, the Society forwarded a copy of the complainant's letter to the Solicitor and requested his comments with respect thereto. A copy of the Society's June 25 letter, complete with a copy of the complainant's June 7 letter of complaint and the relevant enclosures attached thereto, are attached, collectively, as Exhibit 25 to this agreed statement of facts.

124. By letter dated November 5, 1990, the Solicitor advised the Law Society that his secretary had constantly followed up with the vendor's solicitor regarding the undertaking.

22nd October, 1992

125. By registered mail, dated July 24, 1990, the Law Society reminded the Solicitor of his obligation to reply pursuant to Rule 13, Com.3. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the chair of the discipline committee.

126. By facsimile transmission on July 30, 1990 the complainant advised the Law Society that she had written the Solicitor regarding a notice she had received with respect to an unpaid hydro bill.

127. By letter dated August 1, 1990, the Solicitor advised the Law Society that the cheque was returned by the bank as a result of an oversight in having John Ringer's signature omitted on the execution of the cheque.

128. By letter dated September 13, 1990 the Law Society forwarded to the Solicitor a copy of the complainant's letter dated July 30, 1990. The Solicitor was requested to provide his comments within three weeks.

129. By letter dated September 18, 1990, the Solicitor forwarded to the Society correspondence to the Whitby Public Utilities Commission and to Shilling & Evans regarding matters raised by the complainant. A copy of the Solicitor's September 18 letter, complete with enclosures, is attached as Exhibit 26 to this agreed statement of facts.

130. By letter dated October 1, 1990, the Law Society advised the Solicitor that his response as to the delay in responding to the complainant, with respect to the outstanding hydro account was insufficient. The Solicitor was also requested to advise of the steps he had taken to follow-up on the undertaking. The Solicitor was requested to reply within three weeks. No reply was received within the time frame required.

131. By letter dated November 5, 1990 the Solicitor advised the Society that his secretary had been constantly following up with the vendors solicitor regarding the hydro undertaking.

132. By letter dated April 24, 1991, the complainant advised the Law Society that she had not received a cheque from the Solicitor. She further stated that a lien had been placed against her property due to hydro arrears.

133. By letter dated June 19, 1991, Howard Kirshenbaum, a lawyer who had been retained by the complainant wrote to the Solicitor and requested his comments to the aforementioned concerns of the complainant.

134. By letter dated July 10, 1991, the complainants new counsel forwarded to the Law Society a copy of the Solicitor's letter dated June 26, 1991. In that correspondence, the Solicitor enclosed a bank draft in the amount of \$438. He further indicated that he had been under the impression that his previous secretary had dealt with the matter and apologized to the complainant for the inconvenience. The complainant was satisfied.

135. The Solicitor admits that the above-stated facts constitute an unreasonable delay in completing work on behalf of clients as alleged in particular 2(a)(i) and unreasonable delay in replying to Society as alleged in particular 2(a)(iv).

V. PRIOR DISCIPLINE

136. On May 24, 1988 the Solicitor was found guilty of professional misconduct supported by the particulars that he participated in financing for his personal residence that had been structured to disguise the fact that he was a borrower and to make it appear that the price paid for the property was higher than it actually was; that he borrowed money from clients without insuring that their interests were protected; and, that during the period 1984 to mid-1987 there were frequent unreasonable delays in the completion of his work on behalf of clients.

22nd October, 1992

By Order of Convocation dated June 23, 1988, the Solicitor's right to practice was suspended for six months effective July 11, 1988 and he was ordered to pay a fine of \$5,000. The Solicitor resumed practice on January 11, 1989. Convocation also ordered that at the completion of the suspension the Solicitor was to practice with an experienced solicitor for an indefinite period until relieved by Convocation. Copies of the complaints D135/87 and the Report and Decision of the Discipline Committee respecting the aforesaid are attached collectively as Exhibit 27 to this agreed statement of facts.

137. The Solicitor was found guilty of professional misconduct on February 26, 1991 for failing to reply to the Society. On that occasion the Solicitor was reprimanded in committee. A copy of complaint D213/90 is attached as Exhibit 28 to this agreed statement of facts.

