

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 25th March, 1999
9:00 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Angeles, Armstrong, Arnup, Carey, Chahbar, Copeland, Crowe, Curtis, Krishna, MacKenzie, Puccini, Ross, Scott, Stomp, Swaye, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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Ms. Lesley Cameron, Senior Counsel-Discipline introduced Mr. Raj Anand who acted as Duty Counsel.

Re: Chaim Peter BREDIN - North York

The Secretary placed the matter before Convocation.

Ms. Curtis and Messrs. Carey, Chahbar and Wilson withdrew for this matter.

Mr. Glenn Stuart appeared on behalf of the Law Society and Ms. Marlys Edwardh appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 27th November, 1998, together with an Affidavit of Service sworn 7th December, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 3rd December, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 10th December, 1998 (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

Jane Harvey, Chair
Thomas J. P. Carey
Abdul A. Chahbar

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

Glenn Stuart
For the Society

CHAIM PETER BREDIN
of the City
of North York
a barrister and solicitor

Marlys Edwardh
For the solicitor

Heard: September 16, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 27, 1997 Complaint D209/97 was issued against Chaim Peter Bredin alleging that he was guilty of professional misconduct. This Complaint was withdrawn and replaced with Complaint D209a/97.

The matter was heard in public on September 16, 1998 before this Committee composed of Jane Harvey, Chair, Thomas J.P. Carey and Abdul A. Chahbar. The Solicitor attended the hearing and was represented by Marlys Edwardh. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D 209a/97

2. a) He misappropriated a total of \$307,503.92, more or less, from his mixed trust account throughout the period October 6, 1990 to August 19, 1996;
- b) in relation to his client Versailles Court Limited the Solicitor drew \$77,644.20 from the Versailles trust ledger without issuing fee bills, although fees in this amount had been earned but not billed; and,
- c) he misapplied the sum of \$92,550.36 from the funds which he held in his mixed trust account on behalf of all of his clients, to the benefit of clients who did not have funds in that amount on deposit in the trust account during the period from June 1993 to July 1996.

Evidence

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

"STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D209/97 and is prepared to proceed with a hearing of this matter on August 18-19, 1998.

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 D209/97 and this statement of facts with his counsel, Marlys Edwardh. The Solicitor acknowledges that the Law Society can prove the particulars in Complaint D209/97 and the facts contained in this statement of facts to the requisite standard of proof, that is, clear and convincing proof based on cogent evidence, and waives further proof of these facts. The Solicitor does not contest that the particulars alleged in Complaint D209/97 supported by the facts set out below constitute professional misconduct.

IV. FACTS

Background

4. The Solicitor was called to the Bar in Ontario on April 8, 1976, and commenced practice with a partner. As of October 31, 1984, the partnership dissolved, and the Solicitor continued as a sole practitioner with a general practice with his time about equally divided between real estate and civil litigation. The Solicitor voluntarily ceased practice on December 31, 1996.

5. The Solicitor personally performed all of the bookkeeping functions related to his practice, initially using the Safeguard one-write system, which is a bookkeeping system based upon the use of carbon paper to make entries in multiple locations at the same time. The use of this system continued until November 1, 1989, when the solicitor began using a computer based system known as Newviews. The system is known as a "real time" system in that it immediately posts any transaction directly to a particular client account. As a result, it was necessary, when entering fees or disbursements or writing out cheques or recording funds received, to enter a client account number in each instance, otherwise the computer would not allow the completion of the entry or the cheque to be generated.

6. The transfer from a paper based to a computer based accounting system was accomplished by simply transferring account balances as at October 31, 1989, from the paper based system to the computer system. This was done with respect to the following: the trust and general bank accounts, the accounts receivable ledgers, the accounts payable ledgers, and the trust ledgers. No account histories were transferred, so it was like starting out fresh with no history. Ledgers with no balances as at the close of business on October 31, 1989, were not opened on the computer based system.

7. As time went by, the data base for the books became too large to access quickly so, in January of 1993, the Solicitor opened a new set of books on the computer, backed up the old set onto diskettes and cleared the old set from his computer. The transfer process was the same one used in the transfer from the paper based system to the computer based system, i.e. the "no history" process. Thereafter, each November 1st, the Solicitor backed up onto diskette and removed the books for the preceding fiscal year (November 1 to October 31) and started a new set of books with the only information being transferred from the old system to the new system, being that obtained by the "no history" process. Simply stated, the Solicitor was commencing each fiscal year with a clean set of books. If historical information was to be obtained, it would require either (a) restoring the information backed up on diskette to the computer, (b) reviewing the hard copies printed annually for the Solicitor's accountant (described below), or (c) reviewing the contents of the file and relying on the Solicitor's memory (the course usually taken).

8. The Solicitor was fully aware of the steps that had to be taken with respect to the receipt and disbursement of funds on behalf of clients as required by the Society in accordance with Regulation 708 pursuant to the *Law Society Act*, and specifically section 14 of that regulation, and good accounting practice, except as noted in paragraph 13, below. He failed to take those steps.

9. Commencing in the late 1980's the Solicitor was having personal problems related to the health of various family members and was having difficulty concentrating on his practice.

10. Around this time, he adopted the following practice as to his handling of trust funds. Whenever trust funds were received, although they were deposited into the mixed trust account maintained by the Solicitor and entered in the computer, rather than assigning a separate account number for the client from whom or on whose behalf the funds had been received and crediting the funds to that account number, the funds were credited to any account number that was already available on the Solicitor's computerized books, whether it was an account number of that client or not. The Solicitor believes that if a trust account number had been assigned to a particular client, the funds were usually (not always) recorded as being received under that account number; otherwise, the funds were recorded as credited to whatever account number was convenient. In many instances, it was the account number assigned to a client named Versailles Court.

11. From time to time, whenever the Solicitor required funds in order to pay the expenses of his practice, he would estimate the amount of money that was owing to him by various clients for fees and disbursements, to that point in time, and write a single cheque, drawn on his mixed trust account, to himself. As explained above, it was necessary to provide a client account number to the computer when writing cheques, and the Solicitor simply used any account number that was convenient at the time. The cheque was usually for a bulk amount (e.g. \$3,500.00). Examples of these cheques can be seen in the "Amount of Cheque" column on Schedule 1 to this Agreed Statement of Facts.

12. The effect of this process was that the Solicitor was using the mixed trust account as a pool of available funds, but the receipts to and disbursements from trust were not being properly recorded in the proper client trust ledger.

13. The Solicitor states that it was always his understanding that he could withdraw amounts owing for disbursements from trust, at any time without presenting a bill, and he could take fees from trust without prior billing, provided the client had first been advised, in writing, of the amount of the fees that would be charged when work was done. In keeping with this understanding, fees were only taken from trust after the client was advised in writing, of the amount of the fees that would be charged and work was done, but, in some instances, prior to the actual fee billing being sent. Clients were advised of the amounts that the Solicitor would charge by way of written statement of the fees to be charged prior to commencing work or taking fees.

14. After the end of each month, the Solicitor would take a day to organize his books. This consisted of assigning account numbers to individual client files in respect of which the Solicitor had performed services but for which account numbers had not yet been assigned, posting fee billings and disbursements to the appropriate accounts, issuing fee billings, and changing the account numbers to which deposits and withdrawals had been posted to reflect the account numbers to which they should have been posted.

15. In some instances, the Solicitor over-estimated the amounts owing to him in respect of fees and disbursements; this resulted in him drawing too much money from the particular client's account. This situation would usually be identified when a bill was prepared. In order to correct this, the Solicitor simply credited to the account numbers of these clients, amounts which were shown to the credit of other client account numbers, but were owing to him. At the end of the process, the trust account balanced to the bank, there were no negative balances in any account, and the appropriate clients had usually (but not always) been credited or charged with the appropriate deposits and/or withdrawals.

16. Examples of instances where the Solicitor wrote a "bulk cheque" to himself are cheques marked with a "#" in Schedule 1 to this Agreed Statement of Facts. "Bulk cheques" were cheques which ultimately were not posted to the account of a single client but, at month-end, were re-allocated among several client accounts.

17. Eventually, the Solicitor did not have sufficient un-billed amounts retained in trust against which to post the amounts taken from trust, and a shortfall began to accrue in the trust account.

18. The Solicitor acknowledges that, in hindsight, when combined with the "no history" process of opening new sets of books every year, it was a road to disaster.

19. After the end of each fiscal year, the Solicitor would print out a hard copy of the books and send it, along with his bank statements for the year, to his accountant in order for the annual Law Society reports to be prepared. As the hard copy reflected only the final results and not the entire process described above, the trust account appeared to be properly maintained and in balance at all times. This was possible due to the large pool of funds which the Solicitor held on behalf of various clients; although the Solicitor maintained less money on behalf of certain clients than ought to have been in the mixed trust account for that client, this discrepancy was not apparent on the face of the books and would have only been disclosed upon a review of the Solicitor's fee billings.

20. As time passed, the problems escalated. For example, the Solicitor would receive a telephone call from a client indicating that the Solicitor was holding an amount of money in trust from the client. The amount was not reflected in his trust listing but, if the Solicitor referred back to the hard copies or to the prior ledgers, he would find it. The Solicitor would issue a cheque to the client for the amount and reimburse the trust account with funds from his personal savings, or funds from fees billed or pretaken as fees, or from other clients' trust funds.

21. As time passed and other individuals called requesting payment of money from trust, cheques were issued from trust, but repayment became more difficult. The Solicitor had no real grasp of the amount of money that was owing as he was dealing with the clients on an individual basis rather than stepping back and taking an overall look at the trust account.

Complaint that initiated the audit

22. On or about August 9, 1995, the Society received a complaint from Horst Jaudzems ("Jaudzems"), the president of Metropolitan Toronto Condominium Corporation #1072, previously Versailles Court, with respect to the conduct of the Solicitor (Document Book, Tab 1). The complaint alleged, in part, that Versailles Court had paid the Solicitor the sum of \$12,000.00 towards the conversion of an apartment building to a condominium and that this sum had not been accounted for by the Solicitor or returned to the corporation, although the Solicitor's fees had allegedly been paid later by the unit holders. In addition, he alleged that the Solicitor had not refunded certain money to the individual owners on closing in May 1994, but that he had continued to hold it 'pending final accounting'.

23. By letter dated October 20, 1995 (Document Book, Tab 2), the Solicitor responded to the Law Society regarding Jaudzems' letter stating that the \$12,000 related to work in connection with a mortgage to the Hongkong Bank, and not the conversion, and that the amounts owing to the unit holders were withheld until an audit was done to establish final liability of the unit holders to Versailles as there was a dispute between those parties at the time.

24. A review of the Solicitor's various trust ledgers by a Law Society auditor in late 1996 showed that the \$12,000 was deposited into the Solicitor's mixed trust account on May 1, 1994, but most of the funds were withdrawn from the trust account by the Solicitor through cheques payable to himself on account of fees earned and disbursements incurred without a formal account being rendered but with prior notification of the fee estimate, as follows:

Date	Cheque #	Payee	Amount
20-May-94	4799	Chaim P. Bredin	-1893.44
24-May-94	3600	Chaim P. Bredin	-3425
25-May-94	3609	Chaim P. Bredin	-2825
27-May-94	4800	Chaim P. Bredin	<u>(2,825.00)</u>
			(10,968.44)

These cheques are reflected in the trust ledger summary which is Schedule 2 to this Agreed Statement.

25. On November 30, 1995, Mr. Jaudzems wrote again to the Society (Document Book, Tab 3) and advised that the Solicitor had not completed the matters he stated in his response to the Law Society that he would see to, and, in particular, that he had not refunded monies held in trust for unit holders.

26. As of November 1995, the Solicitor did not have sufficient funds in trust to repay the unit holders. The Solicitor, through a series of deposits, from personal funds, into the Versailles trust ledger in December 1995 accumulated sufficient funds to enable him to pay the balance owing to the remainder of the unit holders, which he then did. These deposits by the Solicitor and the payments to the unitholders are detailed on Schedule 2.

27. In January 1996, the Solicitor advised the Law Society that he had dealt with the unit holders but still had to do a final accounting regarding the mortgage, which he indicated would be provided by February 2, 1996. The Solicitor subsequently provided the requested information.

28. The Solicitor states that, following the disbursement of the funds to close out the Versailles account in December of 1995, and the accounting prepared and sent to Versailles Court, he believed that he had the situation in hand. He believed that he was aware of the amount owing and had a plan for making up any shortfall when funds were required by clients thereby avoiding any client being inconvenienced and the Society becoming involved.

29. By letter dated May 24, 1996 (Document Book, Tab 4, complete with enclosures), Malcolm G. Harnum, Mr. Jaudzems' solicitor, made a further complaint on behalf of Mr. Jaudzems, demanding that the Law Society further consider this situation. This letter, in part, alleged that there was still money owing by the Solicitor to Versailles. The letter was forwarded to the Solicitor for his response on July 26, 1996.

30. At this point, the Solicitor simply gave up trying to deal with this matter. He believed that the problem was possibly larger than he had imagined and that he needed the Society's help in dealing with the matter.

31. Accordingly, the Solicitor called the Complaints Officer in August of 1996, and advised her that he could not finalize this matter without some assistance and requested her help. She suggested that an auditor could be dispatched to his office, and the Solicitor agreed.

Intervention of the Law Society Auditor

32. Realizing the state of the books and that simply handing them over to the auditor would probably result in the auditor being required to perform an overwhelming task in trying to reconstruct the books since he began to operate on the computer based system, the Solicitor attempted to re-construct the books properly, going back to 1989.

33. In the course of this process, the Solicitor reversed the posting entries in relation to all cheques issued from trust in respect of:

- cheques written to himself that were unsupported by fee bills;
- cheques written to himself for which he subsequently issued a fee bill;
- cheques written and deposits made in one client ledger which related to another client, and
- cheques written to himself in respect of fees and disbursements owing by Versailles Court and the unit owners (described below)

and placed them into a ledger entitled 'Miscellaneous' - #2222-33333 (Document Book, Tab 5). The Miscellaneous ledger notes the date of the transaction, the cheque number, an identifying reference (which was not always the payee), the amount of the cheque, individual repayment amounts and a running balance.

34. In the course of her subsequent review, the auditor retyped the miscellaneous ledger and performed the following analysis:

- traced each cheque to the client ledger where it was originally recorded,
- where available, obtained a copy of the cheque noted, and
- divided the amount drawn (cheques) and repayments into separate columns.

The resulting summary of the miscellaneous trust ledger prepared by the auditor, and organized in chronological order, is Schedule 1. The same information, organized by reference to the client against whose account the withdrawal was posted, is contained in Schedule 1.1.

35. The purpose of this exercise, as indicated by the Solicitor to the auditor, was not to only create a list of funds misappropriated, but to have the client trust ledgers appear in a form unaffected by the improper bookkeeping process described above. However, both the auditor and the Solicitor understood that any misappropriations from the trust account were identified in the miscellaneous trust ledger, although there were also legitimate transactions on that ledger, and, therefore, the auditor's review would focus that ledger. The Solicitor states that he hoped that the auditor would confirm the amounts in the client trust ledgers, advise him if he was missing any client balances through a historical review of the hard copies of the books and files that he would provide to the auditor dating back prior to the transfer from the one-write system to the computerized system, and then advise him of the amount of any shortfall.

36. The matter was referred to the Department of Audit & Investigation on or about August 28, 1996. An audit was authorized under Section 9 and 18 of Regulation 708 pursuant to the Law Society Act. The audit commenced with an attendance at the Solicitor's office by the Law Society auditor on September 16, 1996, and ended in March 1997.

37. On September 16, 1996, the Solicitor told the Society's auditor that his books and records were at home and that he would have them ready for her review at his office on September 19, 1996.

38. On September 18, 1996, the Solicitor contacted the Society through his counsel and advised the Society to anticipate a significant shortfall in the trust account which the auditor would find when she attended on September 19th.

39. By agreement with the Society, the Solicitor's trust account was frozen on September 19, 1996; the Solicitor's letter of direction to the Bank is at Tab 6 of the Document Book. The Solicitor had maintained his trust account at Royal Bank of Canada, 260 East Beaver Creek Road, Richmond Hill. It was account #100-706-1. At the time the account was frozen, \$26,132.69 remained in the account.

40. In contemplation of the freezing of the account and the limitation of his ability to continue practising, the Solicitor contacted LPIC to request their assistance in the completion of certain real estate transactions. The Solicitor had three real estate files which were closing within the next few days. For one of the three real estate files, Gillan, the Solicitor should have been holding approximately \$35,000.00 in trust which was required for the closing. As there was a trust shortage, and the trust account was to be frozen, LPIC agreed to appoint a solicitor to complete the transactions and advance the amount necessary to complete the Gillan transaction so that the real estate deal could close. The Solicitor signed a promissory note to LPIC for the amount paid out by them. The solicitor appointed by LPIC also attended at the Solicitor's office on September 19, 1996.

41. Mr. Stan Jenkins, of the Law Society's Staff Trustee's office also attended at the Solicitor's office. By agreement between the Solicitor, the auditor and Mr. Jenkins, the Solicitor was to conduct an orderly wind up of his practice and absolutely cease the practice of law as of December 31, 1996. This agreement was formalized in an Undertaking signed October 21, 1996 (Document Book, Tab 7).

42. The Solicitor has complied with the Undertaking to the Society's satisfaction.

43. The Solicitor has co-operated fully with the Society's investigation. The Solicitor's books and records had not been maintained as required under Section 15 of Regulation 708 under the Law Society Act but prior to the auditor's attendance had been corrected by the Solicitor and are now adequate.

44. In order to expedite payment of funds to clients, the Solicitor contacted clients to whom large sums of money were owing and directed them to make application to the Law Society's Fund for Client Compensation for payment of these amounts. The Solicitor made arrangements with the Compensation Fund to repay it for any amounts paid out by it.

45. With the assistance of LPIC and the Compensation Fund, all clients have now been repaid trust money owing to them. The Solicitor has reimbursed both LPIC and the Compensation Fund for all but \$3,939.52 of the amounts advanced by them in respect of trust funds which should have been held by the Solicitor. The costs to be paid by the Solicitor to LPIC and the Compensation Fund in relation to this matter are under discussion and therefore remain unresolved and outstanding.

Misappropriations from the Solicitor's mixed trust account
throughout the period October 6, 1990 to August 19, 1996

46. The Law Society's analysis of the miscellaneous ledger indicated that a total of \$307,503.92 was drawn from the trust accounts of at least seven clients initially through the issuance of approximately 213 cheques, most payable to Chaim P. Bredin. (See Schedules 1 and 1.1) Where the cheques were available, they have been included at Tab 8 of the Document Book in order of cheque number. Due to the Solicitor's failure to properly segregate his client trust ledgers, the amounts in question were not necessarily misappropriated from the clients to whom the trust ledgers belonged, but they were misappropriated from the pool of client monies held in the Solicitor's trust account.

47. As reflected in Schedule 1, a total amount of \$307,503.92 was misappropriated from the pool of funds in the Solicitor's trust account during the period from October 6, 1990 to August 19, 1996, inclusive. However, as also reflected in Schedule 1, a total amount of \$124,040.23 was repaid to the trust account by the Solicitor during this period. As a result, the net misappropriation by the Solicitor over this period was \$183,463.69, the difference having effectively been misappropriated by the Solicitor, repaid and then misappropriated again.

48. Three of the above clients have been selected to illustrate the methods the Solicitor used to draw funds from trust. The Versailles Court Limited ("Versailles") trust ledger was used most often and over the longest period of time by the Solicitor.

Versailles Court

49. The Solicitor was retained by Versailles on various files. Versailles was originally a 90 unit rental apartment located at 2245 Eglinton Avenue East, Scarborough. The majority of the work involved financing issues in the process of conversion of the apartment building from a co-ownership to a co-operative and from a co-operative to a condominium.

50. Of the total amount misappropriated, a total of \$92,827.00 was recorded on the trust ledger for Versailles (Schedule 1.1). However, due to the inclusion of funds belonging to other clients on the Versailles ledger, not all of this amount belonged to, and was misappropriated from, his client Versailles, although the total amount was misappropriated from the Solicitor's clients between August 1994 and September 1996.

51. Client ledger #1181*92244 was originally designated as the Versailles Court trust ledger. There are a number of versions of this client ledger. One version includes entries as they were adjusted by the Solicitor at month end (Document Book, Tab 9). The closing balance in this ledger is (\$39,395.63). The auditor retyped this ledger as found in the Solicitor's account records (a ledger for each year) to arrive at one continuous ledger as originally posted. Although all entries are posted on the Versailles ledger, they have been classified by the auditor by the client ledger to which they should have been posted and alternatively sorted by chronological order (Schedule 2) and by appropriate client ledger (Schedule 2.1).

52. Names of other clients appear on the Versailles trust ledger because the Solicitor was using the Versailles ledger as a ledger for other clients, posting receipts and disbursements on behalf of clients including Cavuotti, Christopoulos, Cross, D'Amico, Hillside Masonry, Shapiro, Solakian, Tobis and Uy. Where amounts were posted against these clients' names on account of the Solicitor's fees for completing work, these amounts effectively resulted in a net deposit to the Versailles ledger which represented the Solicitor's fees for completing work; accordingly, these amounts have been recorded by the auditor as repayments to the Versailles trust ledger, of amounts improperly taken.

This is an example of the Solicitor's treatment of the Versailles trust account as part of an undivided pool of funds.

53. The other ledger, the "corrected ledger", was prepared by the Solicitor before the auditor's attendance (Document Book, Tab 10). In the corrected ledger, the Solicitor removed all of the entries relating to other clients that should not have been entered on the Versailles ledger, as well as entries for amounts taken from trust by the Solicitor either for work done for Versailles or otherwise. He transferred these entries to the miscellaneous ledger. The ledger's ending balance is \$97,662.34. This balance represents fees earned and billed by the Solicitor for work done for Versailles. Although the fees have already been taken by the Solicitor over time, legitimately or by pre-taking, he has not reflected amounts taken by him in this second ledger; therefore, the balance represents the fees to which he is entitled. The fee bills issued to Versailles by the Solicitor during this period are summarized in Schedule 3. There is an unexplained difference of \$130.00 from the total of \$97,662.34, as per Schedule 1, and the total fees of \$97,532.34 identified in Schedule 3.

History of Versailles matters

54. In 1978, the apartment building referred to as Versailles Court, was converted into a co-ownership with each co-owner given a deed to a percentage interest in the land. Each co-owner was obligated to pay a portion of the blanket mortgage on the land and building held by Bank of Nova Scotia. In addition, each co-owner also arranged their own second mortgages on their own percentage interest. The Solicitor was not involved with the building at that time.

55. In 1988, re-financing of the building was required, but financial institutions refused to deal with 90 individual owners. The owners, therefore, decided to have title to the individual units transferred to one corporate entity, Versailles Court Limited, and to operate as a co-operative. The Solicitor was retained to convert the co-ownership into a co-operative. Once the conversion was completed, Versailles obtained a new second mortgage from Royal Trust. The money was used to repay the private financing of each owner.

56. In or about 1992, the owners of the building decided to convert the building from a co-operative to a condominium. In addition, the then second mortgagee of the building, Royal Trust, demanded repayment of its mortgage. A new mortgage was obtained from Hongkong Bank of Canada, to provide financing for the conversion to condominium, including renovation of the building, and to repay the existing mortgages to the Bank of Nova Scotia and Royal Trust. The Solicitor received into trust approximately \$44,000.00 in October and November, 1992 from Gardiner Roberts, solicitors for Hongkong Bank. After making a payment of \$16,950.00 to Versailles on December 18, 1992, and paying his fee bill of \$14,381.87 dated November 2, 1992, approximately \$13,000.00 remained in trust for Versailles (as indicated at page 1 of Schedule 2).

57. In order to convert the building to a condominium, it was necessary to transfer the title to the property from the Registry System to the Land Titles system and make an application to the City of Scarborough. The Solicitor provided a statement of fees to be charged to Versailles in respect of each of these services which he was retained to provide. In early 1993, the Solicitor began issuing cheques to himself, which were posted against the Versailles ledger but were not supported by accounts at the time, although the amounts were based on the work which had been done by the Solicitor.

58. The Solicitor did not issue a fee bill for his services until January 26, 1994, when he issued an account for \$17,378.47. By that date, the Solicitor had drawn \$14,125.73 from the Versailles trust ledger without issuing fee bills (Schedule 2.2). By April 22, 1994, all funds held in trust by the Solicitor had been withdrawn, leaving a nil balance on the trust ledger (Schedule 2), although approximately \$3,000.00 was still owed to the Solicitor for fees earned and billed.

59. By May 1994, the condominium was registered as Metropolitan Toronto Condominium No. 1072. Each co-owner was to get a deed to his unit and obtain their own financing sufficient to pay Versailles for their share of the Hongkong Bank mortgage, the costs of the conversion, reserve fund contributions, etc. After the final accounting, Versailles was to be wound up.

60. On May 1, 1994, the Solicitor received \$12,000.00 from Versailles towards a total of \$22,500.00 plus disbursements, which the Solicitor had quoted to Versailles for his fees to convert the co-ownership to a condominium. The Solicitor immediately began to draw down these funds by writing cheques to himself. The first \$3,252.74 from these cheques represented payment of the unpaid balance on his previous accounts. The remainder was unsupported by fee bills, although the sums did relate to earned, but unbilled, fees.

61. Subsequent to receiving Mr. Jaudzem's complaint of August 9, 1995 (Document Book, Tab 1), the Solicitor prepared a fee bill, dated February 7, 1996, for \$12,840.00 on account of services provided to Versailles for the Hongkong Bank financing. The Law Society auditor brought to the Solicitor's attention that he had already billed for the Hongkong Bank financing on November 2, 1992. (See Schedule 3). The Solicitor agrees that the \$12,000.00 had been double billed to Versailles.

62. The Solicitor has undertaken to review his fee bills and Versailles files to issue a new fee bill to Versailles for work not previously billed. To date, he has not yet completed or delivered this fee bill. In anticipation of the completion of this task, no amount is shown on the current trust list as owing to Versailles.

63. On June 1, 1994, a large amount of funds were received on behalf of the unit holders, which brought the trust account balance to a high of \$1,478,254.26 (Schedule 2). The trust balance was gradually drawn down, in part, by payments made to the Hongkong Bank in repayment of its mortgage. In addition, the Solicitor continued to draw cheques payable to himself which were unsupported by fee bills, although he had provided a written statement of the fees to be charged at the outset of the retainer.

64. In summary, during the period from December 1992 to April 13, 1993, the Solicitor withdrew a total of \$14,125.73 from his mixed trust account on account of services he provided to Versailles, but for which he had not rendered fee billings in advance of withdrawing the funds. Likewise, during the period from April 22, 1994, to July 26, 1994, the Solicitor withdrew a total of \$63,518.47 from his mixed trust account on account of services he provided to Versailles (Schedule 2.2), but for which he had not rendered fee billings in advance of withdrawing the funds. Thus, he withdrew a total of \$77,644.20 from his mixed trust account on account of services he provided to Versailles prior to rendering a fee billing for those services.

65. The Solicitor wrote to all unit holders in October 1994, reporting on the transaction and providing an accounting.

Misapplication of Funds during the period July 1994 to July 1996

66. From July 1994 to July 1996, the Solicitor paid a total of \$83,875.36, from the funds he had recorded on the Versailles trust ledger to the credit of an unrelated client, Depilamax Electrolysis Equipment Inc. ("Depilamax"). These three payments, along with repayments totalling \$56,022.83, on behalf of Depilamax, were posted to the Versailles trust ledger (as shown in Schedule 2.1 to this Agreed Statement of Facts).

67. At the time of these payments, there were no funds held in trust for Depilamax to cover the required payments due to the Solicitor's misappropriations (described below). As a result, the payments identified in the preceding paragraph were misapplied from funds held on behalf of other clients in the Solicitor's mixed trust account. Although these payments were attributed to the Versailles trust ledger, the payments were not necessarily misapplied from funds belonging to Versailles, however, because, at that time, that trust ledger also contained funds belonging to other clients.

Depilamax Electrolysis Equipment

68. The Solicitor was retained by Abdool Jajbhay and the other owners of a corporation known as Depilamax to sell their shares in Depilamax to Silhouet-Tone Appareils De Beaute Ltee of Quebec ("Silhouet-Tone"). The amount of \$170,929.70 (consisting of \$160,000 plus \$10,929.70) was to be paid at the closing of the sale on June 7, 1993, and the balance was to be paid in six consecutive monthly payments of \$12,308.45 commencing July 8, 1993. The equal monthly payments were to be held in trust for a period of three years as security for any liability which could arise from a Revenue Canada re-assessment of the company's tax liability. The total amount that should have been held in trust by the Solicitor from and after December 8, 1993 was, therefore, \$73,850.70.

69. As in the case of the Versailles ledger, there are two versions of this ledger, created and used in the same manner as the Versailles ledger.

70. The Solicitor deposited the sum of \$10,929.70 which he received on the closing of this transaction into his trust account. However, only \$4,929.70 was recorded on the Depilamax trust ledger. The Solicitor misapplied the remaining \$6,000, which belonged to Depilamax, by recording this amount to the credit of the trust ledger for his client Sunsweet.

71. On July 8, 1993, the Solicitor deposited the first of six installments in the amount of \$12,308.45 from Silhouet-Tone on account of the balance of the purchase price into his trust account. However, only \$9,633 was recorded on the Depilamax trust ledger. The Solicitor misapplied the remaining \$2,675, which belonged to his client Depilamax, by recording this amount to the credit of the trust ledger for his client Pithadia.

72. Of the total amount misappropriated, a total of \$74,011.54 was recorded on the trust ledger for his client Depilamax. However, due to the possible inclusion of funds belonging to other clients on the Depilamax ledger, all of this amount may not have belonged to, and may not have been misappropriated from, Depilamax, although the total amount was misappropriated from the Solicitor's clients between August 1993 and March 1994.

73. The miscellaneous ledger (summarized in Schedule 1.1) indicates that \$78,143.47 had been misappropriated from the trust ledger account for Depilamax; however, this amount incorrectly included a total of \$4,131.66, which was not, in fact, misappropriated.

74. With the consent of Silhouet-Tone, Abdool Jabhay asked the Solicitor to release Gulamhusein's share (being 25%) of the funds that were to be held in trust by the Solicitor for the three year indemnity period and to invest the balance remaining in trust in secured bonds. Gulamhusein, one of the Vendors, was terminally ill and required money immediately.

75. Since March 15, 1994, the Solicitor had not recorded any funds as being held in trust for Depilamax. To ensure fairness to all parties, the Solicitor calculated interest on the total amount held based upon daily interest rates at the Royal Bank (\$2,430.86) to arrive at a total of \$76,281.56 which should have been held in trust for Depilamax as of that date. He then issued a cheque to Gulamhusein for \$19,070.39, which cheque was misapplied against the trust ledger of Versailles on July 18, 1994, as cheque number 3728 (Document Book, Tab 11). Consequently, a balance of \$57,211.17 remained in trust to be invested.

76. On July 18, 1994, the Solicitor invested approximately \$57,000.00 in bonds on behalf of the Jabhays through the Royal Bank. The bonds were held in the Solicitor's name in trust. The clients were given copies of the confirmation forms to support the investment. The Solicitor redeemed the bonds a few months later, without notifying the client. The Solicitor deposited these funds to his mixed trust account and posted them to the Versailles' trust ledger so as to partially correct the earlier misapplications from that trust ledger in favour of Depilamax.

77. At the beginning of June 1996, at the end of the escrow period, Abdool Jabhay requested that the funds held be released to him. As a result, on or about June 6, 1996, the Solicitor purchased a Government of Canada Bond due September 1, 1998 at 6.5% with a face value of \$25,000.00, at a cost of \$25,656.85, in the name of Abdool Jabhay. He later released this bond to Mr. Jabhay.

78. Abdool Jabhay approached the Solicitor in July 1996 for a further payment of approximately \$9,000.00 of the funds held by the Solicitor. The Solicitor issued a trust cheque, dated July 17, 1996, in the amount of \$9,000.00 to Abdool Jabhay (Document Book, Tab 12); this cheque was misapplied against the Versailles trust ledger. Coincidentally, this amount approximated the amount of interest which may have accrued on the funds if they had been left in bonds (a total of \$8,955.70).

79. After the provision of the bond and the cheque for \$9,000.00 to Abdool Jabhay, the Solicitor still owed the Jabhays a total of \$33,361.90, which included interest of approximately \$9,000 which would have been earned had the money been left invested in the bonds, from the funds which had been placed in trust with the Solicitor following the sale of Depilamax.

80. The Jabhays made application to and was compensated by the Compensation Fund for the principal amount due to them, in an amount of \$24,361. The Solicitor has now repaid the Compensation Fund for this amount.

81. The Solicitor was retained in March 1992 by Sunsweet Holdings Limited ("Sunsweet") and the Toronto-Dominion Bank to act on a mortgage refinancing of Sunsweet's property at 30 Rayette Road with the bank. By letter, dated June 25, 1992 (Document Book, Tab 13), the Solicitor reported to Sunsweet on this transaction and confirmed, among other matters, that he was holding the balance of the mortgage funds, in the amount of \$74,457.72, in trust, until the bank confirmed to him that all documentation was in order.

82. At the same time, the Solicitor had been retained by Sunsweet to act in respect of an action brought against it by Quality Service Programs Inc. ("QSP") as well as other litigation. It was understood by the Solicitor and Sunsweet that the funds remaining in the Solicitor's trust account were held pending the outcome of the litigation with QSP.

83. The QSP matter was heard September 25, 1992, and judgment granted in favour of QSP in the total amount of \$59,227.40. The judgment was appealed and the appeal was referred to other counsel. The Court of Appeal affirmed the trial decision in January 1996.

84. After the Solicitor deducted his earned and billed fees from the funds held in trust, the balance held in trust by the Solicitor for Sunsweet to \$57,055.30 as of November 23, 1992.

85. In a fax to Eldon Moses, accountant for Sunsweet, dated September 29, 1994 (Document Book, Tab 14), the Solicitor confirmed that he was holding \$57,055.30 in trust for Sunsweet and listed court actions pending against Sunsweet. He also noted that there was a judgment, in favour of QSP for \$50,000.00 plus interest, which was being appealed.

86. The Solicitor recorded all work done on the re-financing of the Rayette Road property and the QSP litigation on one client ledger #1187-23400 from at least April 1992. As in the case of the Versailles ledger and the Depilamax ledger, there are two versions of the Sunsweet trust ledger. One consists of the entries made by the Solicitor as they occurred (Document Book, Tab 15) The closing balance in this ledger is nil as at May 5, 1994. In the other ledger prepared for the auditor (Document Book, Tab 16), the Solicitor removed all entries that should not have been entered on that ledger. He transferred these entries to the miscellaneous ledger. The ending balance of the corrected Sunsweet ledger is \$54,474.11 as at November 1, 1994 (where it remained).

87. During the period prior to November 1994, the amount on this trust ledger fluctuated as the Solicitor withdrew fees he earned and billed on other Sunsweet files. The Solicitor states that he drew his fees from the balance held in trust for the QSP litigation, rather than waiting to receive payment of an account from Sunsweet, but, when he received payment from Sunsweet, he re-deposited these payments into trust.

88. The difference between the final balances of \$57,055.30 and \$54,474.11 relates to an amount which should have charged against the general account being deducted from the trust account. Consequently, the correct balance in the account should have been \$57,055.30.

89. Of the total amount misappropriated, a total of \$60,474.11 was recorded on the trust ledger for his client Sunsweet as shown on the miscellaneous ledger (Schedule 1.1). This created the nil balance on the Sunsweet ledger prior to the transfer of these withdrawals to the miscellaneous ledger. However, due to the possible inclusion of funds belonging to other clients on the Sunsweet ledger, all of this amount may not have belonged to, and may not have been misappropriated from, Sunsweet, although the total amount was misappropriated from the Solicitor's clients between April 1992 and June 1993.

90. In early October 1996, the Solicitor had informed the president of Sunsweet of his situation and informed him that he was unable to repay the balance held in trust until a later date. The Solicitor has now made full payment to Sunsweet for the amount owing to it.

Use of funds and restitution

91. Most of the cheques which misappropriated funds from the Solicitor's mixed trust account, as identified in the miscellaneous trust ledger (Schedules 1 and 1.1), were made payable to Chaim P. Bredin and were deposited into his general account. Once in his general account, the funds were used mainly to support his practice with periodic payments of varying amounts being paid to the Solicitor as drawings. By way of example, the payments out of the Solicitor's trust account, and the use of the misappropriated funds in July 1994, July 1996 and August 1996 are detailed in Schedule 4.

92. At various times since March 1993, the Solicitor has been making payments into trust to repay the amount which he had misappropriated, as seen in Schedule 1.

93. As at September 20, 1996 the trust shortage was \$204,069.89, as detailed in Schedule 5. This trust shortage represents the total of the client trust listing, \$228,101.18, plus overdrawn client accounts of \$2,101.50, less the amount of funds actually on deposit in the Solicitor's trust account, \$26,132.69. This amount includes certain funds to which the Solicitor would become entitled once he billed the appropriate clients for fees already earned, but not billed. These amounts, which totalled \$50,704.62, were subsequently billed and applied to decrease the shortage. In addition, by January 1997, the Solicitor had deposited into his trust account a total of \$29,255.34, which he had collected as accounts receivable from earlier billings, thereby further decreasing the shortage.

94. The Solicitor has now made full restitution. He has reduced the trust shortage through accumulation of accounts receivable and borrowed funds. He has also sold his house and has repaid other clients from the sales proceeds of the family home.

V. DISCIPLINE HISTORY

95. The Solicitor has no prior discipline.

DATED at Toronto, this 30th day of July, 1998."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Chaim Peter Bredin be given permission to resign.

REASONS FOR RECOMMENDATION

There was a joint submission of the Law Society of Upper Canada and the Solicitor that the Solicitor be permitted to resign.

Mr. Bredin has made full restitution at great personal sacrifice to himself and his family. Mr. Bredin cooperated with the Society to determine the amount of trust shortfall which was not clear because of the Solicitor's practice of not accounting properly for trust funds.

As stated in the Agreed Statement of Facts, paragraph 47, a total amount of \$307,503.92 was misappropriated from the pool of funds in the Solicitor's trust account during the period from October 6th 1990 to August 19, 1996, inclusive. However, as also reflected in schedule 1 (to the Agreed Statement of Facts), a total amount of \$124,040.23 was repaid to the trust account by the Solicitor during this period. As a result, the net misappropriation by the Solicitor over this period was \$183,463.69, the difference having effectively been misappropriated by the Solicitor, repaid, and then misappropriated again.

Mr. Bredin has no prior discipline record and has been in practice for 22 years.

We considered the testimony, oral and written, of Dr. Wood Hill to the effect that from 1988-89 Mr. Bredin became chronically and clinically depressed, constituting mental illness. The reasons for the depression in Dr. Hill's view included the illness and death of his uncle and father in 1989 and 1991, respectively, and his reaction thereto based on his role in his family of Holocaust survivors. This illness has continued to the present time in his opinion.

It appears that Mr. Bredin's illness caused his behaviour over the period covered by the Complaint. Given the circumstances of this cause, the panel agree that the appropriate penalty is permission to resign.

Chaim Peter Bredin was called to the Bar on April 8, 1976.

ALL OF WHICH is respectfully submitted

DATED this 27th day of November, 1998

Jane Harvey, Chair

There were no submissions on the finding of professional misconduct.

It was moved by Mr. Topp, seconded by Mr. Wright that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be given permission to resign.

Mr. Stuart advised that the solicitor had tendered his resignation.

Both counsel made submissions on the joint submission made before the Discipline hearing that the solicitor be permitted to resign.

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

Carried

Re: Martin Edward VAMOS - Hamilton

The Secretary placed the matter before Convocation.

Messrs. Topp, Carey and Chahbar withdrew for this matter.

Mr. Hugh Corbett appeared for the Law Society and Mr. James Turnbull appeared for the solicitor who was present.

25th March, 1999

Convocation had before it the Report of the Discipline Committee dated 18th December, 1998, together with an Affidavit of Service sworn 18th January, 1999 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 8th January, 1999 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 22nd February, 1999 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Philip M. Epstein, Q.C., Chair
Thomas J. P. Carey
Abdul A. Chahbar

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

Hugh Corbett
For the Society

MARTIN EDWARD VAMOS
of the City
of Hamilton
a barrister and solicitor

James Turnbull
For the solicitor

Heard: July 29 and November 27, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 8, 1998 Complaint D48/98 was issued against Martin Edward Vamos alleging that he was guilty of professional misconduct.

The matter was heard in public on July 29 and November 27, 1998 before this Committee composed of Philip M. Epstein, Q.C., Chair, Thomas J. P. Carey and Abdul A. Chahbar. The Solicitor attended the hearing and was represented by James Turnbull. The Law Society was represented by Jonathan Batty on July 29 and by Hugh Corbett on November 27.

DECISION

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

Complaint D48/98

2. a) The Solicitor failed to maintain the books, records and accounts in connection with his practice in accordance with section 15 of Regulation 708 under the Law Society Act;
- b) During the period July 18, 1994 to January 3, 1996, the Solicitor failed to maintain sufficient balances on deposit in his mixed trust account to meet all his obligations with respect to money held in trust for clients in accordance with section 14 of Regulation 708 under the Law Society Act;
- c) The Solicitor operated a mixed trust account during the period October 5, 1995 to January 3, 1996 in violation of the requirements of section 7 of Regulation 708 under the Law Society Act; and
- d) From September 6, 1994 to January 3, 1996, the Solicitor operated general account and personal transactions through his mixed trust account in violation of the requirements of section 14 of Regulation 708 under the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D48/98 and is prepared to proceed with a hearing of this matter before a Discipline Committee on July 29, 1998.

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 D48/98 and this Agreed Statement of Facts with his counsel, James Turnbull, and admits the particulars and facts contained therein. The Solicitor also admits that the particulars alleged in the Complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

A. Background

4. The Solicitor was called to the Bar in 1982. He is a sole practitioner.
5. The Solicitor made an assignment in bankruptcy on October 5, 1995 and received a discharge from bankruptcy on September 9, 1996.

B. Complaint D48/98

- Particular 2(a) The Solicitor failed to maintain the books, records and accounts in connection with his practice in accordance with section 15 of Regulation 708 under the *Law Society Act*;

6. On September 4, 1996, Marie Morley, an Examiner with the Audit and Investigation Department of the Law Society, (the "Examiner") attended the office of the Solicitor, which was located in his home. The Examiner left a letter dated July 24, 1996 at this address which informed the Solicitor that a review of the books and records in connection with his practice had been authorized (Document Book, Tab 1).
7. The Solicitor telephoned the Examiner on September 6, 1996 and indicated that he was in receipt of the Law Society's letter (Document Book, Tab 2).
8. On September 10 1996 the Solicitor stated (Document Book, Tab 3) that his books were not entered up-to-date but he had the source documents in a box and needed to employ someone to complete the entries and prepare the monthly reports. He thought that there were some entries after the date of his last filing (September 30 1994) but did not know the exact dates.
9. On September 24 1996 the Solicitor advised that much of his source material had been lost or destroyed by a flood in the garage where it was stored and he had to obtain the information from the bank which required 7 to 10 days to provide the details (Document Book, Tab 5).
10. A series of delays ensued in the production of the Solicitor's books and records (Document Book, Tabs 1-57). The Examiner will testify to the chronology of the Solicitor's delay in producing these books and records as summarized in the table attached as Appendix A. This table contains all the Examiner's contacts with the Solicitor and/or his accountant in order to obtain the books and records of his practice for examination.
11. The books and records of the Solicitor's practice were reviewed on May 2, May 21, June 12, June 19, July 31, and September 9, 1997 (Document Book, Tabs 26, 27, 36, 37, 43, 53). The books and records were reviewed on these six occasions because, after each visit, errors or deficiencies were identified and brought to the Solicitor's and/or his accountant's attention. The state of the books and records on each date is summarized in the following table.