138. On May 8, 1991, the Solicitor was found guilty of professional misconduct in respect of complaint D26a/89 for failing to meet a financial obligation arising out of his practice, including: a \$33,000 judgement in favour of a client; and, remission of an Errors & Omissions deductible. On that occasion the Solicitor was reprimanded in committee. A copy of discipline complaint D26a/89 is attached as Exhibit 29 to this agreed statement of facts.

139. The Solicitor has been suspended on four separate occasions between November 1989 and March 1990 as follows:

<u>Suspended</u>	<u>Reinstated</u>	<u>Reason</u>
November 24, 1989	December 15, 1989	Non payment of E&O levy
May 25, 1990	June 27, 1990	Non payment of E&O levy
November 23, 1990	December 27, 1990	Non payment of E&O levy
February 23, 1990	March 7, 1990	Non payment of annual fees.

DATED at Toronto this 14th day of April, 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Gregory Peter Linton Vanular be Reprimanded in Convocation and that he be required to comply with the following conditions:

- 1) that he immediately re-enlist in the Practice Review programme of the Professional Standards Committee;
- 2) that he comply with all of the recommendations resulting therefrom within a reasonable time after they are made; and
- 3) that he pay the costs of the Practice Review up to the sum of two thousand dollars (\$2,000.00).

REASONS FOR RECOMMENDATION

Were it not for the timing of the events listed in paragraphs 6 to 135 of the Agreed Statement of Facts in relation to the Solicitor's prior discipline record as set out in paragraphs 136, 137 and 138 of that Agreement, we would have recommended to Convocation the imposition of a more serious penalty. However, it would appear that all of the particulars of professional misconduct as set out in the complaint were known to the Society as of the dates of the proceedings set out in paragraphs 137 and 138; namely, February 26th, 1991 and May 8th, 1991. It is acknowledged that the Solicitor was not represented by counsel on those dates. Had he been represented, it may very well have transpired that all items of the complaint would have been dealt with on one or the other of those dates.

An appropriate penalty for all matters could have been imposed at either of those times.

In these proceedings, the Solicitor made submissions on his own behalf to the following effect:

- 1) that when he returned from his period of suspension on or about January 11th, 1989, he found his practice in a state of disarray as a result of the neglect and mismanagement of his associate, Mr. Stanleigh;
- 2) at the same time, he found that he was indebted for various expenses including a substantial amount for legal fees incurred as a result of the previous disciplinary proceedings and related civil consequences;
- 3) that by July of 1989, he had paid most of those debts from monies received from the sale of a property which he had owned;
- 4) that from the date of his return to practice after his suspension to the present time, he had engaged in the process of transforming his practice from one essentially devoted to real estate matters to one essentially devoted to the practice of criminal law to which he felt he was better suited;
- 5) that on or about March of 1990, he had submitted to the Practice Review Programme of the Professional Standards Committee and implemented most of the recommendations which had flowed therefrom (entered as Exhibit #7 and attached to this Report as Schedule "A");
- 6) that he was prepared to return to the Practice Review Programme with a view to having a further review performed in light of the changes which he has made;
- 7) that generally, he now had his practice under control and was committed to maintaining that control.

The Committee accepted these submissions and Counsel for the Law Society recommended to the Committee that it recommend to Convocation that the Solicitor be Reprimanded in Convocation without conditions. The Solicitor concurred in that recommendation. However, the Committee feels strongly that the Solicitor requires further rehabilitation. The Committee is therefore prepared to concur with the joint submission with the addition of the conditions previously set out.

The Committee feels strongly that the Solicitor can be rehabilitated and every effort should be made in that regard. The Committee considered recommending a suspension but felt that such a disposition would perhaps cause the Solicitor to suffer an unfortunate setback.

For these reasons, we make the recommendation of a Reprimand in Convocation on the conditions set out above.

22nd October, 1992

Gregory Peter Linton Vanular was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th day of April, 1981.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"R. Yachetti"
Chair

A letter from the Society to Mr. Vanular dated September 18th, 1992 was filed as Exhibit 2.

A motion for an increased penalty was made by Mr. Copeland at the June Convocation.

There were submissions by both counsel. The solicitor asked if he was to be suspended that he be given 30 days to bring his affairs in order.

There were questions taken from the Bench.

Counsel, the solicitor, reporter and the public withdrew.