REQUIRED RECORD	STATUS May 2/97	STATUS May 21/97	STATUS June 12/97	STATUS June 19/97	STATUS July 31/97	STATUS Sept 9/97
Trust receipts journal s.15 (1)(a)	Monthly journals to Jan 31 1995 & two entries in February 1995	Journals to Dec 1995 - numerous deposits to ledger called Legal Aid	Journals to Dec 1995 - some entries revised	Journals to Dec 1995 - with additional revisions to entries	Journals to Jan 1996 (current) - additional revisions to entries	Same as July 31 1997
Trust disbursements journal s.15(1)(b)	Monthly journals to Jan 31 1995 but some entries missing	Journals to Dec 1995 but entries made using bank statement dates	Journals to Dec 1995 - some entries revised	Journals to Dec 1995 - with additional revisions	Journals to Jan 1996 (current) - additional revisions	Same as July 31 1997
Clients trust ledger s.15(1)(c)	Ledgers on trust list to Dec 7/95 but entries made from bank statements & some entries missing or incorrectly attributed	Ledgers on computer to Dec 7 1995 but continuing entry problems as previously noted	Ledgers to Dec 1995 - some entries revised	Ledgers to Dec 1995 - with additional revisions to entries	Ledgers to Jan 1996 (current) - additional revisions to entries	Same as July 31 1997
General receipts journal s.15(1)(e)	None	None	None	None	None	None
General disbursements journal s.15(1)(f)	None	None	None	None	None	None

REQUIRED RECORD	STATUS May 2/97	STATUS May 21/97	STATUS June 12/97	STATUS June 19/97	STATUS July 31/97	STATUS Sept 9/97
Fees book or file of billings in date order s.15 (1)(g)	None	None	None	None	None	None
Trust comparisons s.15(1)(h) and 2(a)	No trust lists or bank reconciliations between Dec 31/94 and Dec 31/95; Dec 31/95 trust list overdrawn and Dec 31/94 & Dec 31/95 reconciliations showing large differences	Trust lists to Dec 31/95 - trust ledger and trust total overdrafts; still no bank reconciliations between Dec 31/94 & Dec 31/95 - those reconciliations still showing differences	Trust lists to Dec 31/95 - some revisions made & trust total no longer overdrawn but o/d ledgers remain; one Dec 31/95 reconciliation difference corrected but others remain	Revised trust lists & bank reconciliations from Oct/94 to March 1995; lists include explanations and/or corrections of overdrawn trust ledgers; differences remain	Revised trust lists and bank reconciliations from Sept/94 to Jan/96 (current); no differences but o/s reconciling items and o/d trust ledgers	Same as July 31/97 but o/d shown to be offset by earned/ billed fees in trust; only some of the reconciling items covered by remaining earned fees
Bank statements, cashed cheques and deposit slips for trust and general accounts s.15(1)(j)	Inadequately detailed trust deposit slips; Nov & Dec/95 & Jan/96 trust statements & cheques missing; no general bank statements & cheques and only one insufficiently detailed general deposit book May 5/ 94 to Jan 9/95	Same as May 2 1997	Same as May 2 1997	Same as May 2 1997	Same as May 2 1997 except that a copy of the Jan/96 trust bank statement was obtained	Same as July 31 1997

12. As the table indicates, the Solicitor's trust records were eventually brought up-to-date as of January 1996, the date by which the Solicitor closed his trust account owing to his declaration of bankruptcy. Between January 1996 and March 1997, the Solicitor's trust transactions were run through the trust accounts of another solicitor, James Scott.

13. In March 1997, the Solicitor opened new trust and general bank accounts and moved his practice to an office outside his home.

14. Despite several months of extensions and reviews of the Solicitor's books and records, he has failed to update the general receipts, disbursements and fees records in connection with his practice.

Particular 2(b) During the period July 18, 1994 to January 3, 1996, the Solicitor failed to maintain sufficient balances on deposit in his mixed trust account to meet all his obligations with respect to money held in trust for clients.

15. When the reconstruction of the Solicitor's trust records was finally completed, the records disclosed a number of overdrawn trust ledger accounts which, although eventually shown to be offset by earned fees and disbursements in the trust account, were nevertheless allowed to exist uncorrected over long periods of time. As well, because the records were not kept up-to-date, there were bank errors and other reconciling items which were owed to the trust account, some of which remained outstanding for almost two years.

16. Reconciling items totalling \$530.26 were eventually shown to be offset by earned fees in trust but the remaining amount of \$89.17 was offset only because an outstanding trust cheque in that amount remained in the account because the cheque could not be reversed and reissued as the client was not identified.

17. The following table illustrates the overdrawn trust ledger accounts and the outstanding reconciling items owed to trust as of January 3 1996 which were not corrected until August 1997.

Client	Payee & Amount causing Debit	Debit Balance	Date Incurred	Explanation
Barinowski (Document Book, Tabs 58, 59)	1) Client - \$870.00 2) MOF - \$50.00 3) MOF - \$50.00	1) \$82.43 2) \$132.43 3) \$182.43	1) Dec 13/94 2) Dec 15/94 3) Sept 29/95	Solicitor advised that client was overpaid but could not explain these overdrawn balances; final balance of \$182.43 offset by earned fees and disbursements in trust, some of which were not billed until Aug/97.
Carnie (Document Book, Tabs 60,61)	Solicitor - \$589.00	\$32.10	Nov 2/94	Solicitor advised that this was an error; overdraft offset by earned fees and disbursements in trust, some of which were not billed until August 1997.
Dee/Banks (Document Book, Tab 62)	1) Les Paci, in trust - \$3100.00 2) MOF - \$110.00 3) Pamela Vamos (Solicitor's fees) - \$400.00	1) \$549.74 2) \$659.74 3) \$559.74	1) Apr 27/95 2) May 5/95 3) Sept 29/95	Although this ledger account shows an overdrawn balance of \$559.74, the true balance is a credit of \$440.26 because the March 22/95 receipt of \$1000.00 from client Dee was incorrectly posted to the credit of another, unrelated client, Szucsko; this credit balance represents earned fees in trust which were billed August 20 1997 and which were used to offset other overdrawn trust ledger accounts.
Geddes/ Schieve/ Timmer-man (Document Book, Tab 63)	1) Solicitor - \$300.00 2) MOF - \$125.00 3) Discovery Services Ltd. - \$96.17	1) \$300.00 2) \$425.00 3) \$521.17	1) June 16/95 2) July 17/95 3) Sept 29/95	Although this ledger account shows an overdrawn balance of \$521.17, the true balance is a credit of \$228.83 because the June 1/95 and Aug 15/95 receipts of \$500.00 and \$250.00 from clients Geddes/ Schieve /Timmerman were incorrectly posted to the credit of the Solicitor's trust ledger called "Legal Aid Disburs."; this credit balance represents earned fees in trust which were billed Aug 20 1997 and which were used to offset other overdrawn trust ledger accounts.

Client	Payee & Amount causing Debit	Debit Balance	Date Incurred	Explanation
Langsford (Document Book, Tab 64)	1) Crystal Whyte, (paralegal) - \$470.00 2) Angie Free (paralegal) - \$180.00	1) \$470.00 2) \$650.00	1) Aug 30/95 2) Aug 31/95	The overdraft was reduced to \$515.00 on Sept 1/95 by a deposit of \$135.00 from the client; the Solicitor had no explanation for this overdrawn balance but it was eventually offset by earned fees and disbursements in trust, some of which were not billed until Aug/97.
"Legal Aid Disburs." (Document Book, Tabs 65, 66)	1) Solicitor - \$886.60 2) Pamela Vamos, wife of Solicitor - \$1100.00 3) P. Vander-mullen - \$433.83 4) MOF - \$17.00 5) Pamela Vamos - \$230.00 6) Pamela Vamos - \$675.00 7) Pamela Vamos - \$550.00 8) James Scott, in trust - \$549.98	1) \$93.58 2) \$1193.58 3) \$1627.41 4) \$1644.41 5) \$1874.41 6) \$2549.41 7) \$3099.41 8) \$3271.22	1) Sept 29/95 2) Sept 29/95 3) Sept 29/95 4) Oct 2/95 5) Oct 2/95 6) Oct 27/95 7) Nov 2/95 8) Jan 3/96	The debit balance of \$3099.41 was reduced by a direct deposit on Nov 3/95 of \$378.17 in payment to Solicitor from OLAP; although this ledger account shows an overdrawn balance of \$3271.22, the true overdrawn amount is \$4063.22 because, as already noted, the Geddes/Schieve/Timmerman deposits of \$500.00 and \$250.00 were incorrectly posted to this ledger; as well, deposits of \$25.00 and \$17.00 which were made by the Solicitor on Apr 4/95 to replace overdrafts in ledgers for clients Raposo and Smith were incorrectly posted to the Solicitor's personal ledger called Legal Aid Disburs. The overdraft was offset by earned fees and disbursements in trust, some of which were not billed until August, 1997.
Pellerin (Document Book, Tabs 67, 68)	Solicitor - \$516.82	\$66.82	Nov 30/94	The Solicitor stated that this overdraft is the result of an error which cannot be accounted for; the overdraft was offset by earned fees and disbursements in trust, some of which were not billed until Aug /97.

Client	Payee & Amount causing Debit	Debit Balance	Date Incurred	Explanation
Raposo (Document Book, Tabs 69, 70)	Solicitor - \$982.60	\$25.00	July 18/94	Although this ledger shows an overdrawn balance of \$25.00, the true balance is 0 because, as noted above, the Solicitor's deposit on Apr 4/95 of \$25.00 to replace this overdraft was incorrectly posted to his personal ledger called Legal Aid.
Smith (Document Book, Tabs 71, 72)	Solicitor - \$610.00	\$17.00	July 25/94	Although this ledger shows an overdrawn balance of \$17.00, the true balance is 0 because, as noted above, the Solicitor's deposit on Apr 4/95 of \$17.00 to replace this overdraft was incorrectly posted to his personal ledger called Legal Aid Disburs.
Sullivan (Document Book, Tabs 73, 74)	Solicitor - \$140.19	\$130.38	Feb 23/95	The Solicitor said that he transferred his fees twice in error; the overdraft was offset by earned fees and disbursements in trust, some of which were not billed until Aug/97.
Teepell (Document Book, Tabs 75, 76)	MOF - \$17.00	\$1.51	Oct 8/94	The Solicitor stated that this was an accounting error; the overdraft was offset by earned fees and disbursements in trust, some of which were not billed until Aug/97.
Reconciling Item	Amount	Date Incurred	Explanation	
Bank error in recording deposit (Document Book, Tab 77)	\$.16	August 1994 or earlier - exact date unknown	This item was overlooked when it occurred and, as the Solicitor's books and records were not kept up-to-date, was not corrected; it was offset only by a stale-dated trust cheque in the amount of \$89.17 which could not be reversed and reissued as the client and payee are not known.	
Bank error - service charges (Document Book, Tab 77)	\$39.27	March 1994	This item was only partially corrected by earned fees and disbursements in trust, some of which were not billed until August 1997; the balance of \$29.01 is offset only by the stale-dated trust cheque which could not be reversed and reissued as the client and payee are not known.	

Reconciling Item	Amount	Date Incurred	Explanation
Outstanding deposit re: client Keparoutis (Document Book, Tab 77)	\$500.00	Sept 30 1994	This deposit was recorded in the Solicitor's books but never deposited in the bank; the Solicitor suggested that the cash which was received from the client was stolen from his office but advised that he has no evidence; I 15 April 1999 determined that the Solicitor's earned fees and disbursements in trust were sufficient to cover the missing \$500.00.
Bank error in recording cheque (Document Book, Tab 77)	\$60.00	October 2 1995	The bank recorded cheque #569 as \$93.00 instead of the actual amount of \$33.00; the \$60.00 excess was offset only by the funds in the account related to the stale-dated trust cheque mentioned above.
Bank charge re: insufficient funds in trust account (Document Book, Tab 77)	\$20.00	Dec 22 1995	The Solicitor disbursed what he calculated to be the remaining funds in his trust account but, as his books and records were not up-to-date, he miscalculated and the cheque was returned NSF resulting in the bank charge which would normally be taken from a Solicitor's general bank account; this charge was offset by the Solicitor's earned fees and disbursements in trust some of which were not billed until Aug 1997.

Particular 2 (c) The Solicitor operated a mixed trust account during the period October 5, 1995 to January 3, 1996 in violation of the requirements of section 7 of Regulation 708 under the Law Society Act

18. The Solicitor made an assignment in bankruptcy on October 5, 1995 (Document Book, Tab 82) and received a discharge from bankruptcy on September 9, 1996 (Document Book, Tab 87). As the Solicitor had not informed the Law Society of his bankruptcy, on November 7, 1995 (Document Book, Tab 104) the Office of the Staff Trustee of the Law Society wrote to the Solicitor advising him of his responsibility to inform the Law Society about his bankruptcy and provided information which set out the guidelines, procedures and prohibitions with respect to the requirements of section 7 of Regulation 708.

19. The Solicitor's trust bank account was with the Canadian Imperial Bank of Commerce at Commerce Place in Hamilton, Ontario. On October 2, 1995, the Solicitor's trust bank account had a balance of \$4,095.81 (Document Book, Tab 85).

20. The Solicitor continued to operate his trust bank account and funds were received in and disbursed from the trust account after the date of the Solicitor's bankruptcy and until the account was closed on January 3, 1996 (Document Book, Tab 92).

21. The following table outlines the Solicitor's use of his trust account between October 5, 1995 and January 3, 1996.

DATE	EVENT/ITEM
October 5, 1995	Solicitor made an assignment into bankruptcy
October 16, 1995 (Document Book, Tabs 83, 84)	Solicitor wrote and signed trust cheque # 587 (both cheque and cheque stub show Solicitor's note that funds disbursed to him by this cheque represent Legal Aid-duty counsel payment in trust)
October 31, 1995 (Document Book, Tab 85)	Trust bank statement for this month (copy) shows deposit to and disbursements from account after Solicitor's bankruptcy
November 2, 1995 (Document Book, Tab 86)	Trust cheque stub shows disbursement from trust account to Pamela Vamos, Solicitor's wife, after date of Solicitor's bankruptcy (cheque not available as returned cheques and bank statement lost/destroyed)
November 7, 1995 (Document Book, Tab 87)	The office of the staff trustees of the Law Society wrote to the Solicitor setting out the requirements of section 7 of Regulation 708 concerning bankrupt solicitors
November 30, 1995 (Document Book, Tab 88)	Trust bank statement for this month (copy) shows deposit to and disbursements from account after Solicitor's bankruptcy
December 4, 1995 (Document Book, Tab 89)	Solicitor's note of calculations and trust cheque stub show transfer of funds from Solicitor's trust bank account after date of Solicitor's bankruptcy to the trust bank account of James Scott who was to handle all Solicitor's trust transactions during bankruptcy period
December 15, 1995 (Document Book, Tab 90)	Trust journal of James Scott shows deposit to his trust account of funds from Solicitor and subsequent reversal of deposit as Solicitor's trust cheque was returned NSF
December 31, 1995 (Document Book, Tab 91)	Trust bank statement for this month (copy only as cheques and original statement lost/destroyed) shows disbursements from Solicitor's trust account after Solicitor's bankruptcy
January 3, 1996 (Document Book Tab 92)	Trust bank statement for this month (copy only as cheques and original statement lost/destroyed) shows disbursement from Solicitor's trust account and the closing of the account three months after Solicitor's bankruptcy on October 5 1995
January 5, 1996 (Document Book, Tab 93)	Trust journal of James Scott shows deposit to his trust account of funds from Solicitor to replace NSF deposit of Dec 15 1995 (\$549.98 from Solicitor's trust account and \$30.00 deficit from Solicitor to account for \$579.98 deposit)

Particular 2 (d) From September 6, 1994 to January 3, 1996, the Solicitor operated general account and personal transactions through his mixed trust account in violation of the requirements of section 14 of Regulation 708 under the Law Society Act

22. The Solicitor deposited in and disbursed from the trust bank account funds which were not trust funds as defined by subsection 3 of section 14 of Regulation 708 and mingled his own funds with those belonging to clients.

23. The Solicitor's personal receipts and disbursements were posted to a ledger entitled "Legal Aid Disbursements" (Document Book, Tab 98). Some of the postings relate to a company called Courtyard Law Chambers (Hamilton) Inc. whose shareholder is Pamela Vamos, the Solicitor's wife. The deposits to and disbursements from the trust account in connection with this company were originally posted to a ledger called Courtyard (Document Book, Tabs 96, 97) but were later transferred to the ledger called Legal Aid Disbursements. The deposits included rent payments from tenants of property located at 104 Britannia St. and at 106 East 6th St. and a \$6,900. loan to the company on June 1, 1995 from Pamela Vamos and/or the Solicitor. The disbursements included mortgage, hydro, gas and insurance payments as well as a payment on July 21, 1995 to Pamela Vamos for "loan balance".

24. Other postings (Document Book, Tab 94) represent payments to the Solicitor from the Ontario Legal Aid Plan (for duty counsel work or other matters) which should have been deposited in the Solicitor's general bank account - instead, these funds were deposited in the trust account and some or all of these funds were later disbursed to the Solicitor or Pamela Vamos or to the Solicitor's creditors including the Receiver General.

25. The trust ledger entitled Legal Aid Disbursements illustrates the improper transactions which were conducted through the trust account from September 6, 1994 to January 3, 1996 and shows that a number of them took place after the Solicitor's bankruptcy on October 5, 1995 (Document Book, Tab 94). Several disbursements were made to the Solicitor and/or his wife just before the Solicitor's bankruptcy and for some time thereafter. Because the Solicitor mingled his own funds with clients' funds held in trust, he exposed his clients' funds to the risk of seizure by the bankruptcy trustee.

26. The deposits to the trust account of fees and disbursements received by the Solicitor from the Ontario Legal Aid Plan (OLAP) (Document Book, Tabs 95, 99) were made primarily by the Solicitor but were also made by direct deposit to the trust bank account on, for example, October 20, 1995 (Document Book, Tab 102) and November 3, 1995 (Document Book, Tab 103). The Solicitor did not always immediately disburse any or all of these funds (Document Book, Tabs 85, 88) but made a number of disbursements (Document Book, Tabs 100, 101) from the trust account over time including payments to the Solicitor, Pamela Vamos, the Receiver General (for GST), Canada Post (for stamps) and to others for paralegal and bailiff services. These disbursements should have been made from the general bank account.

27. The Solicitor believed that there were sufficient "general" funds in the trust bank account as posted to the Legal Aid Disbursements ledger to cover these disbursements as well as any overdraft in other trust ledgers but, as previously noted, the Legal Aid Disbursement ledger itself was frequently overdrawn.

28. The Solicitor made an assignment in bankruptcy on October 5, 1995 and received a discharge from bankruptcy on September 9, 1996. Nevertheless, the Solicitor continued to operate his trust bank account and funds were received in and disbursed from the trust account after the date of the Solicitor's bankruptcy and until the account was closed on January 3, 1996.

V. DISCIPLINE HISTORY

4. The Solicitor does not have a discipline history.

DATED at Hamilton, this 27th day of July, 1998."

Appendix A

DATE	CONTACT	RESULT
September 4, 1996 (Document Book, Tab 1)	Unannounced attendance at address on record for Member (residence).	As the Member was not at home, I left my card and letter of introduction with the person who answered the door.
September 6, 1996 (Document Book, Tab 2)	Member left voice mail message for me.	Member asked me to call him on September 10 1996.
September 10, 1996 (Document Book, Tab 3)	I called Member and advised him that audit instructed because of his bankruptcy on October 5 1995 and because of his failure to file for the period ended September 30 1994.	Member advised that he filed September 30 1994 in July 1996 and that another lawyer (James Scott) had been handling his trust funds since his bankruptcy - he said that he received a discharge on September 9 1996; he asked me to call him September 13 1996 to schedule an appointment as he may be involved in a trial which will make meeting difficult.
September 13, 1996 (Document Book, Tab 4)	I called the Member.	Member advised that he was still unsure about whether he would be in court the next week so appointment made for September 25 1996.
September 24, 1996 (Document Book, Tab 5)	Member left message for me and I returned his call.	Member asked to postpone meeting because books must be reconstructed from October 1 1994 and source documents have been lost or destroyed by flood where they were stored; he must obtain information from bank and is seeking an extension to November 1 1996 for filing; he said that he would call me with time-frame for reconstruction and date when audit may commence.
November 27, 1996 (Document Book, Tab 6)	As Member had not contacted me, I called him.	I left a message for Member asking him to call me concerning the audit.
December 3, 1996 (Document Book, Tab 7)	Message received from Member.	Member advised that all books with accountant with whom he was to meet December 4 - he said he would call me in afternoon of December 5.