The motion for the increased penalty was withdrawn.

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

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

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

.....

Re: DAVID EDGAR STORRY, London

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Messrs. Murray, Campbell, Topp and Ms. Curtis withdrew.

Mr. Norm Perrier appeared for the Society and Mr. Storry appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 8th October, 1992 together with an Affidavit of Service sworn 21st October, 1992, by Louis Katholos that he had effected service on the solicitor by registered mail on 7th October, 1992 (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor dated 22nd October, 1992 (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

Earl J. Levy, Q.C., Chair
Carole Curtis
Ross W. Murray

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

Neil Perrier
for the Society

DAVID EDGAR STORRY
of the City
of London
a barrister and solicitor

Not Represented
for the solicitor

Heard: April 2, 1992
June 24, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 29, 1991, Complaint D50/91 was issued against David Edgar Storry alleging that he was guilty of professional misconduct.

The hearing was heard in public on April 2, 1992 and June 24, 1992, before this Committee composed of Earl J. Levy, Q.C., Chair, Carole Curtis and Ross W. Murray. Mr. Storry attended the hearing and was not represented. Neil Perrier appeared on behalf of the Law Society.

DECISION

Complaint D50/91

- 2.(a) After losing an appeal of an Assessment held pursuant to the Solicitors' Act, R.S.O. 1980, c.478, as amended, the Solicitor contacted the employer of his former client, Stephanie Black, to complain about the client's conduct, thereby failing to discharge with integrity the duty owed to a client;

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D50/91 and is prepared to proceed with a hearing of this matter on September 17, 1991.

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. Paragraph 2(b) of Complaint D50/91 is withdrawn by the Law Society.

4. The Solicitor has reviewed Complaint D50/91 and admits that he communicated with a regional real estate manager of a client's (the "complainant") employer some three months after the dismissal of an appeal by the Solicitor from a Master's ruling at an Assessment hearing, to inform the said Manager of the complainant's communications and conduct with the Solicitor during the course of a realty purchase transaction.

IV. FACTS

5. The Solicitor was called to the Bar in 1977 and practises as a sole practitioner in London.

6. The Solicitor has no previous discipline record.

Particulars 2(a) and (b)

7. The Solicitor acted for a client (complainant) on the purchase of a condominium unit at Grand Bend from July 2, 1987 until completion of the transaction in November, 1989.

8. The Solicitor presented the complainant with an account in the amount of \$2,975.00 for fees which included a \$75.00 disbursement for a conveyancer's fee and \$1,361.25 for other disbursements.

9. The complainant began Assessment proceedings with regard to this account, which Assessment was heard on January 8, 1990 before Master Browne in London, Ontario.

10. At the Assessment hearing, the Master allowed all disbursements except title search fees in the sum of \$75.00, but reduced the Solicitor's fee to the sum of \$800.00 for two reasons:

- a) The Master found that the Solicitor had given to his client a firm quotation for fees, which was not varied as the relationship continued, despite questions by the client, and therefore, the Solicitor was bound;
- b) Using the Middlesex Law Association tariff for average complexity as a base, the Master found that although some of the services performed by the Solicitor were outside the tariff, they were not so far outside as to warrant a substantially different fee from that suggested by the tariff, being the sum of \$1,528.75.

22nd October, 1992

11. As well, the Solicitor gave evidence that he spent twenty-six hours on this transaction. The Master found that this was simply excessive, and that on a quantum meruit basis, the fees should have been the sum of \$800.00.

12. The Master accepted evidence of the complainant when it was at variance with that of the Solicitor.

13. The Solicitor appealed Master Browne's Report, and the appeal was dismissed by The Honourable Mr. Justice Rosenberg on February 21, 1990.

14. On or about May 1, 1990, the Solicitor contacted by telephone Ms. Ann Pascoe, Regional Real Estate Sales Manager of Canada Trust Real Estate. The subject matter of that telephone conversation was confirmed by Ms. Pascoe in a letter to the complainant dated May 14, 1990. A copy of that letter is attached as Appendix "A".

15. Both the Law Society and the Solicitor will be leading viva voce evidence.

DATED at Toronto, this 17th day of September, 1991."