25th March, 1999

DATE	CONTACT	RESULT
December 16, 1996 (Document Book, Tab 8)	As the Member had not called me, I telephoned him.	Member advised that there was no progress with books to report so he did not call; he said he would call during week of January 6 - 10 1997 regarding status of reconstruction of books - he knows that I need to review the books/records soon.
January 9, 1997 (Document Book, Tab 9)	Message received from Member's accountant.	Accountant said that he needs more time to complete accounting but expects to have majority completed by end of week (January 10 1997).
January 10, 1997 (Document Book, Tab 10)	I called Member's accountant three times.	Accountant said that he would call me on Monday (January 13) with update of Member's accounting situation.
January 31, 1997 (Document Book, Tab 11)	Facsimile received from Member's accountant.	Accountant advised that he would contact me "with everything done" by the end of the week (February 7).
February 27, 1997 (Document Book, Tab 12)	I sent a letter to Member's accountant by facsimile.	I reminded accountant of the content of his January 31 message and asked him (or the Member) to contact me.
February 28, 1997 (Document Book, Tab 13)	Received message from Member's accountant.	Accountant said that they had computer problems today and lost 5 hours of information; he said he would call me on Monday (March 3).
March 13, 1997 (Document Book, Tab 14)	As I had not heard from Member or his accountant, I called the Member.	Member advised that reconstruction 98% completed and he will be meeting soon with accountant; he asked me to send him a fax stating that we spoke and that he would contact me next week.
March 13, 1997 (Document Book, Tab 15)	At his request, I sent a letter to Member by facsimile.	Letter outlined his comments regarding the reconstruction of his books and confirmed his statement that he would contact me the next week (March 17 - 21 1997).

25th March, 1999

DATE	CONTACT	RESULT
March 21, 1997 (Document Book, Tab 16)	Received telephone message from Member's accountant asking that I call him.	I called accountant and left voice mail message advising that I had spoken with Member; asked accountant to contact me about books so that I can make arrangements with Member to complete audit; told accountant he could reach me March 25 or 26 or could send message by facsimile.
April 4, 1997 (Document Book, Tab 17)	Received telephone message from Member.	Member provided new telephone and fax numbers and advised that he had called for advice regarding his filings; he said that he had also left a message about his filings with the Forms Dept.
April 4, 1997 (Document Book, Tab 17)	I returned Member's call and left a message; Member called and left message about when he could be reached; I called Member twice more and spoke to him.	Member said he didn't know whether accountant had contacted me (I told him of March 21 messages and nothing since); he said accountant has all necessary information so there should be no further delay - he will ask accountant to call me and if he does not call by Tuesday (April 8) I should call Member; Member added that he received filing advice from Forms Department.
April 8, 1997 (Document Book, Tab 18)	Received telephone message from Member's accountant.	Accountant said that he would be out of office until 4:00 or 5:00 p.m. but would call me again at that time or the next morning.
April 8, 1997 (Document Book, Tab 18)	I called Member's accountant three times between 4:30 and 5:00 p.m. and attempted to leave message on voice mail system.	Each attempt to leave a message was cut off by the system but was able to leave part of a message advising him of the books and records required to complete an examination (he had previously asked to know what documentation was required).
April 9, 1997 (Document Book, Tab 19)	Received telephone message from Member's accountant.	Accountant said he was having problems with voice mail modem but would send facsimile later today.

25th March, 1999

DATE	CONTACT	RESULT
April 15, 1997 (Document Book, Tabs 20 to 22)	Received from Member's accountant a facsimile cover page referring to an attached letter which was not received.	I called the accountant and advised that letter was not received; he said that he would send the letter again and asked me to call him; I received the letter and called the accountant - an audit appointment was made for April 24 1997 at Member's office.
April 21, 1997 (Document Book, Tab 23)	Telephone conversations with accountant and with Member.	Accountant advised that Member wanted audit to be conducted at accountant's office as all records there but accountant busy with tax returns and asked to postpone audit to May 1; Member later called to advise that he may not be at accountant's office on May 1 but will be available by telephone after 11:00 a.m.
April 30, 1997 (Document Book, Tab 24)	Message from Member's accountant (5:30 p.m.) and call to accountant (6:15 p.m.)	Accountant requested that the May 1 appointment be postponed to May 2 1997 as he would be working all night and needed the next day to recover.
May 2, 1997 (Document Book, Tabs 25, 26)	Attended accountant's office as scheduled.	Books and records not in order or properly reconciled and several items missing; reviewed the records in existence and gave accountant list of books and records required; spoke to Member on telephone about outstanding items; appointment made to continue audit on May 21 at accountant's office.
May 21, 1997 (Document Book, Tabs 27, 28)	Attended accountant's office as scheduled.	Accountant advised that he had sent a fax this morning to postpone this appointment; I reviewed the new records that had been completed to this point and noted/reviewed outstanding items with accountant.
May 26 & 27, 1997 (Document Book, Tabs 29 to 31)	Messages from and calls to Member.	Member asked that I give accountant written list of required items; I advised that accountant already has a list which I reviewed with him on May 2 & 21; Member will call accountant to get matters concluded and call me to set up appointment.

25th March, 1999

DATE	CONTACT	RESULT
May 27, 28 & 29, 1997 (Document Book, Tabs 31 to 33)	Messages from and to Member's accountant.	Accountant asked me to call to arrange appointment; I left messages with possible dates of May 29, June 2, 3 or 5; accountant advised that he was waiting for some information but would call the next day (May 30) to make firm appointment for the next week (June 2 - 6).
June 3 & 5, 1997 (Document Book, Tabs 34, 35)	Messages from and call to Member's accountant.	Accountant said that he received information; I advised that I can attend to continue audit on June 11 or 12; he said June 12 better for him so appointment made for June 12.
June 12, 1997 (Document Book, Tab 36)	Attended accountant's office per scheduled appointment.	Continued review of books, records and files; reconciliations still showing differences and accountant in process of trying to correct them; noted other outstanding items on list; appointment made to continue audit on June 19.
June 19, 1997 (Document Book, Tab 37)	Attended accountant's office per scheduled appointment.	Accountant forgot that we had an appointment and advised that he was still working on trust comparisons; I reviewed corrected trust comparisons from September 1994 through March 1995 and noted some errors which accountant corrected; accountant advised that all would be reconciled by next week but, as I would be working in another department next week and then on vacation for two weeks, appointment made for July 14.
July 14, 1997 (Document Book, Tab 38)	Attended accountant's office per scheduled appointment.	Accountant was not in office; later received telephone messages advising that relative of accountant had died and he had to attend funeral.
July 15, 1997 (Document Book, Tab 39)	Telephone call from Member's accountant.	We rescheduled audit appointment for July 21 1997.

DATE	CONTACT	RESULT
July 17, 1997 (Document Book, Tab 40)	Message from and call to Member's accountant.	Accountant advised that he is waiting for one piece of banking information and would like to postpone audit until information received; he said that he would call me on July 22.
July 24, 1997 (Document Book, Tab 41)	Message from and to Member's accountant.	Accountant asked me to call him and I left a message advising that I can attend July 28 or 31 and asked him to call with his choice of appointment.
July 25, 1997 (Document Book, Tab 42)	Message from Member's accountant.	Accountant confirmed appointment on July 31 1997.
July 31, 1997 (Document Book, Tab 43)	Attended accountant's office per scheduled appointment.	Reviewed latest bank reconciliations for Member's new trust account; checked trust comparisons for old trust account from Sept/94 to Mar/95 for changes; reviewed corrected trust comparisons for April 1995 to January 1996 when old trust account closed - all differences corrected but numerous overdrawn trust ledgers; I will contact Member August 1.
July 31 & August 1, 1997 (Document Book, Tabs 44, 45)	Message from and call to Member.	Member to review records for old trust account in order to correct overdraft; he said he would call me when he finished his review.
August 7, 1997 (Document Book, Tab 46)	Member telephoned.	Member advised that he had been unable to meet with his accountant to review the trust records; he asked me to fax a list of the books and records which are required for review for his new trust and general accounts; he said he would call me when he has contacted his accountant and I can attend to review the current records and the corrections which are required regarding the old trust account.

25th March, 1999

DATE	CONTACT	RESULT
August 7, 1997 (Document Book, Tab 47)	At his request, I sent a letter to the Member by facsimile.	The letter listed the books and records which are required by the Regulation and which must be provided for audit.
August 22, 1997 (Document Book, Tab 48)	Member telephoned.	Member said that funds in the old trust account were earned fees and disbursements which he had not transferred to the general account - these funds offset the overdrawn trust ledgers; he dictated billings and reporting letters (if none could be found) and they will be typed on weekend and forwarded to his accountant on Monday (August 25); Member said he would contact me August 25 to arrange an appointment
August 28, 1997 (Document book, Tab 49)	Received telephone message from Member.	Member advised we can meet at any time regarding audit of current books but need one day's notice and suggested September 3, 4 or 5; he asked me to call his accountant to set up an appointment with him as well and then call Member to confirm that I have done so.
August 29, 1997 (Document Book, Tab 50)	I called and left messages for Member's accountant.	I asked accountant to call and confirm appointment September 3 (preferred date) or 4 and called member and left message advising that I had called his accountant and left above message.
August 29, 1997 (Document Book, Tab 51)	Messages from and to Member's accountant; telephone conversation with accountant and message to Member.	Accountant said he could not have adjustments ready by September 3 so appointment made for September 9; I called Member and left message advising him of September 9 appointment.

DATE	CONTACT	RESULT
September 4, 1997 (Document Book, Tab 52)	Telephone conversation with Member.	We made set an appointment for 2:00 p.m. at his office as I hoped to complete the review of adjustments at accountant's office in the morning and attend Member's office in the afternoon to complete a review of the new trust and general accounts.
September 9, 1997 (Document Book, Tab 53)	Attended at accountant's office per scheduled appointment.	Accountant had forgotten about our appointment but got out the material that Member had prepared regarding the adjustments; I reviewed the billings and memos, compared the information with the ledgers and reviewed some files in connection with the earned fees in trust which offset the overdrawn ledgers; due to the volume of material, I was unable to attend at the Member's office the same day; spoke by telephone to the Member who advised that he would be mailing something to me and to Audrey Cado in Discipline Dept.; we made appointment for audit of current books and records at his office on September 22 1997.
September 10, 1997 (Document Book, Tab 54)	Message from and call to Member.	Member advised that before his books and records were lost/destroyed the book entries were made on PC Law up to January 1995 for the general account and March or April 1995 for the trust account - for the period from April 1995 to his bankruptcy on October 5 1995 there were detailed source documents but, as these were also lost or destroyed, the books had to be reconstructed and there were delays because of the time required by the bank to provide information and due to the accountant's schedule.

DATE	CONTACT	RESULT
September 12, 1997 (Document Book, Tab 55)	Received letter from Member.	The letter is also addressed to Jonathan Fedder of the Complaints Dept. and Audrey Cado of the Discipline Dept. and it outlines the problems which the Member has encountered in his practice and personal life and which led to his failure to maintain records and to make timely annual filings.
September 17, 1997 (Document Book, Tab 56)	Telephone discussion with Member.	Member said that his accountant had some questions regarding the filings and I advised that the Member and his accountant should discuss the filing requirements with that department; we confirmed the appointment on September 22 1997.
September 22, 1997 (Document Book, Tab 57)	Attended at Member's office per scheduled appointment.	The review of books and records of Member's current (from March 1997) trust and general accounts disclosed no problems. Note: From May 1995 to March 1997, the Member practised from his home and continued to have his trust transactions processed through James Scott's account, notwithstanding the fact that the Member received a discharge from bankruptcy on September 9 1996; as noted, the Member's general records for the period prior to March 1997 were not provided/available; in March 1997 the Member opened new trust and general bank accounts and moved his practice to an office in Hamilton.

FINDING OF THE COMMITTEE

The Solicitor has been charged with professional misconduct arising out of the failure to maintain his books and records and accounts in accordance with the Regulations under the Law Society Act.

There was a lengthy Agreed Statement of Facts, annexed to these Reasons, which sets out the quite lengthy history of the matter and the significant efforts by the Society to ensure that the Solicitor's records were brought up to date.

At the hearing of this matter, the Solicitor agreed that he was guilty of professional misconduct and asked for some additional time to bring his records into order. The Committee agreed to extend to the Solicitor the necessary time to make a further attempt to satisfy the Society. To the Solicitor's credit, he used that time well and we were informed on the resumption of the hearing that the Solicitor's records are now in order to the satisfaction of the Society.

The Solicitor was also charged with professional misconduct in operating a mixed trust account during a certain period of time in violation of the requirements of the Law Society Act; and also charged with operating his general account and personal transactions through his mixed trust account; and also that he failed to maintain sufficient balances on deposit in his mixed trust account to meet all of his obligations to the clients.

All of these matters are inter-related and all are as a result of inadequate record keeping by the Solicitor. It appears that although the Solicitor seemed able to properly maintain his practice, record keeping was beyond him.

Based on the Agreed Statement of Facts and the submissions of counsel, we found the Solicitor guilty of professional misconduct on all counts.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Martin Edward Vamos be reprimanded in Convocation; that he pay Law Society costs in the amount of \$1,000, payable within ninety days of the date of the Report; and, that he be required to produce a monthly trust reconciliation to the Society for a period of twelve months.

REASONS FOR RECOMMENDATION

The Solicitor and counsel for the Society were able to agree upon a joint submission. The joint submission was that the Solicitor pay the Society its costs of investigation of \$1,000, payable within ninety days from the date of the Report; that the Solicitor be reprimanded in Convocation; and, that the Solicitor be required to produce to the Society on a monthly basis, a trust reconciliation for the following twelve months. The Solicitor agreed to these conditions and has filed an undertaking to provide the requisite trust reconciliations.

The Solicitor has no discipline record. He has taken specific steps in his office to improve his record keeping and avoid the risk that such behaviour will occur again.

At first blush, one might think that this series of charges might well give rise to a penalty of a reprimand in Committee, but the sheer volume of the problems and the length of time it took the Solicitor to deal with them and the real failure of the Solicitor to address these issues until he was finally called to account, leads us to accept and approve of the joint submission and the reprimand in Convocation. See the cases of Levine, Donohue and Daley wherein similar penalties were ordered by Convocation for similar matters.

In all of the circumstances therefore, we recommend to Convocation the joint submission as submitted by the Society and the Solicitor.

Martin Edward Vamos was called to the Bar on April 7, 1982.

ALL OF WHICH is respectfully submitted

DATED this 18th day of December, 1998

Philip M. Epstein, Q.C., Chair

There were no submissions on the finding of professional misconduct.

It was moved by Mr. Swaye, seconded by Mr. Copeland that the Report be adopted.

Carried

25th March, 1999

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation and pay the Society's costs in the amount of \$1,000 within ninety days of the date of the Report and further that he be required to produce a monthly trust reconciliation to the Society for a period of 12 months.

Mr. Corbett advised that the solicitor had paid the Society's costs in the amount of \$1,000.

Both counsel made submissions in support of the joint submission made at the Discipline hearing that the solicitor be reprimanded in Convocation.

It was moved by Mr. Swaye, seconded by Mr. Copeland that the solicitor be reprimanded in Convocation.

Carried

The Treasurer administered the reprimand.

Re: Michael Gerrard DECOSIMO - Mississauga

The Secretary placed the matter before Convocation.

Messrs. Topp, Swaye, Wright and Copeland withdrew for this matter.

Ms. Cameron appeared for the Society and Mr. William Trudell appeared for the solicitor. The solicitor was not present.

The matter was stood down.

Re: Philip Deblois QUINTIN - Kingston

The Secretary placed the matter before Convocation.

Messrs. Carey and Chahbar withdrew for this matter.

Ms. Kathryn Seymour appeared on behalf of the Society and Mr. Anand, Duty Counsel appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 27th November, 1998, together with an Affidavit of Service sworn 7th December, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 3rd December, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th March, 1998 (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

Jane Harvey, Chair
Thomas J. P. Carey
Abdul A. Chahbar

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

Kathryn Seymour
For the Society

PHILIP DEBLOIS QUINTIN
of the City

Stuart B. Scott
For the solicitor

of Kingston
a barrister and solicitor

Heard: September 16, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 23, 1998 Complaint D31/98 was issued against Philip Deblois Quintin alleging that he was guilty of professional misconduct.

The matter was heard in public on September 16, 1998 before this Committee composed of Jane Harvey, Chair, Thomas J.P. Carey and Abdul A. Chahbar. The Solicitor attended the hearing and was represented by Stuart Scott. Kathryn Seymour appeared on behalf of the Law Society.

DECISION

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

Complaint D31/98 (as amended)

2. a) From on or about April 1, 1995, to on or about January 31, 1997, the Solicitor continued to practise law while on sabbatical in breach of Section 50 of the *Law Society Act*; and
- b) He misled the Law Society by representing to the Society that he was on sabbatical when in fact he was continuing to practise.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D31/98 and is prepared to proceed with a hearing of this matter on September 15 and 16, 1998.

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 D31/98 and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. He was called to the Bar on April 10, 1964. He practised law in Kingston as a sole practitioner and sometime partner or associate until April 1, 1995 when his membership status with the Law Society of Upper Canada ("LSUC") was changed to "retired or not working" as a result of the Solicitor's advice to the LSUC that he was taking a sabbatical year..

Particular 2(a) From on or about April 1, 1995, to on or about April 12, 1997, the Solicitor continued to practise law while retired in breach of Section 50, of the *Law Society Act*;

(b) He misled the Law Society by representing to the Society that he was retired when in fact he was continuing to practise.

5. On or about February 17, 1995, the Solicitor called the Law Society to advise that, effective April 1, 1995, he was taking a sabbatical from the practice of law (Document Book, Tab 345).

6. On or about October 4, 1996, the Law Society sent a Notice of Default in Annual Filing to the Solicitor as he had not filed with the Society since March 31, 1995 (Tab 346). On or about October 23, 1996, the Solicitor filed with the Law Society his Form 2 certifying that during the twelve month period since his last filing (March 31, 1995), he was not engaged in the practice of law and had not handled or been responsible for clients' trust funds or valuables (Tab 349).

7. The Solicitor admits that his Form 2 was false and that, in certifying to the Law Society that he had not been engaged in the practice of law and had not handled or been responsible for clients' trust funds or valuables during the 12 month period since his last filing (March 31, 1995), he misled the Law Society with respect to his activities.

8. On or about December 4, 1996, the Law Society commenced an audit of the Solicitor's practice pursuant to Sections 9 and 18 of Regulation 708 under the *Law Society Act*.

9. On or about July 11, 1997, the Law Society wrote to the Solicitor requesting the accountant's report on the Solicitor's trust account from April 1, 1995 (the specified date of sabbatical) to the close of the account (to a maximum of twelve months), and advised the Solicitor that, even if he was not practising law, he had a continuing obligation to file an accountant's report while he was holding trust funds (Tab 350).

10. On or about July 23, 1997, the Solicitor returned the Society's letter of July 11, 1997, on which the Solicitor had written a note advising that he had directed his accountant to prepare the Form 2/3 for the fiscal year ended March 31, 1996 (Tab 350).
11. On or about August 25, 1997, the Solicitor filed with the Society the Private Practitioner Form and the Public Accountant's Report for the fiscal year ended March 31, 1997 (Tab 352).
12. The Solicitor admits that he took two sabbaticals, back to back, commencing April 01, 1995 and ending March 31, 1997, during which time the Solicitor was to be "retired/not working" and therefore not engaged in the practice of law. The Solicitor admits that, although he represented to the Law Society - both verbally and in his annual filing - that he would not be engaged in the practice of law, he continued to practice law from April 01, 1995 through to January 31, 1997, a period of approximately 22 months.
13. The Solicitor admits that he paid only the reduced annual fee of a Category 1.3 member (being 25% of his regular fee) to the Law Society, and further admits that he did not pay any LPIC levies during the two year period. Accordingly, the Solicitor admits that he was practising without insurance over the period from April 01, 1995 to January 31, 1997.
14. The Solicitor states that he withdrew his advertising from the Bell directory and from the Chamber of Commerce directory, and that he also removed his name and professional sign from his place of business. However, the Solicitor admits that he continued to handle files which had been commenced prior to April 1, 1995, until they were closed in approximately mid June, 1995. The Solicitor further admits that during 1995 he was handling mortgage advances for his family's mortgage portfolio and, occasionally, for clients. The Solicitor admits that he handled purchase and mortgage transactions that he should not have, but states that he did not solicit any new legal business and did turn down some work.
15. The Law Society's audit produced documentation which evidenced that the Solicitor had been practising law continuously over the two year period of his sabbatical. The Society's evidence is set out in Appendix "A" attached hereto. The Solicitor admits handling a total of 28 files during his sabbatical which he should not have. The Solicitor's summary of files and fees earned is set out in Appendix "B" hereto. The scope and nature of the work performed by the Solicitor during the period of his sabbatical will be the subject of submissions to the Committee.
16. The Solicitor advised the Law Society on or about April 5, 1997, that he no longer wished to practise law and was seeking to resign his membership administratively pursuant to Section 12 of the *Law Society Act*. The Solicitor has now reconsidered the decision and wishes to retain his membership with LSUC, and will make submissions to the Discipline Committee in that regard.
17. On or about April 12, 1997, the Solicitor's trust account was closed.

V. PRIOR DISCIPLINE HISTORY

18. On September 23, 1982, the Solicitor received a Reprimand in Convocation and was ordered to pay costs in the amount of \$500.00 for being convicted of income tax evasion. A copy of the Report and Decision of the Discipline Committee is attached hereto as Appendix "C".

DATED at Toronto this 16th day of September, 1998."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Philip Deblois Quintin a) be suspended for a period of six months commencing at the conclusion of his administrative suspension; b) pay the Law Society fees and LPIC premiums (if LPIC will provide coverage) for the period the Solicitor practised law in an incorrect membership category, that is from April 1, 1995 to January 31, 1997; and c) pay costs of the Law Society in the amount of \$3,500.

REASONS FOR RECOMMENDATION

The Committee was persuaded that the Solicitor having experienced personal problems, including the death of his father, the care of his mother, personal health, and what he described as 'burn-out', genuinely decided to take a sabbatical from practising law for a period of one year and so advised the Law Society and LPIC. His gross income in 1994 was approximately \$100,000.