RECOMMENDATION AS TO PENALTY

On June 24th, 1992, the Committee found the Solicitor guilty of professional misconduct with respect to allegation (a) in that he failed to hold in strict confidence information he had acquired during the course of his professional relationship with his client, Ms. Black, when he had not been expressly or impliedly authorized by the client or required by law to do so. After hearing submissions with respect to penalty, the Committee advised it would impose a Reprimand in Committee. The Committee meant to impose costs in the amount of \$2,500.00 but I incorrectly used the word "fine" instead of "costs". A discussion had arisen as to whether or not costs could be imposed when there is a Reprimand in Committee. The Committee's attention was drawn to Sec. 34, 37 and 40 of The Law Society Act and it accepted Mr. Perrier's submission that costs could be imposed. Mr. Storry was given 12 months to pay the \$2,500.00. The Solicitor requested time to consider whether or not he wished to appeal the Committee's decision and as a result the matter was adjourned to a future date. However, in the interim, the Solicitor advised the Law Society that he wished to appeal the Committee's decision.

REASONS FOR RECOMMENDATION

Ms. Black, the Solicitor's client testified. She stated that at certain time there had been arguments between herself and the Solicitor, one of which was over fees. She was told by the Solicitor that the fee for closing the real estate transaction in question would be \$800.00 plus disbursements. The Solicitor also told her that she would have to pay tax for appliances that were included in the Offer of Purchase and Sale of the condominium. She questioned this as "they were not included in the chattels in writing". She stated that she did not ask the Solicitor to swear a false affidavit. When she questioned him as to why she had to pay taxes he then asked if she was asking him to swear a false affidavit and jeopardize his career. She said no, she just wanted to know why she had to pay the taxes.

The real estate transaction closed November 8th, 1989.

22nd October, 1992

Ms. Black subsequently had the Solicitor's bill assessed by the Master in January, 1990 and it was reduced to \$800.00.

Ms. Black further testified that in May, 1990 she was called into the office of Ann Pascoe the Regional Manager representing Canada Trust for all of South Western Ontario and was asked to explain the contents of the letter referred to in paragraph 14 of the Agreed Statement of Facts. It is the contents of this letter disclosed by the Solicitor to Ms. Black's employer which is the subject matter of the complaint against the Solicitor.

Ms. Black stated that the original of the above-mentioned letter remains on her file with the head office of Canada Trust. As a result Ms. Black has concerns about her credibility with her superiors and within the industry.

The Solicitor testified. He agreed that he disclosed the information complained about to Ms. Black's superior, Ms. Pascoe and contained in her letter above-mentioned. He felt this information was no longer confidential because it had been disclosed at the assessment hearing before the Master. This evidence had been introduced by the Solicitor and not Ms. Black. He testified that Ms. Black had to swear an "affidavit of residence and value consideration" by law and that she wanted to list the chattels in the affidavit as being worth only \$1,109.00. Subsequently she phoned the Solicitor to state that she had spoken with her branch manager who told her nobody pays retail sales tax. He later stated that he was either told this by Ms. Black or she told his secretary. The Solicitor responded by saying he was not going to take her affidavit by putting in no value for chattels and jeopardize his career. The affidavit was subsequently completed properly. He also thought that because Ms. Black had discussed the matter with her branch manager that it was no longer confidential.

In cross-examination the Solicitor stated that as far as he knew Ms. Black did not have any conversations with Ms. Pascoe with respect to anything set out in the letter. The Solicitor also felt that since Ms. Black was discussing the commission of a criminal offence the matter was no longer confidential. His motive was to preclude a danger of persons being harmed with respect to real estate transactions and to force her to clean up her act as a real estate representative.

It is noteworthy that the Solicitor's reasons for disclosure all relate to swearing a false affidavit but not to any of the other information he conveyed to Ms. Pascoe as reflected in the above-mentioned letter.

The Solicitor stated that after his appeal against the Master's ruling and costs being awarded against him that he was in a minus \$135.00 position with respect to his fees. Further, that Ms. Black's counsel, the same day of the taxation, without even a telephone call to him, garnished his bank account in a small suburban community outside of London causing him embarrassment.

On or about April 17th, the Solicitor learned from an unnamed colleague of Ms. Black that there was an unrelated complaint against her to the local real estate board. This evidence was held to be admissible, notwithstanding its hearsay character, as going to the Solicitor's state of mind. The Solicitor stated he was encouraged by this colleague to make the complaint he did to Ms. Pascoe. He stated that he had some concerns about Ms. Black being a danger to the public. He sat on the matter for two weeks before deciding to advise Ms. Black's employer and it was shortly after this that he initiated the complaint to the Law Society against Ms. Black's counsel for garnisheeing his account so quickly.

22nd October, 1992

Counsel for the Law Society agreed that the Solicitor could file two affidavits (Exhibits #8 and #9) both sworn September 5th, 1991 by Elizabeth Storry, his wife and receptionist and Patricia Cunningham, his secretary. We are told by Mr. Perrier that he had warned the Solicitor by letter that although he was not objecting to the filing of the above affidavits that their probative value could be affected by not calling the deponents to testify. The essence of Elizabeth Storry's affidavit (Appendix "B" attached hereto) contained in paragraph 2 as follows:

"In or about late September, 1989, Stephanie Black telephoned David E. Storry respecting value to be placed upon chattel appliances for RST purposes. I heard David E. Storry say "I will not sign an Affidavit I know to be false." After some further discussion I heard David E. Storry ask to speak to Stephanie Black's manager. After some further discussion I heard David E. Storry say "I will not take your Affidavit knowing it to be false. I have spent too long working at my career and I will not jeopardize it in this way."

The essence of Mrs. Cunningham's affidavit (Appendix "C" attached hereto) is as follows:

"4. On August 23, 1989 I spoke with Stephanie Black respecting value of chattel appliances to be inserted in Affidavit of Residence and Value of Consideration. She advised me "they are really of no value, and they are small and cheap". I advised her that some value had to be placed on them since sum of \$1109.00 had been withheld respecting washer and dryer only. She reluctantly conceded this fact and said to place value at \$1109.00.

5. Subsequent to further discussions Stephanie Black agreed to insertion of sum of \$2,500.00 for chattel appliances when Affidavit of Residence and Value of Consideration was executed at office of David E. Storry on or about October 16, 1989."

The evidence contained in the above affidavits stands unchallenged but we do not have the benefit of seeing these witnesses under cross-examination.

Looking at the evidence of Ms. Black and that called on behalf of the Solicitor, it may well be that there was an honest misunderstanding between the parties as to whether or not Ms. Black specifically counselled the Solicitor to swear a false affidavit.

The Solicitor stated that although the real estate transaction closed in late November, 1989, he did not contact Ms. Pascoe with the information until May 1st, 1990, some five months later. The Solicitor therefore could not have been disclosing the information to Ms. Pascoe to prevent a crime, even if he had been counselled to swear a false affidavit.

The Solicitor further agreed that he was upset that Ms. Black challenged his fee and that his fee had been reduced substantially to the point he had to repay some money to Ms. Black and that his appeal against the Master's judgment was dismissed with costs on February 21st, 1990. He was angered that counsel for Ms. Black garnisheed his account. He agreed that it was only after these matters occurred that some time in April he called Ms. Pascoe with the information that is the subject of this inquiry. It was in mid April that he spoke to the above-mentioned unnamed colleague of Ms. Black and had his opinion of her confirmed. The Solicitor stated that in his view after dealing with Ms. Black for some two and one-half years that she was an unsavoury character. According to the tenor of Mr. Storry's testimony this opinion was not confirmed when she allegedly counselled him to swear a false affidavit but was only confirmed when speaking to the aforementioned unnamed colleague of Ms. Black. As a result he thought Ms. Black's superiors should be made aware of those matters reflected in the above-mentioned letter.

Ms. Black was allowed to be called in reply to respond to evidence given by the Solicitor which was not the subject matter of cross-examination of Ms. Black by the Solicitor. Ms. Black testified she only discussed the issue of paying sales tax on chattels with her branch manager after the solicitor notified her employer of those matters contained in the aforementioned letter.

The Solicitor for the Law Society, Mr. Perrier, advised this Committee at various stages of the hearing that the allegation against the Solicitor was a breach of Rules 1 and 4 of the Rules of Professional Conduct. Whilst the allegation as set out appears to be significantly lacking in particulars and somewhat vague there was no complaint by the Solicitor, nor request for particulars nor an application for an adjournment.