After April 1, 1995 when he was supposed to stop practising law for his sabbatical, he took his sign down from the house where his office was located, had no secretary, and discontinued his business telephone listing. He did continue to occupy the office.

The Solicitor testified that he did not seek out work but did in fact complete files undertaken before April 1, 1995 and did accept new work, some forty-five client files, comprised of fifty-four transactions with a gross revenue of only \$33,000 over a twenty-two month period.

He testified that at the end of his first year of sabbatical and that during the twenty-two month period he was involved in settling his father's estate, consulting for a motor sport association, and managing his family mortgage company, Oswego.

A complaint to the Law Society prompted an audit by the Law Society who discovered that the Solicitor was still practising law. The Solicitor cooperated with the Law Society investigation, shut down his trust account, and has not practised law since April 12, 1997, voluntarily. He is now 62 years of age and would like to resume the practice.

The Committee weighed the following factors. The Solicitor had a previous discipline history, one reprimand in Convocation sixteen years ago. The Solicitor did not pay Law Society fees and LPIC premiums for twenty-two months yet continued to practise. The Solicitor filed a false Form 2 report to the Law Society indicating that he was not practising and advised LPIC that he was not practising when he was in fact practising law. We reviewed the fact that the Solicitor has voluntarily not practised law for seventeen months from April 12, 1997.

We determined the appropriate period of the suspension to be six months and that as he practised during the period of twenty-two months without payment of the appropriate Law Society fees and LPIC premiums that these should also be paid prior to his resumption of practice.

Philip Deblois Quintin was called to the Bar on April 10, 1964.

ALL OF WHICH is respectfully submitted

DATED this 27th day of November, 1998

Jane Harvey, Chair

Ms. Seymour asked that the following corrections be made to the Report:

- (1) - page 2, particular 2(a) under the heading Facts should read "From on or about April 1, 1995, to on or about January 31, 1997", not April 12, 1997
- (2) - page 3, paragraph 12, second line - the date "March 31, 1997" should read "January 31, 1997".
- (3) - page 2, particular 2(b) under the heading Facts that the word "retired" be deleted and replaced with the words "on sabbatical".

It was moved by Mr. Crowe, seconded by Mr. Copeland that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 6 months commencing at the conclusion of his administrative suspension, to pay the Society fees and LPIC premiums for the period the solicitor practised law in an incorrect membership category and pay the costs of the Society in the amount of \$3,500.

Ms. Seymour advised that the recommended penalty set out on page 6 should read "...at the conclusion of any administrative suspension...".

Both Counsel made submissions in support of the recommended penalty.

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

It was moved by Mr. Copeland, seconded by Mr. MacKenzie that the recommended penalty be adopted with the proviso that if there were any dispute about the amount of the fees that the matter could be brought back before Convocation.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the recommended penalty be adopted that is, that the solicitor be suspended for 6 months commencing at the conclusion of any administrative suspension, to pay the Society fees and LPIC premiums and the Society's costs in the amount of \$3,500 with the proviso that the solicitor could bring the matter back before Convocation in the event there was a dispute about the amount of the fees.

The solicitor was asked if he would waive the quorum requirement should the matter be brought back to Convocation on the issue of the fees.

The solicitor consented to waive the quorum requirement.

RESUMPTION OF THE DECOSIMO MATTER

Convocation had before it the Report of the Discipline Committee dated 18th December, 1998, together with an Affidavit of Service sworn 18th January, 1999 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 8th January, 1999 (marked Exhibit I). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Gerald A. Swaye, Q.C., Chair
W. Michael Adams
Bradley H. Wright

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

Lesley Cameron & Kathryn Seymour
For the Society

MICHAEL GERRARD DeCOSIMO
of the City
of Mississauga
a barrister and solicitor

Michael Ingram & William Trudell
For the solicitor

Heard: October 14, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 18, 1997 Complaint D379/97 was issued against Michael Gerrard DeCosimo alleging that he was guilty of professional misconduct. This Complaint was withdrawn and replaced with Complaint D379a/97.

The matter was heard in public on October 14, 1998 before this Committee composed of Gerald A. Swaye, Q.C., Chair, W. Michael Adams and Bradley H. Wright. The Solicitor attended the hearing and was represented by Michael Ingram and William Trudell. Lesley Cameron and Kathryn Seymour appeared on behalf of the Law Society.

DECISION

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

Complaint D379a/97

2. a) In the period October 3, 1989 to June 30, 1992, he misappropriated a total of \$520,940, more or less, from his mixed trust account, and in particular, he misappropriated the following:
 - i) in the period October 3, 1989 to June 30, 1990, \$291,400, more or less;
 - ii) in the period July 1, 1990 to June 30, 1991, \$177,550, more or less;
 - iii) in the period July 1, 1991 to June 30, 1992, \$51,990, more or less.

25th March, 1999

- b) On or about June 9, 1995 and on or about August 2, 1995, he improperly withdrew from his trust account \$23,500 of funds that belonged to his client, Art Magic Carpentry Inc.
- c) In the period June 19, 1996 to July 15, 1996, he improperly withdrew from his trust account \$10,085 of funds that belonged to his clients the Estate of Louis Jessop and/or Margaret Polo.
- d) In the period January 31, 1995 to October 31, 1996, he misapplied over \$1.6 million he received in trust on behalf of clients of his law practice, and in particular, misapplied the following client funds:

Catherine Bianchi and/or Estate of Louis Bianchi	\$ 203,259
Mary Borsato and/or Art Magic Carpentry Inc.	128,129
Richard & Denise Cormack	263,138
Estate of Jean DelTorre and/or Archie DelTorre	177,255
Gary Guarino	42,000
Gary & Andrea Guarino	45,588
Margaret & Michael Polo and/or Estate of Louis Jessop	73,067
Belgijzere Kelolli	100,771
Estate of Susan Federico, Kent Murphy and Sharon Gibb	118,794
Estate of Dennis Kolomayz	108,136
Estate of Samuel Patience	144,415
Anna & Sabino Mazzilli	221,250
	<u>\$1,625,802</u>

- e) In the period January 31, 1995 to November 22, 1996, he failed to maintain sufficient balances on deposit in his trust account to meet all his obligations with respect to monies held in trust for clients. As at November 22, 1996, the amount of the shortage was over \$1.5 million in respect of the following clients:

Catherine Bianchi and/or Estate of Louis Bianchi	\$ 203,259
Mary Borsato and/or Art Magic Carpentry Inc.	132,000
Richard & Denise Cormack	259,489
Estate of Jean DelTorre and/or Archie DelTorre	85,483
Gary Guarino	42,000
Gary & Andrea Guarino	44,018
Margaret & Michael Polo and/or Estate of Louis Jessop	30,914
Belgijzere Kelolli	97,949
Estate of Susan Federico, Kent Murphy and Sharon Gibb	117,913
Estate of Dennis Kolomayz	39,416
Estate of Samuel Patience	144,414
Mary & Bernard Wilson and/or the Royal Bank	279,423
Stephen & Cynthia Berneski	24,854
	<u>\$1,501,132</u>

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D379a/97 and is prepared to proceed with a hearing of this matter on October 14 and 15, 1998.

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 D379a/97 and this agreed statement of facts with his counsel, Michael Ingram and William Trudell. The Solicitor admits particulars 2(b), (c), (d) and (e) of Complaint D379a/97. The Solicitor admits the facts set out below and admits that these facts disclose professional misconduct.

4. The Solicitor does admit particular 2 (a) of Complaint D379a/97.

IV. FACTS

Background

5. The Solicitor was called to the bar on March 26, 1971 and was a sole practitioner in the City of Mississauga until November 21, 1996.

6. On October 15, 1996, the Law Society began an audit of the Solicitor's law practice, following a complaint received from a client.

7. On November 21, 1996, the Solicitor contacted the Law Society through counsel and a lengthy meeting took place at which the Solicitor advised that there were problems with mortgage investments which the Solicitor had made on behalf of clients and shortages in his trust account. The Solicitor produced a list of affected clients (Document Book, Tab 1).

8. Also on November 21, 1996, the Solicitor gave the Law Society an undertaking not to practice until such time as disciplinary proceedings arising from the Law Society investigation had been finally concluded (Document Book, Tab 2). By letter dated November 21, 1996, the Law Society placed co-signing controls on the Solicitor's trust account, in which there remained \$17,812.53 (Document Book, Tab 3).

9. Subsequent investigation by the Law Society revealed that there were potential client losses of approximately \$12,700,000 which included:

- a) clients who gave money to the Solicitor to invest on their behalf, who have suffered potential losses of approximately \$11,200,000, the magnitude of which losses will depend on the outcome of ongoing litigation and alternative recovery efforts; and
- b) clients who had not authorised the Solicitor to invest or otherwise make any use of their money and who thought that their money was still in trust, who have suffered losses of approximately \$1,500,000.

10. The Solicitor states that on the advice of his counsel, on December 23, 1996, he put Micalor Financial Enterprises Limited ("Micalor"), a corporation of which the Solicitor was the sole shareholder, into bankruptcy. Micalor was the corporation which the Solicitor used as a vehicle for his own investment in mortgages and clients' investments in mortgages.

11. The Solicitor states that also on the advice of counsel, on January 15, 1997, he made a voluntary assignment in bankruptcy.

12. The Solicitor states that he took the steps outlined in the above two paragraphs so that clients' claims could be dealt with in an orderly manner. The Solicitor states that he has assisted the trustee in bankruptcy by meeting on numerous occasions to assist the trustee in understanding his affairs and supporting the trustee in the ongoing litigation, including testifying.

13. In December of 1996, counsel for the Solicitor met with the Law Society staff trustee to assist with the transfer of ongoing client files.

14. The Solicitor states that, in December of 1996, he also instructed his counsel to report all potential claims to the Lawyers' Professional Indemnity Company.

15. From February 25, 1997 to March 27, 1997, there were four subsequent meetings between the Solicitor, his counsel and the Law Society investigator to provide information.

16. Since the issuance of Complaint D379/97, the Solicitor and his counsel have met with the investigator and counsel for the Law Society in efforts to reach an agreed statement of facts on several occasions in the period July to October, 1998.

Overview

17. Beginning in the 1980s and continuing into the 1990s, the Solicitor in effect acted as a mortgage broker, bringing together borrower clients and lender clients and acting for both on the resulting mortgage transactions. The Solicitor deposited monthly mortgage payments by the mortgagor clients into his trust account and paid the mortgagee clients from his trust account.

18. Joan Yim ("Yim") and Yim's brother Errol Johnson ("Johnson") were longstanding clients of the Solicitor and had extensive real estate investments. John Zivanovic ("Zivanovic") was a new client in April of 1989 who had begun to develop a property previously purchased. The Solicitor invested the funds of many lender clients in mortgages on properties belonging to Yim, Johnson and Zivanovic.

19. The Solicitor also invested his own and his wife's funds in mortgages from Yim, Johnson and Zivanovic.

20. In many instances, the Solicitor invested lender clients' money in mortgages without either:

- (i) providing all relevant information to the client and allowing the client to make an informed investment decision; or
- (ii) exercising prudence where he was making the investment decision on the clients' behalf.

21. When a mortgagor client was unable to make monthly payments, the Solicitor did not advise the mortgagee client. Instead, the Solicitor would make the monthly payment owing using funds held in his mixed trust account.

22. The Solicitor maintained only one mixed trust account for all client funds. The Solicitor also deposited personal funds into this mixed trust account and removed funds for his personal use and benefit from this trust account. The monies used to make the monthly payments on behalf of defaulting mortgagor clients came both from client funds in the mixed trust account and the Solicitor's personal funds in the mixed trust account, as described below in greater detail.

23. When the Solicitor used mixed trust funds to make the mortgage payments on behalf of defaulting mortgagors, these payments would create a shortage in his mixed trust account.

24. At each month end, the Solicitor's bookkeeper would review all trust ledger cards and prepare a draft listing of client trust balances. As a result of the improper payments on behalf of defaulting mortgagors, there would be overdrawn trust ledger balances, reflecting the trust shortages. The Solicitor would review the draft listing of client trust balances and improperly instruct his bookkeeper to eliminate the overdrawn balances by recording the transfer of funds from other unrelated client ledgers as necessary. Had he not done so, at the end of each fiscal year, the accountant who prepared the Solicitor's annual filings would have had to report the overdrawn trust balances to the Law Society.

25. The Solicitor's conduct described in paragraphs 20 to 24 above occurred from 1989 to October of 1996.

26. The Solicitor chose to continue to make payments to his mortgagee clients using his own and other clients' funds in the hope that the real estate market would improve and that sufficient funds would be realized to enable him to rectify all of the trust shortages created by his improper transfer of funds.

27. The real estate market did not rebound, the monthly interest payments on behalf of defaulting mortgagors continued to increase, and the situation became increasingly hopeless.

28. [This paragraph was deleted on consent at the hearing]

29. The Law Society's audit began with a review of trust ledgers for clients with current trust shortages and clients who had suffered investment losses. The audit ultimately focussed on the investigation of trust shortages and the improper use of trust funds.

30. As of October 13, 1998, the Lawyers Fund for Client Compensation (the "Fund") has paid fifty-three claims from the Solicitor's former clients totalling \$1,954,253.14. Forty five claims remain open and there are other potential claims.

31. Set out below is a brief description of transactions involving three of the Solicitor's family properties. The description is relevant because there are several references to these properties below. Although the Solicitor's wife, Gail DeCosimo, was on title as the purchaser and owner of all of these properties, some of the Solicitor's personal funds in the mixed trust account came from the sale and mortgage of these properties and some of the funds removed from trust for the Solicitor's personal use were used for the construction of one of these residences.

32. As of July 7, 1988, the Solicitor's family residence was 2174 Stillmeadow Road ("Stillmeadow"). Gail DeCosimo took back a mortgage on the sale of Stillmeadow and some of the proceeds received upon the discharge of this mortgage were used to reduce trust shortages, as set out below.

33. On July 7, 1988, Gail DeCosimo purchased a property at 2182 Oneida Court, Mississauga ("Oneida Court") for \$735,000, which property was to be a new family residence.

34. The existing house at Oneida Court was demolished and construction of a new house began in 1989. The house was completed in 1990 by a builder, David Rossi of Rossi Construction Limited ("Rossi") for a cost estimated by the Solicitor as \$1.1 million. Many of the payments for the construction came out of the Solicitor's trust account.

35. On August 30, 1996, Oneida Court was sold for \$1,800,000 and some of the proceeds used to reduce trust shortages, the specifics of which are set out below.

36. In August of 1996, Gail DeCosimo purchased a property at 810 Meadow Wood Drive in Mississauga and some of the proceeds from a mortgage on this property were used to reduce trust shortages, the specifics of which are set out below.

Solicitor's Use of Trust Account: DeCosimo - TD and Other Ledgers

(i) August 31, 1989 to June 30, 1990

37. In addition to individual client trust ledgers, the Solicitor maintained a trust ledger titled "DeCosimo - TD" (Document Book, Tab 4). This DeCosimo - TD ledger recorded some of the deposits of the Solicitor's personal funds into the trust account as well as payments out of the trust account to or on behalf of the Solicitor. These payments included payments to Rossi, the builder of Oneida Court, and other payments for the benefit of the Solicitor.

38. As the DeCosimo - TD trust ledger is not in chronological order, Table 1 below sets out in chronological order the transactions recorded in the DeCosimo - TD trust ledger from the date of the first deposit to trust, being August 31, 1989, to June 30, 1990.

Table 1

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
Aug. 31/89	DeCosimo	(4) 90,000.00		90000
Aug. 31/89	Transfer to Micalor & Ford		(5) 5,000.00	85000
Aug. 31/89	Transfer to Micalor & Rossi		(5) 13,000.00	72000
Aug. 31/89	Transfer to Micalor & Luciano (New Stop)		(5) 36,000.00	36000
Aug. 31/89	Transfer to Munoz - purchase		(5) 22,000.00	14000
Sept. 6/89	Canada Trust		(2) 25,000.00	-11000
Sept 15/89	Canada Trust		(2) 25,000.00	-36000
Sept 30/89	Transfer from Mic & Iachetta	(5) 36,000.00		Nil
Oct. 2/89	DeCosimo		(1) 15,000.00	-15000
Oct. 3/89	Canada Trust		(2) 15,000.00	-30000
Oct. 3/89	Transfer from Sherway Inn - Elsen	(4) 24,104.29		-5895.71
Oct. 3/89	Transfer from Okiniro -purchase/sale	(5) 41,870.57		35974.86
Oct. 3/89	DeCosimo		(1) 10,000.00	25974.86
Oct. 18/89	Canada Trust		(2) 25,000.00	974.86
Oct. 19/89	Canada Trust		(2) 25,000.00	-24025.14

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
Oct. 19/89	Transfer from Micalor & Ford	(5) 21,000.00		-3025.14
Oct. 20/89	DeCosimo - from general account	(4) 3,025.14		Nil
Oct. 23/89	DeCosimo	(4) 50,000.00		50000
Oct. 24/89	DeCosimo		(1) 10,200.00	39800
Nov. 9/89	Canada Trust		(2) 25,000.00	14800
Nov 13/89	Regency Building Products		(3) 2,831.46	11968.54
Nov 16/89	DeCosimo - from Masson	(4) 18,779.01		30747.55
Nov 17/89	Bank of Montreal		(3) 15,000.00	15747.55
Nov 17/89	Bank of Montreal		(3) 11,000.00	4747.55
Nov 23/89	DeCosimo		(1) 12,000.00	-7252.45
Nov 30/89	DeCosimo	(4) 40,000.00		32747.55
Dec. 1/89	Canada Trust		(2) 15,000.00	17747.55
Dec. 13/89	Bank of Montreal		(3) 6,000.00	11747.55
Dec. 13/89	Canada Trust		(2) 15,000.00	-3252.45
Dec. 20/89	DeCosimo		(1) 12,000.00	-15252.45
Dec. 22/89	Canada Trust		(2) 10,000.00	-25252.45
Dec. 31/89	Transfer from Micalor & Zivanovic	(5) 26,000.00		747.55
Jan. 3/90	DeCosimo		(1) 7,500.00	-6752.45
Jan. 9/90	DeCosimo		(1) 21,000.00	-27753.45
Jan. 18/90	Consumers Gas		(3) 1,088.48	-28840.93
Jan. 22/90	Haney, Hunt & Bowden		(3) 1,848.00	-30688.93
Jan. 22/90	Canada Trust		(2) 2,100.00	-32788.93
Jan. 23/90	DeCosimo		(1) 16,000.00	-48788.93
Jan. 30/90	Canada Trust		(2) 15,000.00	-63788.93
Jan. 31/90	Transfer from Webster - Estate	(5) 55,000.00		-8788.93
Jan. 31/90	Transfer from Charlton - mortgage	(5) 9,000.00		211.07
Feb. 2/90	Canada Trust		(2) 10,000.00	-9788.93

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
Feb.16/90	DeCosimo	(4) 19,000.00		9211.07
Feb.16/90	Canada Trust		(2) 2,000.00	7211.07
Feb.22/90	Canada Trust		(2) 20,000.00	-12788.93
Feb. 27/90	Canada Trust		(2) 7,500.00	-20288.93
Feb. 28/90	Transfer from DeCosimo - Rossi	(4) 20,300.00		11.07
Mar. 1/90	DeCosimo		(1) 14,500.00	-14488.93
Mar. 5/90	Canada Trust		(2) 20,000.00	-34488.93
Mar. 6/90	Bank of Montreal		(3) 7,000.00	-41488.93
Mar 14/90	Canada Trust		(2) 2,000.00	-43488.93
Mar 23/90	DeCosimo		(1) 14,000.00	-57488.93
Mar 30/90	Transfer from Bet - purchase	(5) 58,000.00		511.07
Apr. 9/90	Canada Trust		(2) 10,000.00	-9488.93
Apr. 12/90	Canada Trust		(2) 2,500.00	-11988.93
Apr. 27/90	DeCosimo		(1) 13,000.00	-24988.93
Apr 30/90	Transfer from Townsend -sale	(5) 25,000.00		11.07
May 1/90	TD Bank		(3) 3,042.39	-3013.32
May 2/90	Canada Trust		(2) 15,000.00	-18031.32
May 11/90	Bank of Montreal		(3) 8,000.00	-26031.32
May 17/90	DeCosimo		(1) 10,000.00	-36031.32
May 25/90	DeCosimo		(1) 8,000.00	-44031.32
May 28/90	TD Gold Visa		(3) 6,000.00	-50031.32
May 28/90	Canada Trust		(2) 10,000.00	-60031.32
May 31/90	Transfer from Virginello - mortgage	(5) 60,000.00		-31.32
May 31/90	Transfer from Micalor & Par	(5) 100.00		68.68
June 1/90	DeCosimo		(1) 13,000.00	-12931.32
June 1/90	DeCosimo		(1) 8,000.00	-20093.32
June 12/90	DeCosimo		(1) 15,000.00	-35931.32

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
June 20/90	Canada Trust		(2) 15,000.00	-50931.32
June 21/90	Cousins Carpet		(3) 10,000.00	-60931.32
June 22/90	DeCosimo		(1) 9,000.00	-69931.32
June 30/90	Canada Trust		(2) 20,000.00	-89931.32
June 30/90	Transfer from Kelloli - sale	(5) 90,000.00		68.68

39. The transactions detailed in Table 1 from August 31, 1989 to June 30, 1990 are summarized in Table 2 below:

Table 2

PAYMENTS TO THE SOLICITOR	
Payments to the Solicitor for his personal use	(1) 208,200.00
Payments to Canada Trust re Rossi Construction Ltd., for the construction of the house at 2182 Oneida Court.	(2) 331,100.00
Other payments on behalf of the Solicitor	(3) 71,810.33
TOTAL PAYMENTS	611110.33
SOURCE OF FUNDS	
Funds received from or on behalf of the Solicitor	(4) 265,208.44
Net amounts transferred from other client trust ledger accounts	(5) 345,901.89
TOTAL	611110.33

40. The information from the DeCosimo - TD ledger (Document Book, Tab 4) summarized in Table 2 above shows that during the period from August 31, 1989 to June 30, 1990, the Solicitor removed \$345,901.89 more money from trust for his personal use than he put into trust in the same period.