Rule 1 of the Professional Conduct Handbook states as follows:

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

Rule 4 of the Professional Conduct Handbook states as follows:

The lawyer has a duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and should not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.

It is clear from the evidence that knowledge of those matters which were conveyed by the Solicitor to Ms. Black's superior, Ms. Pascoe, was acquired through the professional relationship of the Solicitor and Ms. Black. The Solicitor therefore had a duty to hold in strict confidence this information unless expressly or impliedly authorized by the client or required by law to do so. Failing these exceptions the Solicitor would contravene Rule 4.

The Solicitor states that he felt he could disclose the information in question because it had been disclosed in an assessment hearing when his bill for services rendered was challenged by Ms. Black. The Solicitor is entitled to disclose confidential matters in such circumstance but only to the extent necessary for such purpose. Rule 4, Commentary 12 states as follows:

Disclosure may also be justified in order to defend the lawyer or the lawyer's associates or employees against any allegation of malpractice or misconduct, or in legal proceedings to establish or collect the lawyer's fees, but only to the extent necessary for such purposes.

In the Committee's view disclosure by the Solicitor in such circumstance is limited to the assessment hearing.

While disclosure of a solicitor-client privilege may amount to waiver of the privilege, such is not the case before this Committee. The ethical rule is to be distinguished from the evidentiary rule of solicitor and client privilege. The ethical rule is wider and applies without regard to the nature or sources of the information or the fact that others may share the knowledge.

Rule 4, Commentary 2 states:

This ethical rule must be distinguished from the evidentiary rule of lawyer and client privilege with respect to oral or documentary communications passing between the client and the lawyer. The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.

Rule 4, Commentary 8 states as follows:

The Rule may not apply to facts which are public knowledge, but nevertheless the lawyer should guard against participating in or commenting upon speculation concerning the client's affairs or business.

"Public knowledge" in the Committee's view must mean more than the disclosure by the Solicitor at an assessment hearing and even in situations where the client has chosen to share the information with a few others. That is the meaning in our view of Commentaries 2 and 12 to Rule 4. See also Professional Responsibilities, 2nd Edition by Ronald D. Rotunda, West Publishing Company, St. Paul, Minn. 1988, page 43.

The Solicitor further argues that because Ms. Black discussed the matter of being taxed on the chattels with her branch manager that the matter was no longer confidential. The Solicitor states that he was aware that Ms. Black discussed the matter with her superiors either from Ms. Black herself or that the information came to the secretary from Ms. Black. This uncertainty as to how the Solicitor came into possession of such knowledge, the vague evidence as to what exactly was discussed between the Solicitor and Ms. Black, coupled with Ms. Black's denial that the only discussion of such a nature that she had with her branch manager was after the Solicitor called Ms. Pascoe, her superior, prevents us from attaching weight to this excuse. In addition we are not impressed with the weight of the evidence by way of affidavits from the Solicitor's wife and secretary, both of whom, without explanation, did not subject themselves to cross-examination. Even if the Solicitor were entitled to discuss the issue of a false affidavit with Ms. Pascoe because he felt that it had previously been discussed between Ms. Black and a superior from her office, it did not give the Solicitor the right to disclose the other matters referred to in the letter of Ms. Pascoe.

Commentary 11 to Rule 4 states as follows:

Disclosure of information necessary to prevent a crime will be justified if the lawyer has reasonable grounds for believing that a crime is likely to be committed.

The Solicitor's position that he thought he could disclose what might have been a crime is therefore untenable. If in fact Ms. Black was counselling the Solicitor to commit a criminal offence by swearing a false affidavit, that was in the past and accordingly the Solicitor did not disclose the information to prevent a crime nor could he reasonably believe a crime was likely to be committed. Again, even if he did so believe, this did not give him the right to disclose the other matters referred to in Ms. Pascoe's letter.

The Solicitor further argues that over a period of some 2-1/2 years he came to regard Ms. Black as rude and unsavoury. It was his testimony that he did not choose to report her for counselling him to swear a false affidavit shortly after it occurred but he only did so after later learning some information from an unnamed colleague, not called to testify, which he states confirmed his earlier views of her. The Committee is not impressed with this submission. If it was so clear to the Solicitor that Ms. Black was asking him to swear a false affidavit it would only make sense that his earlier views of her would have been confirmed at that time and if his motives were pure he would have reported her then, not some five to six months later.