41. The \$24,104.29 transfer from the Sherway - Elsen ledger on October 3, 1989 was in respect of unbilled fees.

42. The Solicitor has drawn to the Law Society's attention additional deposits of his own monies into trust during the period August 31, 1989 to June 30, 1990, as set out below.

43. A trust ledger titled "274662 - CIBC" shows a deposit by the Solicitor into trust of the sum of \$160,483.86 on June 29, 1990 (Document Book, Tab 5). These funds were raised by a mortgage on an office building owned by the Solicitor's wife's numbered company at 7 Helene Street, Mississauga. Of these funds, \$105,996.15 was subsequently used to make payments to or on behalf of the Solicitor or his family, as shown by the subsequent entries on the trust ledger titled "274662 - CIBC", leaving a net deposit to trust by the Solicitor of \$54,487.71.

44. During this period there were additional trust transactions as described in paragraphs 66 to 69 below.

45. The Solicitor states that he was also conscious that Micalor had an investment of \$300,000, later increased to \$400,000, in a mortgage from Zivanovic, described below. The Solicitor states that in his mind, these investments were available to assist clients in that he could have moved clients into these investments if necessary to cover trust shortages arising from his removal of funds from trust for his personal use and benefit.

(ii) July 1, 1990 to June 30, 1991

46. The trust account transactions that are recorded on the DeCosimo - TD trust ledger (Document Book, Tab 4) from July 1, 1990 to June 30, 1991, are set out in Table 3 below in chronological order.

Table 3

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
	Trust account credit balance at June 30/90			68.68
July 24/90	Cousins Carpet		(3) 13,560.45	-13491.77
July 31/90	Transfer from Veluswami - sale	(5) 13,500.00		8.23
Aug. 7/90	DeCosimo		(1) 10,000.00	-9991.77
Aug. 8/90	TD Visa		(3) 3,500.00	-13491.77
Aug. 8/90	DeCosimo		(1) 8,500.00	-21991.77
Aug. 17/90	DeCosimo		(1) 6,500.00	-28491.77
Aug. 20/90	DeCosimo		(1) 250.00	-28741.77
Aug. 22/90	DeCosimo		(1) 8,800.00	-37541.77
Aug. 24/90	Periwinkle		(3) 26,208.45	-63750.22
Aug. 29/90	Canada Trust		(2) 2,500.00	-66250.22
Aug. 31/90	Transfer from Cruise - estate	(5) 61,250.00		-5000.22
Aug. 31/90	Transfer from Kelolli - sale	(5) 5,000.00		-0.22
Aug. 31/90	Transfer from general	(4) 0.22		Nil
Sept. 5/90	Elegance is Life's Finest Ltd.		(3) 13,538.89	-13538.89
Sept. 5/90	Canada Trust		(2) 1,000.00	-14538.89
Sept 19/90	Canada Trust Powerline		(3) 1,827.63	-16366.52
Sept 24/90	DeCosimo		(1) 8,600.00	-24966.52
Sept 27/90	DeCosimo		(1) 5,228.90	-30195.42
Sept 30/90	Transfer from Yim re fees	(4) 30,200.00		4.58

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
Oct. 3/90	Periwinkle		(3) 25,000.00	-24995.42
Oct. 4/90	Raincentre		(3) 8,240.00	-33235.42
Oct. 12/90	Canada Trust		(2) 10,000.00	-43235.42
Oct. 17/90	Canada Trust		(2) 2,500.00	-45735.42
Oct. 18/90	Receiver General		(3) 11,000.00	-56735.42
Oct. 25/90	DeCosimo		(1) 8,100.00	-64835.42
Oct. 25/90	City of Mississauga		(3) 2,054.51	-66889.93
Oct. 25/90	City of Mississauga		(3) 3,638.37	-70528.3
Oct. 26/90	Township of Muskoka Lakes		(3) 2,500.00	-73028.3
Oct. 30/90	Transfer from Mic & Yim - College re fees	(4) 73,100.00		71.7
Nov. 6/90	Periwinkle		(3) 15,000.00	-14928.3
Nov. 6/90	TD Gold Visa		(3) 5,000.00	-19928.3
Nov. 6/90	Ontario Hydro		(3) 1,510.33	-21438.63
Nov 15/90	Canada Trust		(2) 696.67	-22135.3
Nov 23/90	DeCosimo		(1) 8,300.00	-30435.3
Nov 29/90	Bank of Montreal		(3) 2,000.00	-32435.3
Nov 30/90	Transfer from Mic & Scott	(5) 20,500.00		-11935.3
Nov 30/90	Transfer from Yao - mortgage	(5) 12,000.00		64.7
Dec. 5/90	TD Visa		(3) 3,000.00	-2935.3
Dec. 11/90	Canada Trust		(2) 1,800.00	-4735.3
Dec 12/90	DeCosimo		(1) 8,500.00	-13235.3
Dec. 31/90	Transfer from Mic & Mazzilli	(5) 13,500.00		264.7
Jan. 10/91	TD Gold Visa		(3) 3,000.00	-2735.3
Jan. 10/91	Ebel Quarries		(3) 7,071.37	-9806.67
Jan. 10/91	Laven Ass. Ltd.		(3) 427.50	-10234.17
Jan. 18/91	Canada Trust Powerline		(3) 2,500.00	-12734.17
Jan. 22/91	DeCosimo		(1) 8,000.00	-20734.17

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
Jan. 23/91	DeCosimo		(1) 10,000.00	-30734.17
Jan. 24/91	TD Gold Visa		(3) 3,500.00	-34234.17
Jan. 31/91	Transfer from Povey - estate	(5) 34,300.00		65.83
Feb. 2/91	Bank of Montreal		(3) 10,000.00	-9934.17
Feb. 14/91	DeCosimo		(1) 6,500.00	-16434.17
Feb. 28/91	Transfer from DeCosimo - Rossi	(4) 16,500.00		65.83
Mar 25/91	DeCosimo		(1) 6,100.00	-6034.17
Mar 31/91	Transfer from general	(4) 1,495.46		-4538.71
Mar 31/91	Transfer from Doracin - mortgage	(5) 5,000.00		461.29
May 28/91	DeCosimo		(1) 6,800.00	-6338.71
May 31/91	Transfer from Mazzilli - Lau	(5) 6,338.71		Nil
June 27/91	DeCosimo		(1) 6,100.00	6100
June 30/91	Transfer from Sullivan - mortgage	(5) 6,100.00		Nil

47. The transactions detailed in Table 3 above up to June 30, 1991 are summarized in Table 4 below:

Table 4

PAYMENTS	
Payments to the Solicitor for his personal use	(1) 116,278.90
Payments to Canada Trust re Rossi Construction	(2) 18,496.67
Other payments on behalf of the Solicitor	(3) 164,077.50
TOTAL PAYMENTS	298853.07
SOURCE OF FUNDS	
Funds received from or on behalf of the Solicitor	(4) 121,295.68
Amounts transferred from other client trust ledger accounts	(5) 177,557.39
TOTAL	298853.07

48. The information from the DeCosimo - TD ledger (Document Book, Tab 4) summarized in Table 4 above shows that during the period from July 1, 1990 to June 30, 1991 the Solicitor removed \$177,557.39 more money from trust for his personal use and benefit than he put into trust in the same period.

49. During this period there were additional trust transactions as described in paragraphs 66 and 70 below.

(iii) July 1, 1991 to June 30, 1992

50. The trust account transactions that occurred on the DeCosimo - TD trust ledger (Document Book, Tab 4) from July 1, 1991 to June 30, 1992, are set out in Table 5 below in chronological order.

Table 5

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
July 24/91	DeCosimo		(1) 3,600.00	3600
July 31/91	Transfer from Anderson - mtg	(3) 3,600.00		Nil
Aug. 7/91	DeCosimo		(1) 2,250.00	2250
Aug. 26/91	DeCosimo		(1) 5,900.00	8150
Aug. 31/91	Transfer from Ford - mtg	(3) 8,150.00		Nil
Sept 24/91	DeCosimo		(1) 6,000.00	6000
Sept 30/91	Transfer from Ford - mtg	(3) 6,000.00		Nil
Oct. 25/91	DeCosimo		(1) 5,800.00	5800
Oct. 31/91	Transfer from Mic. & Kim	(3) 5,800.00		Nil
Nov 25/91	DeCosimo		(1) 5,600.00	5600
Nov 30/91	Transfer from DeCosimo - Currie	(2) 5,600.00		Nil
Jan. 14/92	DeCosimo		(1) 5,300.00	5300
Jan. 27/92	DeCosimo		(1) 5,300.00	10600
Jan. 31/92	Transfer from Elsen - Anderson	(3) 10,600.00		Nil
Feb. 24/92	DeCosimo		(1) 5,200.00	5200
Feb. 29/92	Transfer from Mazzilli	(3) 5,200.00		Nil
Mar 21/92	DeCosimo		(1) 5,200.00	5200
Mar 31/92	Transfer from Daantos - Golden Eagle	5,200.00 of which: (2) 2,856.00 (3) 2,344.00		Nil

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
Apr. 23/92	DeCosimo		(1) 5,300.00	5300
Apr. 30/92	Transfer from Mic. & McRae	(3) 5,300.00		Nil
May 26/92	DeCosimo		(1) 5,000.00	5000
May 31/92	Transfer from Towers - purchase	(3) 5,000.00		Nil
June 25/92	DeCosimo		(1) 5,000.00	5000
June 30/92	Transfer from Daantos - Golden Eagle	(2) 5,000.00		Nil

51. The transactions detailed in Table 5 above are summarized in Table 6 below:

Table 6

PAYMENTS	
Payments to the Solicitor for his personal use	(1) 65,450.00
TOTAL PAYMENTS	65450
SOURCE OF FUNDS	
Funds received from or on behalf of the Solicitor	(2) 13,456.00
Net amounts transferred from other client trust ledgers	(3) 51,994.00
TOTAL	65450

52. The information from the DeCosimo - TD ledger (Document Book, Tab 4) summarized in Table 6 above shows that during the period July 1, 1991 to June 30, 1992, the Solicitor removed \$51,994.00 more money from trust for his personal use and benefit than he put into trust in the same period.

53. During this period there were additional trust transactions as described in paragraphs 66 and 72 to 79 below.

(iv) July 1, 1992 to June 30, 1993

54. The trust account transactions that occurred on the DeCosimo - TD trust ledger (Document Book, Tab 4) from July 1, 1992 to June 30, 1993, are set out below in Table 7 in chronological order.

Table 7

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
July 20/92	TD Bank		(2) 5,000.00	-5000
July 31/92	Transfer from Bell - sale	(4) 5,000.00		Nil
Aug. 26/92	DeCosimo		(1) 4,700.00	(4 ,700.00)
Aug. 31/92	Transfer from Mic. & Johnson	(4) 4,700.00		Nil
Sept 22/92	DeCosimo		(1) 4,600.00	-4600
Sept 30/92	Transfer from Mic. & Jonas	(4) 4,600.00		Nil
Oct. 23/92	DeCosimo		(1) 5,200.00	-5200
Oct. 31/92	Transfer from Mic. & Bet	(4) 5,200.00		Nil
Nov 25/92	DeCosimo		(1) 5,200.00	-5200
Nov 30/92	Transfer from DeCosimo - Zivanovic	(3) 5,200.00		Nil
Nov 30/92	Transfer from general	(3) 100.00		100
Dec. 1/92	Transfer to general		(2) 100.00	Nil
Dec. 21/92	DeCosimo		(1) 5,300.00	-5300
Dec. 31/92	Transfer from Dolfato - mtg.	(4) 4,360.00		-940
Dec. 31/92	Transfer from Millar - sale	(4) 940.00		Nil
Jan. 25/93	DeCosimo		(1) 5,000.00	-5000
Jan. 31/93	Transfer from Mic & Baldini	(3) 5,000.00		Nil
Mar. 1/93	DeCosimo		(1) 4,600.00	-4600
Mar 21/93	DeCosimo		(1) 4,400.00	-9000
Mar 31/93	Transfer from Smtoll - estate	(4) 9,000.00		Nil
Apr. 26/93	DeCosimo		(1) 4,500.00	-4500
Apr. 30/93	Transfer from Mic. & Rickard	(4) 334.71		-4165.29
Apr. 30/93	Transfer from Mic & Ford	(4) 289.50		-3875.79
Apr. 30/93	Transfer from Mic. & Haigh	(4) 244.32		-3631.47
Apr. 30/93	Transfer from Watters - sale	(4) 3,631.47		Nil
May 27/93	DeCosimo		(1) 4,500.00	-4500
May 31/93	Transfer from DeCosimo - Orlenko	(3) 4,500.00		Nil

DATE	DETAILS	RECEIPTS	PAYMENTS	BALANCE
June 24/93	DeCosimo		(1) 4,500.00	-4500
June 30/93	Transfer from DeCosimo - Orlenko	(3) 4,500.00		Nil

55. The transactions detailed in Table 7 above are summarized in Table 8 below:

Table 8

PAYMENTS	
Payments to the Solicitor for his personal use	(1) 52,500.00
Other payments made on behalf of the Solicitor	(2) 5,100.00
TOTAL PAYMENTS	57600
SOURCE OF FUNDS	
Funds received from or on behalf of the Solicitor	(3) 19,300.00
Net amounts transferred from other client trust ledgers	(4) 38,300.00
TOTAL	57600

56. The information from the DeCosimo - TD ledger (Document Book, Tab 4) summarized in Table 8 above shows that during the period July 1, 1992 to June 30, 1993 the Solicitor took \$38,300.00 more funds from trust for his personal use and benefit than he put into trust in the same period.

57. The Solicitor has drawn to the Law Society's attention that on February 2, 1993 the Orlenkos paid Gail DeCosimo the sum of \$41,000 to discharge the mortgage taken back on the sale of Stillmeadow. A trust ledger titled "Micalor -Zivanovic" (Document Book, Tab 6) indicates that this sum was deposited into trust and used to make payments on behalf of Zivanovic who was in default on his mortgages.

58. During the period July 1, 1992 to June 30, 1993 there were additional trust transactions as described in paragraphs 66 and 71 to 79 below.

(v) Subsequent To June 30, 1993

59. There were further transactions on the DeCosimo - TD trust ledger (Document Book, Tab 4) after June 1993, but the Solicitor was unable to provide trust ledger cards for this period. The Law Society reconstructed some of these entries using cash books. However the number and size of transactions was not comparable to the transactions occurring in the period 1989 to 1993.

60. The Solicitor has drawn to the Law Society's attention additional deposits of his funds into trust in the period after June 30, 1993, as set out below.

61. A trust ledger titled "Micalor - Facciolo - Facciolo s/t Ho" (Document Book, Tab 7) indicates a deposit of \$159,967.21 to trust on October 26, 1993. These funds represented the sale proceeds of a property upon which the Solicitor held a mortgage in his Registered Retirement Savings Plan with principal then owing of approximately \$38,500.00. Micalor also held a mortgage on this property with principal then owing of \$57,123.57. The Solicitor left the \$38,500.00 in trust to eliminate overdrawn trust ledger balances. The use of the \$57,123.57 proceeds from the Micalor mortgage is discussed below at paragraph 81.

62. A trust ledger titled "DeCosimo, Nick - Estate" (Document Book, Tab 8) which refers to the Solicitor's father's estate indicates that he deposited monies to trust in the spring and summer of 1995, of which he used \$5,944.94 to eliminate overdrawn trust ledger balances.

63. Oneida Court was sold on August 30, 1996 for \$1,802,906.42. A trust ledger titled "DeCosimo, Gail - mtg - sale" (Document Book, Tab 9) indicates that the Solicitor received in his trust account net sale proceeds of \$802,083.02 on August 30, 1996 and that \$64,242.94 of these proceeds were used to eliminate overdrawn trust ledger balances.

64. A trust ledger titled "DeCosimo purchase from Rogers 810 Meadow Wood Drive, Mississauga" (Document Book, Tab 10) shows that on August 31, 1996, \$225,000 from London Life was deposited into trust, which money was a first mortgage advance on the Meadow Wood property. After disbursements associated with the purchase of the Meadow Wood property, there remained in trust \$199,689. The Solicitor paid himself \$7,500 and used the remaining \$192,189 to eliminate overdrawn trust ledger balances.

65. In October of 1996, Mr. DeCosimo's trust deposit books (Document Book, Tab 11) indicate that Micalor paid into trust the sum of \$40,000 on October 22, 1996 and a further \$40,000 on October 24, 1996, which the Solicitor advises was money paid by Gail DeCosimo from the proceeds of the sale of Oneida Court. Using the trust cash journals, the Law Society determined that of this \$80,000, \$71,854.29 was used to eliminate overdrawn trust ledger balances.

(vi) Additional trust transactions

66. The parties do not agree on how the following trust transactions should be characterised and have agreed to simply describe these transactions in this agreed statement of facts and the issue of how they should be characterised will be addressed in submissions.

67. On October 20, 1989, the Solicitor paid the sum of \$19,000 into trust from his line of credit and recorded it as a deposit to a trust ledger account titled "Yim - TD Bank etc" (Document Book, Tab 12). Prior to this deposit, this ledger was overdrawn by the sum of \$19,000 as a result of a payment on October 17, 1989, from this ledger to the TD Bank on behalf of Yim.

68. On October 27, 1989, the Solicitor paid the sum of \$25,000 into trust from his line of credit and credited it as a deposit to a trust ledger account titled "Micalor - Yim (1510-1512 King St)" (Document Book, Tab 13). These funds were paid out to Yim the same day.

69. On November 6, 1989 the Solicitor paid \$100,000 to one of his client investors in the third mortgage from Zivanovic on the Kitchener Property. This increased his investment in this mortgage, through Micalor, to the sum of \$400,000.

70. On April 16, 1991, the Solicitor deposited a cheque dated April 16, 1991 in the sum of \$200,000 (Document Book, Tab 14) into trust and credited it to a trust ledger account titled "Zivanovic - T-D Queen Victoria" (Document Book, Tab 15). This ledger indicates that on the same day, these funds were paid to the TD Bank on behalf of Zivanovic.

71. On November 27, 1992, the Solicitor deposited \$35,000 into his trust account from his Registered Retirement Savings Plan and credited it to a trust ledger titled "DeCosimo - Zivanovic - RRSP" (Document Book, Tab 16). The Solicitor produced a cheque in the sum of \$29,000 payable to a company named County Sewer & Water Maintenance Ltd. The Solicitor advised that this cheque was one payment for work done on the development of the Kitchener Property described below.

72. The Law Society's investigation of the removal of monies from trust for the Solicitor's personal use and benefit focussed on an examination of the Solicitor's DeCosimo - TD ledger. The Law Society investigator looked at this ledger as well as the ledgers from which funds were transferred into the DeCosimo - TD ledger. The premise of this aspect of the Law Society's investigation was the Solicitor's recollection at the time that he ran his personal transactions through the DeCosimo - TD ledger only and that the only funds removed from other trust ledger accounts were for fees.

73. In the course of searching for the deposit of certain monies which the Solicitor advised he thought he had paid into trust, the Law Society found a trust ledger titled "Micalor - Yim - Beatrice" (Document Book, Tab 17). This ledger indicates that in the period January 15, 1991 and February 1, 1993, the Solicitor made various payments to himself or to Micalor totalling \$459,574.69 from this ledger account.

74. Approximately \$175,000 of these payments were monies owing to the Solicitor or Micalor because they were the proceeds of sale of Stillmeadow and reimbursement of a short term loan from Micalor to the Solicitor's trust account.

75. The Solicitor advised that the remaining payments to him totalling approximately \$284,000 were for fees unrelated to the Micalor - Yim - Beatrice trust ledger account. The Solicitor advised that these transactions were part of his attempt to eliminate the overdrawn trust ledgers at the end of each month.

76. In support of this position, the Solicitor produced and referred to monthly documents each titled "control journal" for the period January, 1991 to February, 1993. These control journals indicate that at the end of each month, the Solicitor would use bookkeeping entries to take funds that were owing to him for fees and apply these funds to offset overdrawn trust balances. After each month end, he would then take his fees, recording the withdrawals against the Micalor - Yim - Beatrice trust ledger (Document Book, Tab 17), even though the Micalor - Yim - Beatrice ledger was unrelated to the fees owed. As an example, the control journal for the month of January, 1991 is at Tab 18 of the Document Book.

77. In addition to the above bookkeeping entries, the control journals indicate that in some months the Solicitor would also write a cheque from general to trust to assist in covering the overdrawn balances at month end. Over the period January, 1991 to February, 1993, the control journals indicate that the Solicitor transferred approximately \$103,000 more money from general into trust than he removed from the Micalor - Yim - Beatrice trust ledger for fees during the same period.

78. The Society also found a trust ledger titled "Micalor - Zivanovic" (Document Book, Tab 6) which shows that during the period: May, 1991 to February, 1993, the Solicitor paid himself the sum of \$95,900 from trust. The Solicitor states that these funds were taken as unbilled fees for work done on the development of a subdivision on a Kitchener Property, described below. The Solicitor states that this work included:

- (i) finalizing the draft plan of the subdivision;
- (ii) certifying of title;
- (iii) negotiating the subdivision agreement, including the by-laws
- (iv) meeting with the surveyor and planner to arrange the servicing of the subdivision; and
- (v) negotiating with the Toronto Dominion Bank.

79. The Society does not have sufficient information to allow it to assess the work done by the Solicitor or the value of this work. However, the Society acknowledges that there must have been considerable work done on the development of the property. Tab 19 of the Document Book is an evaluation of the Kitchener Property and at page 4, estimates legal and financing costs as \$436,500.