What is clear is that the Solicitor was upset that Ms. Black had his account assessed, his fee reduced, costs awarded against him for the assessment and appeal therefrom, ending up in a minus \$135.00 position with respect to his fees. He was further angered by the fact that Ms. Black's counsel garnisheed his bank account in a small London, Ontario suburb causing him embarrassment. It was not long after this that he gave the information in question to Ms. Pascoe.

22nd October, 1992

The Committee is of the view that the Solicitor's disclosure of the confidential business affairs of Ms. Black was motivated from his upset at both Ms. Black and her counsel.

Accordingly, the Committee finds the Solicitor guilty of professional misconduct in that he offended Rule 4 by not holding in confidence information concerning the business affairs of Ms. Black acquired in the course of their professional relationship. By his actions this Solicitor also breached Rule 1 of the Rules of Professional Conduct in that he failed to discharge his duty to his client with integrity.

Penalty

The conduct of the Solicitor had the potential of affecting the future business employment and earnings of Ms. Black. Ms. Black testified that this information is in her file at head office. It is obviously a serious matter for a solicitor, without consent, to disclose the business affairs of a client. The public should not have to be concerned that lawyers use confidential information to their clients' detriment. Such a concern, if left unchecked, could cause the public to lose confidence and respect in the solicitor-client relationship.

The Solicitor is before a Discipline Committee for the first time. We have found that part of what triggered his action in reporting Ms. Black was the fact that her counsel had immediately set out to garnishee his bank account with respect to the costs awarded against him from the assessment hearing and appeal, causing him embarrassment in a small community. There was virtually no warning from counsel that this would be done. The Committee understands the Solicitor's upset. We feel that he justified his action in reporting Ms. Black through a misunderstanding of the law of solicitor-client privilege and that if he had been more conversant with the distinctions between the evidentiary rules of evidence and the rules of professional conduct his upset at Ms. Black and her counsel would have been subordinated to reason. There has also been no evidence to show that Ms. Black has in fact suffered by reason of the Solicitor's disclosure.

If it were not for the above-mentioned mitigating factors the Committee would have recommended a reprimand in Convocation as submitted by Mr. Perrier, and impose costs. Mr. Perrier has advised that the estimated costs of this investigation and prosecution would be \$2,500.00 to \$3,000.00. Accordingly, we imposed a reprimand in Committee and costs in the amount of \$2,500.00 with twelve months to pay that amount.

David Edgar Storry was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 28th day of March, 1977.

ALL OF WHICH is respectfully submitted

DATED this 8th day of October, 1992

"E. Levy"
Chair

22nd October, 1992

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

There were no submissions.

The Report was adopted.

It was moved by Mr. Strosberg, seconded by Mr. Somerville that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded in Committee and costs of \$2,500 be paid in 12 months time.

The solicitor on appeal made submissions opposing the order of costs.

Counsel, solicitor, the reporter and the public withdrew.

It was moved by Mr. Lerner, seconded by Ms. Murphy that the solicitor's appeal be granted and that he be reprimanded.

Carried

The Recommendation contained in the Report was lost.

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

The solicitor agreed to be reprimanded by a Committee of the whole.

Counsel, the reporter and the public withdrew.

The Treasurer administered a reprimand in Committee.

The solicitor retired.

.....

Re: JAMES WILLIAM ORME, Hamilton

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. Topp did not participate.

Ms. Christina Budweth appeared for the Society and the solicitor appeared on his own behalf.

It was moved by Mr. Strosberg, seconded by Mr. Lerner that the matter be referred back to the Committee to complete the Report by making a Recommendation as to Penalty and that an appropriate record be prepared.

Counsel, solicitor, the reporter and the public withdrew.

The motion put by Mr. Strosberg was carried.

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

Counsel and solicitor retired.

.....

- 98 -

22nd October, 1992

CONVOCATION ADJOURNED AT 4:45 P.M.
.....

Confirmed in Convocation this day of , 1992.

Treasurer