80. On October 18, 1993, the Solicitor deposited \$40,000 into his trust account from his Registered Retirement Savings Plan and credited it to a trust ledger card titled "DeCosimo - Yim (RRSP)" (Document Book, Tab 20). On the same day the \$40,000 was paid to Gowling, Strathy & Henderson in trust for the benefit of Yim. The Solicitor states that this payment was likely used to bring a mortgage given by Yim to the Canadian Imperial Bank of Commerce into good standing.

81. As set out above at paragraph 61, the sum of \$159,967.21 was deposited on October 26, 1993 to the Solicitor's trust account as indicated by a ledger titled "Micalor - Facciolo - Facciolo s/t Ho" (Document Book, Tab 7). Of this sum, \$57,123.57 was owing to Micalor to discharge the mortgage held by Micalor. The Solicitor left these monies in trust crediting them to a ledger titled "Micalor - Zivanovic" (Document Book, Tab 6) and these monies were applied to reduce the overdrawn balance in the Zivanovic trust ledger account.

Zivanovic Mortgage

82. As set out above, Zivanovic was a client of the Solicitor and a real estate developer.

83. In or about August, 1988, Zivanovic purchased an undeveloped, twenty-one acre property in Kitchener, Ontario (the "Kitchener Property"), for approximately \$1,315,000, which purchase was 100% financed.

84. The Solicitor did not act on the purchase of the Kitchener Property nor did he find the financing for the purchase.

85. In or about August 1989, Zivanovic purchased a second property in Caledon, Ontario (the "Caledon Property"). The purchase price was approximately \$3,700,000, although the abstract of title shows a purchase price of \$2,687,750. There were two vendor take-back mortgages totalling approximately \$2,900,000. The Toronto-Dominion Bank lent \$200,000 to Zivanovic as the deposit on the transaction, which was secured by other Zivanovic assets.

86. When Zivanovic was unable to close, the Solicitor assisted by providing financing of \$600,000. This loan was secured by a third mortgage against the Kitchener Property and registered in the name of "Micalor Financial Enterprises Ltd. - Trustee", for a term of one year with interest at 13.5%.

87. The Solicitor obtained the \$600,000 to lend to Zivanovic against the Caledon Property as follows:

- a) \$300,000 was obtained from Micalor using Micalor's line of credit with the Bank of Montreal for \$300,000, secured by a mortgage on Stillmeadow; and
- b) \$300,000 came from investments by the Solicitor's clients. As mentioned above, \$100,000 of this investment was repaid by the Solicitor to one of his investor clients on November 6, 1989, increasing Micalor's investment to \$400,000.

88. The Solicitor states that independent evaluations at this time indicated that the Kitchener Property was worth approximately \$3,000,000. The Society has seen only an evaluation dated February 22, 1990 (Document Book, Tab 19) which estimates the value as \$3,150,000, which value is based on the assumption that the property will be re-zoned and developed as a residential subdivision.

89. In the period September 1989 to June 1990, Zivanovic made regular monthly payments on the third mortgage, being \$6,750, to the Solicitor in trust and the Solicitor, in turn, made monthly payments to his investor clients. The June, 1990 cheque was the last cheque the Solicitor received from Zivanovic and it was returned as there were insufficient funds to honour the cheque.

90. The Solicitor never received any more payments from Zivanovic. Following the pattern described above, the Solicitor did not disclose the default to any of his investor clients, but continued making monthly payments to his investor clients by drawing funds from unrelated client trust accounts and obtaining new investment funds from clients.

91. By March 1991, the real estate market had changed dramatically from August of 1989. Zivanovic was in arrears with all his mortgage payments on the Kitchener Property. The first mortgage on the Kitchener Property had been assigned to the TD Bank, was over six months in arrears and power of sale proceedings had been commenced. However, the Solicitor continued to make the monthly mortgage payments to his investor clients using funds from unrelated client trust accounts and by obtaining new investment funds from clients.

92. Also by March 1991, Zivanovic was six months in arrears with his mortgage payments to the vendor on the Caledon Property. He ultimately lost the Caledon Property to the vendor in September of 1991, pursuant to a final order of foreclosure.

93. The Solicitor and Micalor entered into a Participation Agreement with Zivanovic dated April 1, 1991 whereby the Solicitor and Micalor agreed to provide all of the financing for the Kitchener subdivision (Document Book, Tab 21). The specific terms include payments of interest and expenses and the equal division of profits from the development between Micalor and Zivanovic. The Solicitor advises that the Participation Agreement was signed in the fall of 1991.

94. The Solicitor states that he entered into the Participation Agreement (Document Book, Tab 21) in an attempt to preserve the monies at risk in the Kitchener Property and to keep Zivanovic involved so he would not abandon the project, which would have caused a loss on the \$600,000 third mortgage. The Solicitor states that if he had intended to profit from the deal there would have been a Participation Agreement in August of 1989 when he originally invested some of his own money in what then appeared to be a healthy real estate market. The Solicitor states that he was not motivated by personal gain on the Participation Agreement as Micalor was to receive any profits from the Participation Agreement and as he intended that Micalor would use any profits to cover losses on the Yim mortgages.

95. In May of 1991, the Solicitor used \$745,815.71 from his trust account to pay the \$665,000 first mortgage on the Kitchener Property to the Toronto Dominion Bank ("TD Bank"). The mortgage was assigned to the Solicitor in trust. Most of the funds used to pay off this first mortgage belonged to the Solicitor's clients.

96. In July of 1991, the Solicitor paid a total of \$1,461,873.31 from his trust account to the TD Bank to pay off both the second mortgage on the Kitchener Property and Zivanovic's mortgage on his home at 1669 Chesbro Court, Mississauga. \$824,873.31 of this money was to pay off the \$700,000 second mortgage on the Kitchener Property. \$1,200,000 of the funds used by the Solicitor belonged to his client, Margaret Anderson, who received a third mortgage on the Kitchener Property.

97. In October of 1992, the Solicitor invested another \$1,000,000 from his trust account in the Kitchener Property by paying these funds to the City of Kitchener. Once again, the funds came from Margaret Anderson who received another mortgage on the Kitchener Property.

98. The Solicitor prepared an accounting as at June 17, 1993 showing the total amount of funds owing to him and his clients from the Kitchener Property as \$5,196,946.08. A substantial amount of the total owing was interest, accrued on the outstanding loans. As the Solicitor was making regular monthly payments to most of the clients invested in the Kitchener Property, he was obliged to obtain additional financing every month.

99. In October of 1993, a subdivision agreement was registered on the Kitchener Property. Lots were old, both with and without houses.

100. Most of the sale proceeds were received by the Solicitor, totalling approximately \$3,400,000 in the period 1994 to 1996. The Solicitor's accounting in June of 1993 showed the debt outstanding on the Kitchener Property at that time as \$5,196,946.08. The Solicitor advises that in the period 1994 to 1996, additional payments were made from trust funds for surveying, security, landscaping, fencing and other construction costs. By October of 1996, there was debt outstanding on the Kitchener Property, including outstanding interest, of over \$6,000,000, even after application of the \$3,400,000.

101. Since January of 1997, no work has been done on this subdivision and 77 lots remain unsold. The whole matter is the subject of ongoing litigation.

102. The Solicitor had a personal financial interest in the Kitchener Property Subdivision arising out of his investment of personal funds. As the Solicitor was also the lawyer for various investor clients and Zivanovic, the owner of the subdivision, the Solicitor was in a conflict of interest. Many of his clients did not know of his interest in the Kitchener Property and he did not advise any of his clients to obtain independent legal advice or representation.

Catherine Bianchi/Estate of Louis Bianchi
Misapplications and current trust shortage - \$203,258.83

103. Louis Bianchi ("Bianchi") died on November 26, 1995. His wife, Catherine Bianchi, was the executrix and sole beneficiary of his estate and she retained the Solicitor to act as solicitor for the estate.

104. Bianchi's estate consisted mainly of guaranteed investment certificates and he had accounts at several financial institutions totalling approximately \$300,000.00, plus some mutual funds and some shares in a Newfoundland company.

105. The Solicitor collected the Bianchi estate funds from the financial institutions and deposited them into his trust account (Document Book, Tabs 22 and 23).

106. The trust ledger entries for the estate of Bianchi have been reconstructed by the Law Society investigator from the trust account cash books and transfer journals and are as follows:

Table 9

DATE	DETAILS	RECEIPTS	PAYMENTS
April 17/96	Bianchi	4000	
April 18/96	Minister of Finance		4000
June 13/96	National Trust	50109.89	
June 14/96	National Trust	600	
June 19/96	Scotiabank	22593.06	
June 20/96	Bank of Montreal	21938.96	
June 20/96	TD Bank	61334.01	

DATE	DETAILS	RECEIPTS	PAYMENTS
June 25/96	Canada Trust	22300.23	
June 30/96	Transfer to general account re Disbursement		30
June 30/96	Transfer to Stejskal mortgage (1)		145600.88
June 30/96	Transfer to Micalor & Elsen (1)		4069.75
June 30/96	Transfer to Micalor & Luc (New Stop) (1)		1554.91
June 30/96	Transfer to Micalor & McRae (1)		2296.58
June 30/96	Transfer to Micalor & Presto (1)		1028.94
June 30/96	Transfer to Micalor & Yim (Beatrice) (1)		2322.26
June 30/96	Transfer to Micalor & Yim (College) (1)		921.89
June 30/96	Transfer to Micalor & Yim (Crawford) (1)		4214.2
June 30/96	Transfer to Micalor & Yim (Farnham) (1)		2700.1
June 30/96	Transfer to Micalor & Yim (Huronario St.) (1)		1878.08
June 30/96	Transfer to Micalor & Yim (Kaneff) (1)		1981.94
June 30/96	Transfer to Micalor & Yim (King) (1)		5633.66
June 30/96	Transfer to Micalor & Yim (Spadina) (1)		3251.95
June 30/96	Transfer to Micalor & Yim (Sterling) (1)		822.95
July 25/96	National Bank	24400.71	
July 26/96	Government of Canada	11.97	
July 31/96	Transfer to Grandport # 76 (1)		146.43
July 31/96	Transfer to Klazinski estate (1)		6000
July 31/96	Transfer to Marin - mortgage (1)		833.33
July 31/96	Transfer to Miller estate (1)		687.27
July 31/96	Transfer to Travis estate (1)		953.01
July 31/96	Transfer to Vieira - Szott (1)		3000
July 31/96	Transfer to Zivanovic - London Life (1)		602.84
July 31/96	Transfer to Micalor & Elsen (1)		4069.75
July 31/96	Transfer to Micalor & McRae (1)		7296.58

DATE	DETAILS	RECEIPTS	PAYMENTS
July 31/96	Transfer to Micalor & Zivanovic (Rosehill) (1)		755.22
July 31/96	Transfer to Micalor & Zivanovic (1)		636.31
	Total	207288.83	207288.83

107. All of the above transfers marked (1) to other clients' trust ledgers were improper. Neither Catherine Bianchi nor the Bianchi estate authorised or knew of these transfers. These misapplications totalled \$203,258.83 and there is a current trust shortage in the Bianchi estate trust ledger account of \$203,258.83.

108. The largest improper transfer was \$145,600.88 transferred on June 30, 1996 to the Stejskal trust ledger (Document Book, Tab 24). On February 27, 1996 the Solicitor received \$145,000.00 on behalf of Mr. and Mrs. Stejskal for a mortgage refinancing but he did not pay off their existing mortgage until June 5, 1996. On February 29, 1996, the Solicitor improperly transferred the Stejskal's funds to eliminate other trust shortages. When the Solicitor paid off the Stejskal's mortgage on June 5, 1996, he eliminated the resulting overdrawn trust account balance in the Stejskal trust account by improperly transferring funds from the Bianchi trust ledger.

109. The above improper transfers were made to cover up trust shortages that had arisen as a result of the Solicitor making mortgage payments to various other clients in respect of mortgage investments that were non performing. In most cases, the mortgaged premises had been sold under power of sale and the mortgage funds had been lost.

Mary Borsato / Art Magic Carpentry Inc.

Misapplication - \$128,129.26

Improperly Withdrew From Trust - \$23,500.00

Current Trust Shortage - \$132,000.00

(i) Letter of Credit

Misapplication - \$28,129.26

Improperly Withdrew From Trust - \$23,500.00

Current Trust Shortage - \$32,000.00

110. Art Magic Carpentry Inc. ("Art Magic") is a company owned by Mary Borsato and her husband, Mario Borsato. Prior to 1995 the Solicitor had acted for Art Magic and Mary Borsato for several years.

111. On June 2, 1995, Art Magic submitted a tender for a contract to install windows offered by PCL Constructors Eastern Inc. ("PCL")(Document Book, Tab 25). PCL required Art Magic to submit a letter of credit in the amount of \$170,000 to guarantee proper performance of the contract (Document Book, Tab 26).

112. Because of a previous bankruptcy, Art Magic was unable to secure a letter of credit on its own. Mr. Borsato contacted the Solicitor to seek his help in securing a \$170,000 line of credit.

113. The Solicitor advised Mario Borsato that he would see what he could do and that Mr. Borsato should send him the sum of \$50,000. The Solicitor agreed to hold the funds in an interest bearing trust account. The Solicitor states that, while the precise uses to which the \$50,000 would be applied was not specifically discussed with Mr. Borsato, the Solicitor understood that he would retain the monies for legal fees and other costs which might be incurred in securing a lender.

114. On June 8, 1995, Art Magic sent a cheque to the Solicitor in the amount of \$50,000, which was deposited into the Solicitor's trust account at the Bank of Montreal (Document Book, Tab 27).

115. A legal fee of \$18,000 was agreed upon with Art Magic in the event the Solicitor was able to make arrangements satisfactory to Art Magic and PCL.

116. The Solicitor was successful and by letter dated June 19, 1995, London Life advised Mr. Borsato that he had been approved for a mortgage in the amount of \$170,000 and that these mortgage funds could be drawn upon at anytime as directed by Mr. Borsato (Document Book, Tab 28).

117. By letter dated July 6, 1995, London Life confirmed to PCL that Art Magic had an irrevocable mortgage approval for \$170,000 and had authorized London Life to make these funds available to PCL upon written demand (Document Book, Tab 29).

118. The Solicitor did not hold the funds in trust in a term deposit, as agreed, but rather disbursed the entire \$50,000 in an unauthorized fashion, beginning on the day following receipt of the \$50,000. Table 10 below sets out the transactions recorded in a trust ledger titled "Art Magic - Transfer - L.C." to which the \$50,000 payment was posted (Document Book, Tab 30).

Table 10

DATE	DETAILS	RECEIPTS	PAYMENTS
May 31/95	Balance forward re: earlier transactions	619.24	
June 8/95	Art Magic Carpentry Inc.	50000	
June 9/95	Bank of Montreal		5000
June 9/95	Township of Muskoka Lakes		8500
August 2/95	M. G. DeCosimo - transfer to general account		10000
June 30/95	Transfer to Haigh		8197.41
June 30/95	Transfer to R. D'Ovidio		1500
June 30/95	Transfer to Micalor & Yim re: Hurontario		8556.85
July 31/95	Transfer to Anderson re: Grella		750
July 31/95	Transfer to Anderson re: DKSA		8625
July 31/95	Transfer to Anderson re: Howard		500
August 31/95	Transfer from Strongman	1010.02	
	TOTAL	51629.26	51629.26

119. The \$5,000 payment to the Bank of Montreal and the \$8,500 payment to the Township of Muskoka Lakes on June 9, 1995 were to pay the property taxes on the Solicitor's family's cottage.

120. On August 2, 1995, the Solicitor transferred \$10,000 to his general account.

121. The Solicitor admits that the withdrawal of \$23,500 on June 09 and August 02, 1995, was improper because:

- (a) as of June 9, 1995, he had begun but not completed the work for which the fees were being taken; and
- (b) he has never issued fee billings for these withdrawals.

122. The Solicitor states that in his mind these funds were taken for unbilled fees in relation to the following:

- (a) work in relation to Mario Borsato's personal bankruptcy and security for a loan to Mario Borsato of \$55,000 from Mario Borsato's brother. This work was done over the course of a year from May 1993 to May 1994;
- (b) representation of Art Magic as defendants in a small claims litigation matter. The Solicitor was unable to conclude this matter given the collapse of his practice and the Borsatos were forced to retain new counsel. This work was done over the period from June 1995 to October 1996;
- (c) work on the preparation of Art Magic's financial statements in consultation with Art Magic's accountant, Terry Gorchynski. This work was done during October and November of 1995;
- (d) review of and amendments to a draft Offer to Lease agreement, and preparation of a Lease Extension Agreement re: Art Magic's tenant, Comas Manufacturing Inc. This work was done in November, 1995; and
- (e) work with respect to a contract dispute between Art Magic and its client, James Regan. This work was done in August of 1996.

123. With the exception of the work done to secure the loan of \$55,000 from Mr. Borsato's brother, none of the work described was done prior to June 9, 1995, the date on which the Solicitor transferred \$13,500 from trust for his personal use. At that time, June 9, 1995, the Solicitor was also not entitled to take any fees in relation to securing the irrevocable mortgage approval for PCL as this was not secured until June 19, 1995.

124. All of the transfers on June 30, 1995 and July 31, 1995 were to various other client ledgers, which clients are all unrelated to Art Magic or to the Borsatos. Neither Art Magic nor the Borsatos were aware of any of the transfers disclosed in Table 10. These misapplications total \$28,129.26.

(ii) Mortgage Refinancing
Misapplications and Current Trust Shortage - \$100,000

125. By letter dated October 6, 1995, Art Magic was told by Canada Trust that a mortgage given by Art Magic on property at 1116 Cardiff Boulevard, Mississauga matured on October 26, 1995 (Document Book, Tab 31). The letter stated that Canada Trust was not able to offer Art Magic a renewal "at this time" and requested funds by October 26, 1995.

126. Notwithstanding the maturation of this mortgage on October 26, 1995, the loan continued to be carried by Canada Trust at the existing mortgage rate plus .25% to allow the parties to negotiate a resolution. On October 27, 1995, the Solicitor received \$100,000 in trust from Art Magic to be used to fund the renewal of the mortgage to Canada Trust and deposited the \$100,000 into trust (Document Book, Tab 32).

127. By letter dated March 25, 1996, Canada Trust wrote to Art Magic, care of the Solicitor, setting out "an expression of interest to provide a renewal" of the mortgage under two options with different terms and conditions (Document Book, Tab 33). One of the options was conditional on the mortgage being paid down by \$100,000 by April 26, 1996 and payment of a renewal fee of \$1,500.

128. The Solicitor paid the renewal fee of \$1,500 on April 16, 1996 (Document Book, Tab 34).

129. The Solicitor did not forward the \$100,000 and in fact had misapplied the \$100,000. By letter dated July 9, 1996, Canada Trust wrote to the Solicitor advising that:

"Canada Trust is not prepared to carry this loan as a past due maturity indefinitely, and as your client has not been co-operative in providing the required pay down and financial information, we are herein returning the \$1,500 cheque and request that your client arrange alternate financing to repay CT's indebtedness on or before August 9th, 1996." (Document Book, Tab 35).

130. Table 11 sets out the transactions detailed in the trust ledger titled "Art Magic Carpentry Inc. Canada Trust Mortgage Renewal on 1116 Cardiff Blvd., Mississauga" (Document Book, Tab 34), to which ledger the \$100,000 payment was posted.

Table 11

DATE	DETAILS	RECEIPTS	PAYMENTS
October 27/95	Art Magic	100000	
October 31/95	Transfer to Tonecraft - Laurentian (1)		54921.18
October 31/95	Transfer to Grandport - #7 (1)		30403.58
October 31/95	Transfer to Grandport - Triagstone (1)		888.5
October 31/95	Transfer to Grandport - Lot 75 (1)		2580.99
October 31/95	Transfer to Grandport - #6 (1)		8227.15
December 31/95	Transfer to DeCosimo - Estate (1)		136.25
December 31/95	Transfer to Ditchoff - McLinden (1)		125
December 31/95	Transfer to DKSA/Edwards (1)		2717.35
	TOTAL	100000	100000

131. The Solicitor improperly transferred all \$100,000 to other client trust ledgers, which clients are unrelated to Art Magic or to the Borsatos. Neither Art Magic nor the Borsatos were aware of any of the transfers disclosed by Table 11.

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132. These misapplications were used to eliminate overdrawn trust account balances arising out of other improper transfers by the Solicitor. For example, the \$54,921.18 transferred to the Tonecraft - Laurentian ledger (Document Book, Tab 36) was used to eliminate an overdrawn trust account balance that had arisen as a result of a September 30, 1995 improper transfer to a Grandport/Zivanovic trust ledger (Document Book, Tab 37). That transfer in turn was made to eliminate a trust shortage that had arisen on September 1, 1995 when the Solicitor paid \$60,000 to the City of Kitchener on behalf of Zivanovic.

133. Similarly, a review of the Grandport - #7 trust ledger (Document Book, Tab 38) showed that the sum of \$30,403.58 was transferred to eliminate an overdrawn trust account balance that had arisen as a result of the Solicitor paying various sub-trades funds in October of 1995 on behalf of Zivanovic.

134. A memo dated November 5, 1996 to the Solicitor from one of his employees advised that the accountant for Art Magic had called and advised as follows:

He has just received the Mortgage Statement and was concerned since the balance outstanding thereon does not reflect a \$100,000.00 prepayment issued by Art Magic to you in trust back in October of 1995 to be made to reduce same.

Further, he wanted to confirm that we retain a trust balance of \$32,000.00 on this matter.

He wants you to call him to review same and to provide confirmation with respect to the above prepayment and remaining trust funds. (Document Book, Tab 39)

135. A memo dated November 7, 1996 to the Solicitor from one of his employees advised that Mary Borsato had called and advised as follows:

Mrs. Borsato said that she needed you or me to provide verbal confirmation at that very moment to her Accountant that you are holding the sum of \$131,000.00 in your trust account.

\$100,000.00 of this was to be applied as a prepayment to reduce the Canada Trust Mortgage on her building in October of 1995 and this payment has not been received nor reflected on Canada Trust's updated Mortgage Statement just issued to them.

To update you on this matter, apparently for some reason Canada Trust is not renewing these and other mortgages and Borsato's are finalizing refinancing arrangements with Hongkong Bank of Canada tomorrow.

Mrs. Borsato would not accept the fact that I needed your authorization and that I expect that you will be calling into the office the first opportunity you have and that you would either call her directly or (with your authorization) have me call to verify this with her and her Accountant.

She still would not accept this and couldn't believe that there was no one here that could check the books and verify this. Mary said to me that unless she receives this verification from you ASAP they will have to send someone over to verify the books.

This is URGENT AND VERY IMPORTANT and she has put her faith in you and refuses to lose this building because of your unavailability. (Document Book, Tab 40)

136. By fax dated November 7, 1996, the Solicitor advised Art Magic and the Borsatos as follows:

As confirmed by telephone to your Accountant, Michael Sawh this afternoon, the sum of \$100,000.00 has been retained by me in accordance with your instructions." (Document Book, Tab 41)

137. By letter dated November 22, 1996, Mary Borsato wrote to the Solicitor requesting the return of the \$132,000 held in trust (Document Book, Tab 42).

138. The current trust shortage in respect of the Art Magic trust funds is \$132,000.

139. The Compensation Fund has paid Art Magic \$100,000 in respect of the trust shortage on the two transactions described above, being the maximum grant payable per client per claim.

Richard and Denise Cormack
Misapplications - \$263,137.90
Current Trust Shortage - \$259,489.62

140. Richard and Denise Cormack retained the Solicitor to act for them on the sale of their home at 86 Westminster Avenue, Toronto (Document Book, Tab 43).

141. The transaction closed on May 23, 1996 and the Solicitor received \$274,944.79 in trust on behalf of the Cormacks (Document Book, Tabs 44 and 45).

142. After the deduction of fees and proper disbursements there was a balance of \$264,109.62 held in trust on behalf of the Cormacks (Document Book, Tabs 46 and 47).

143. By letter dated May 28, 1996, the Solicitor reported to the Cormacks on the sale and stated:

This will further confirm, pursuant to our discussions, that the excess funds being held in trust at this time are to be invested on your behalf. I shall be in touch with you to discuss this to confirm the final arrangements with respect to same. (Document Book, Tab 48)

144. The Cormacks did not need the funds immediately as they were going to live at their summer property and look for a new home in the fall. The Cormacks left the \$264,109.62 with the Solicitor on the understanding that the funds would be held in trust and would earn interest of 1% over prime. The Solicitor also advised Mr. Cormack that the funds would be available in the fall, for the purchase of a new home.

145. Using entries from the trust account cash books and transfer journals, the Law Society has reconstructed the flow of the Cormacks' funds as set out in Table 12.

Table 12

DATE	DETAILS	RECEIPTS	PAYMENTS
May 23/96	Funds received on closing	274944.79	
May 23/96	Sutton Group-Royal Realty Inc. balance of real estate commission		9980
May 28/96	Michael DeCosimo - Fees & Disb.		855.17
May 31/96	Transfer to Anderson - Yim (1)		4000
May 31/96	Transfer to DKSA - McFarlane (1)		74300
May 31/96	Transfer to Knowlesview - Zivanovic (1)		27500
May 31/96	Transfer to Krasnzasamy (1)		247.59
May 31/96	Transfer to Levy - Weller (1)		25760.77
May 31/96	Transfer to Zivanovic - London Life (1)		1205.68
May 31/96	Transfer to Zivanovic - ats TD Bank (1)		65740.56
May 31/96	Transfer to Mic & Bengionno (1)		453.83
May 31/96	Transfer to Mic & Elsen (1)		4069.75
May 31/96	Transfer to Mic & Luc (1)		1554.91
May 31/96	Transfer to Mic & Lyn (1)		284.67
May 31/96	Transfer to Mic & McRae (1)		2296.58
May 31/96	Transfer to Mic & Presto (1)		1028.94
May 31/96	Transfer to Mic & Munoz (1)		106.67
May 31/96	Transfer to Mic & Zivanovic (1)		26444.41
May 31/96	Transfer to Mic & Yim - (Beatrice) (1)		1035.97
May 31/96	Transfer to Mic & Yim - (College) (1)		1021.89
May 31/96	Transfer to Mic & Yim - (Crawford) (1)		4214.2
May 31/96	Transfer to Mic & Yim - (Farnham) (1)		2700.1
May 31/96	Transfer to Mic & Yim - (Hurontario) (1)		1878.08
May 31/96	Transfer to Mic & Yim - (Kaneff) (1)		1981.94
May 31/96	Transfer to Mic & Yim - (King) (1)		5275.99
May 31/96	Transfer to Mic & Yim - (1510 King) (1)		725.62

DATE	DETAILS	RECEIPTS	PAYMENTS
May 31/96	Transfer to Mic & Yim - (Spadina) (1)		2789.29
May 31/96	Transfer to Mic & Yim - (Sterling) (1)		822.95
May 31/96	Transfer to Mic & Yim - (Tranmere) (1)		447.51
June 6/96	Sutton Group-Royal Realty Inc.	5000	
June 12/96	George and Catherine Mataxas		5000
June 30/96	Transfer to Anderson (1)		5250
Sept. 13/96	Richard & Denise Cormack		4620
Sept. 30/96	Transfer from Guarino	3648.28	
	TOTAL	283593.07	283593.07

146. The Solicitor misapplied \$263,137.90 (marked (1) on Table 12) of the Cormack's funds by transferring this amount to other client trust ledgers. The Cormacks did not authorise or know of these transfers.

147. The \$74,300 transfer to the "DKSA - McFarlane" trust ledger (Document Book, Tab 49) was made by the Solicitor to eliminate an overdrawn trust ledger balance that had arisen in May of 1996, mainly as a result of payments to other clients, which payments were not authorized by DKSA.

148. The \$65,740.56 transferred to the "Zivanovic - ats TD Bank" ledger (Document Book, Tab 50) was made by the Solicitor to eliminate an overdrawn trust ledger balance that had arisen in May of 1996, mainly as a result of a payment shown on the trust ledger of \$60,000 to the TD Bank.

149. By letter dated August 2, 1996 (Document Book, Tab 51), the Solicitor advised the Cormacks that he had invested their funds in a "mortgage investment ... at the rate of Canada Trust prime plus one (1%) percent". This was false.

150. By letter dated August 23, 1996 (Document Book, Tab 52), the Solicitor sent the Cormacks documents purporting to show that the Solicitor had assigned the Cormacks a \$200,000 interest and a \$64,000 interest respectively in two mortgages, each for \$200,000. These mortgages were given by the DKSA Group Inc. to the Solicitor on two properties in the City of Mississauga (Document Book, Tabs 53 and 54).

151. A title search of the properties in Mississauga (Document Book, Tab 55) shows that they were owned by the DKSA Group and that on March 14, 1996, the Solicitor had assigned the full amount of both mortgages to other clients of his: Vincent and Lillian Cotroneo (Document Book, Tabs 56 and 57). The Solicitor's purported assignments of these two mortgages to the Cormacks dated June 1, 1996 (Document Book, Tabs 53 and 54) were of no effect as the Solicitor had no remaining interest in the mortgages at that time.

152. On September 13, 1996, the Solicitor paid \$4,620 to the Cormacks from his trust account, in purported payment of the first quarterly payment due on their "investment"(Document Book, Tab 58).

153. The Compensation Fund has paid a total of \$200,000 to the Cormacks in respect of the Solicitor's unauthorized use of their funds.

154. The current trust shortage in respect of the \$274,944.79 paid to the Solicitor on closing, without interest, is \$259,489.62, arrived at by subtracting the payment by the Solicitor to the Cormacks of \$4,620 in September of 1996 from the \$264,109.62 due to them from the sale proceeds.

Archie DelTorre / Estate of Jean DelTorre
Misapplications - \$177,255.17
Current trust shortage - \$85,483.00

155. Jean DelTorre died on October 16, 1995.

156. The terms of the will were that the residue of the estate of Jean DelTorre (the "DelTorre Estate") be distributed equally between her three children: Rose Scagnetti, Dennis DelTorre and Archie DelTorre (Document Book, Tab 59). The will named Rose Scagnetti and Archie DelTorre as co-executors.

157. There was a disagreement and as a result Rose Scagnetti and Dennis DelTorre retained Paul T. O'Marra to act for them and Archie DelTorre retained the Solicitor to act for him.

158. The legal work for the DelTorre Estate was split between the Solicitor and Mr. O'Marra (Document Book, Tabs 60 and 61).

159. The main assets of the DelTorre Estate were a property at 22 Cutler Crescent, Etobicoke and guaranteed investment certificates at the TD Bank.

160. The Solicitor acted for the DelTorre Estate on the sale of 22 Cutler Crescent and Mr. O'Marra collected the funds from the guaranteed investment certificates at the TD Bank (Document Book, Tabs 62, 63 and 64).

161. Using the trust account cash books and transfer journals, the Law Society has reconstructed the flow of funds on the sale of 22 Cutler Crescent as set out below in Table 13.

Table 13

DATE	DETAILS	RECEIPTS	PAYMENTS
March 30/96	S. Obradovic - deposit for purchase of property from Estate of Jean DelTorre	5000	
May 29/96	Funds received on closing on sale of 22 Culter Crescent	175255.17	
May 31/96	Transfer to LaPaloma - C/Trust (1)		153000
June 19/96	Michael DeCosimo - Fees & Disb.		3000
June 30/96	Transfer to Mic & Zivanovic (1)		24255.17
Aug 12/96	Funds received from O'Marra & Associates being Archie DelTorre's 1/3 share of the GIC's at the TD Bank	22164.29	
Sept. 13/96	O'Marra & Associates		2165

DATE	DETAILS	RECEIPTS	PAYMENTS
Sept. 13/96	Rose Scagnetti		55757.98
Sept. 13/96	Dennis DelTorre		55757.98
Sept. 30/96	Transfer from Murphy (Estate of Federico)	91516.67	
	TOTAL	293936.13	293936.13

162. By June 30, 1996, the Solicitor had misapplied a total of \$177,255.17 received in trust on behalf of the DelTorre Estate by improperly transferring the funds marked (1) to two other trust ledgers. None of the beneficiaries of the DelTorre Estate knew of or authorised these transfers.

163. Most of the DelTorre Estate's funds were transferred to the La Paloma - Canada Trust ledger (Document Book, Tab 65). The La Paloma trust ledger indicates that on March 15, 1996 the Solicitor received \$150,000 from Canada Trust on behalf of La Paloma for a mortgage. On March 31, 1996, the Solicitor improperly transferred most of La Paloma's funds to eliminate other client trust shortages. On May 24, 1996, the Solicitor disbursed funds on behalf of La Paloma and used funds from the DelTorre trust ledger to eliminate the resulting overdrawn trust account on the La Paloma client trust ledger.

164. In order to pay funds to Rose Scagnetti and Dennis DelTorre on September 13, 1996, the Solicitor misapplied \$91,516.67 from another client of his law practice, being Murphy, Estate of Federico.

165. To date, a trust shortage of \$85,483 remains in respect of the DelTorre Estate. This figure is arrived at by starting with the total improper transfers from the DelTorre Estate, being \$177,255.17, subtracting the improper transfer from another client account of \$91,516.67 and again subtracting \$255.50 billed by the Solicitor, but not taken.

166. On August 12, 1996, the Solicitor deposited a cheque from O'Marra & Associates in the amount of \$22,164.29 into trust. The payee on the cheque was Archie DelTorre.

167. The Compensation Fund has paid Archie DelTorre, Rose Scagnetti and Dennis DelTorre a total of \$85,843.

Gary Guarino

Misapplications and current trust shortage - \$42,000.00

168. Gary Guarino planned to purchase a house and retained the Solicitor to act on the purchase. Mr. Guarino's parents had given him a total of \$47,000 to assist him in making this purchase. Mr. Guarino provided these funds to the Solicitor by way of two cheques which were deposited to the Solicitor's trust account on February 22, 1996 and March 8, 1996 (Document Book, Tabs 66 and 67).

169. Mr. Guarino instructed the Solicitor to hold these funds in his trust account. On March 6, 1996, the Solicitor returned \$5,000 of these funds to Mr. Guarino.

170. Instead of holding these funds in trust, the Solicitor disbursed them as set out in Table 14. The trust ledger to which the \$47,000 is deposited is titled "Guarino - Livingroom Shoppe". The Livingroom Shoppe was the name of Gary Guarino's father's business.

Table 14

DATE	DETAILS	RECEIPTS	PAYMENTS
Feb. 22/96	Bank of Nova Scotia	30000	
Feb. 29/96	Transfer to Grandport Lot 44 (Zivanovic) (1)		12660.31
Feb. 29/96	Transfer to Grandport - Building permit (1)		15741.24
March 6/96	Gary Guarino		5000
March 8/96	Bank of Nova Scotia	17000	
March 31/96	Michael DeCosimo - transfer to general re: disbursement to Ministry of Finance (1)		315
March 31/96	Transfer to Anderson - DKSA (1)		5250
March 31/96	Transfer to Anderson - Yim (1)		2000
March 31/96	Transfer to Vieira - Szott (1)		4000
March 31/96	Transfer to McKinnon - Estate (1)		605.5
March 31/96	Transfer to Strongman - Ivanhoe (1)		279.74
March 31/96	Transfer to Mic & Yim - 1510 King St. (1)		1148.21
	Total	47000	47000

171. The Solicitor misapplied \$42,000 marked (1) of Mr. Guarino's funds by improperly transferring them to unrelated client trust ledgers. Mr. Guarino did not authorise or know of these transfers.

172. There is a current trust shortage of \$42,000.

173. The Compensation Fund has paid this \$42,000 to Mr. Guarino.

Gary and Andrea Guarino
Misapplication - \$45,588.49
Current Trust Shortage - \$44,018.93

174. Gary and Andrea Guarino separated in February of 1996. Gary Guarino retained the Solicitor to act on the matrimonial matter. Andrea Guarino retained Katherine A. Still.

175. In August, 1996, the Solicitor acted for both Gary and Andrea Guarino on the sale of their matrimonial home at 84 Colonel Butler Drive, Markham (Document Book, Tab 68). The transaction closed on August 30, 1996, and the Solicitor deposited the net sale proceeds of \$51,928.54 to his trust account (Document Book, Tabs 69, 70 and 71).

176. As the Guarinos were involved in matrimonial litigation, the Solicitor and Mrs. Guarino's counsel, Ms. Still, agreed that the proceeds of the sale in the amount of \$51,928.54, less disbursements, would be held in the Solicitor's trust account pending settlement of the matrimonial issues (Document Book, Tabs 72 and 73). The trust ledger entries, as reconstructed from trust account cash books and transfer journals, were as set out in Table 15 below:

Table 15

DATE	DETAILS	RECEIPTS	PAYMENTS
August 25/96	Gary Guarino	800	
August 30/96	Nsf cheque debits		612
August 31/96	Net sale proceeds	51928.54	
Sept. 3/96	Re/Max All Stars		6692
Sept. 3/96	Bank of Montreal		161.4
Sept. 3/96	Certain Searches		62.06
Sept. 27/96	Bank of Montreal	578.28	
Sept. 27/96	Consumers Gas		29.99
Sept. 27/96	Markham Hydro		92.18
Sept. 30/96	Transfer to Anderson - DKSA (1)		8622
Sept. 30/96	Transfer to Cormack (1)		3648.28
Sept. 30/96	Transfer to CPL - Cotroneo (1)		2083.33
Sept. 30/96	Transfer to DKSA/Edwards - McFarlane (1) trust ledger	100000	30000
Sept. 30/96	Transfer to Edwards - Doracin (1)		1234.88
Oct. 31/96	Michael DeCosimo - transfer to general a/c		68.7
	Total	53306.82	53306.82

177. The Solicitor misapplied \$45,588.49, marked (1), of Gary and Andrea Guarino's funds by transferring these funds without authorization to unrelated client trust ledgers.

178. The Compensation Fund has paid Gary and Andrea Guarino the sum of \$44,597.21, being the amount owing after the deduction of fees and disbursements.

Estate of Louis Joseph Jessop / Margaret and Michael Polo
Misapplication - \$73,067.10
Improperly Withdrew From Trust - \$10,085.24
Current Trust Shortage - \$30,914.05

179. Louis Jessop died on September 19, 1995. His daughter, Margaret Ann Polo, was the executrix and a beneficiary of her father's estate, and retained the Solicitor to act as solicitor for the estate. The other two beneficiaries of the estate were her brothers, James Joseph Jessop, and Joseph James Jessop.

180. The main asset of the Jessop estate was the late Mr. Jessop's residence at 1223 Claredale Road, Mississauga.

181. Pursuant to an agreement between the three beneficiaries dated June 14, 1996, the residence at 1223 Claredale Road was conveyed to Michael and Margaret Ann Polo (the "Polos") as joint tenants for the sum of \$157,000. The agreement also provided that 25% of the estate would be paid to James Joseph Jessop, being the amount of \$30,914.05 (Document Book, Tab 74).

182. The Polos sold their existing residence at 551 Arbour Road and the net sale proceeds of \$26,460.25, all of which funds belonged to the Polos, were deposited to the Solicitor's trust account on June 18, 1996 (Document Book, Tab 75).

183. The sale of 1223 Claredale Road closed on or about June 21, 1996. Margaret Ann Polo obtained a \$100,000 loan from the TD Bank secured by a mortgage against the property, in part for the purpose of paying out her brother's share of the Estate. A deposit slip dated June 21, 1996 indicates that these funds were deposited to the Solicitor's trust account on June 21, 1996 (Document Book, Tab 76).

184. The trust account transactions relating to the Jessop estate were posted to two separate trust ledgers, only one of which (Document Book, Tab 77) could be located during the Law Society's investigation. The transactions posted to the missing ledger have been reconstructed from the trust account cash books and transfer journals, being the books of original entry. For ease of reference, the transactions from the two separate trust ledgers have been combined in Table 16 below:

Table 16

DATE	DETAILS	RECEIPTS	PAYMENTS
Nov. 24/95	Minister of Finance - Probate fees	50109.89	2125
Nov. 30/95	Transfer from Grandport - Lot 75 (Zivanovic)	2125	
June 17/96	Re/Max Professional Inc. - Balance of real estate commission on sale of 551 Arbor Rd.		710.7
June 17/96	Michael & Margaret Polo	22593.06	10000
June 18/96	Patterson - Balance due on closing of 551 Arbor Rd.	26460.25	
June 19/96	Michael DeCosimo - fees (2)	61334.01	650
June 20/96	Michael DeCosimo - fees & disbursements (2)	22300.23	328.67
June 21/96	TD Bank - 1st mtg. advance re: 1223 Claredale Rd.	100000	30
June 21/96	Michael DeCosimo - fees (2)		4000
June 21/96	Minister of Finance		1295
June 21/96	Minister of Finance		200
June 21/96	Minister of Finance		44
June 21/96	Sears - re Polo		5309.85
June 21/96	TD - Visa - re Polo		2528.94

DATE	DETAILS	RECEIPTS	PAYMENTS
June 21/96	Zellers - re Polo		1858.69
June 21/96	Royal Bank - discharge 1st mtg. 1223 Claredale Rd.		25010.73
June 21/96	Michael DeCosimo - fees & disbursements (2)		1456.57
June 30/96	Transfer to Mic & Zivanovic trust ledger (1)		73067.1
July 8/96	Michael & Margaret Polo		14770.88
July 15/96	Michael DeCosimo - fees & disb. (2)		3650
July 27/96	Michael & Margaret Polo		10000
July 1996	Unknown - possible disb.		50
July 31/96	Transfer from Mazzilli - sale	28470.88	
August 8/96	Margaret Polo		16044.67
August 31/96	Transfer from Elsen mortgage	16044.67	
	Total	173100.8	173100.8

185. All of the funds recorded in the ledgers as summarized above, belonged to the Polos, with the exception of the \$30,914.05 payable to James Joseph Jessop. The transfer marked (1) on June 30, 1996, for the amount of \$73,067.10 from the trust ledger to the unrelated Micalor and Zivanovic trust ledger (Document Book, Tab 78) was a misapplication of funds. Neither the Polos nor James Joseph Jessop authorised or knew of this transfer.

186. In order to pay the Polos all of the funds they were entitled to in July and August, 1996, and to avoid having an overdrawn trust ledger balance at month end, the Solicitor improperly transferred funds from two unrelated trust ledgers to one of the trust ledgers summarized in Table 16 above on July 31, 1996 and August 31, 1996. Although Margaret Ann Polo received all of the funds she was entitled to from her father's estate, James Joseph Jessop never received his 25% share.

187. In addition to the misapplications, the Solicitor transferred a total of \$10,085.24, marked (2) in table 15 above, from trust to the Solicitor's general account. The Solicitor states that these transfers were for unbilled fees and disbursements. In the Solicitor's files were draft fee billings in respect of fees and disbursements on the purchase of 1223 Claredale Road by the Polos (Document Book, Tab 79), the sale by the Jessop Estate of 1223 Claredale Road (Document Book, Tab 80) and other services provided to and disbursements incurred on behalf of the Jessop Estate (Document Book, Tab 81). These draft accounts total \$4,669.07, leaving a difference of \$5,416.17 between the funds taken by the Solicitor and the amount shown on the draft account.

188. The Solicitor states that prior to taking the \$10,085.24 in fees in June and July of 1996, he had done work for the Polos and for James Joseph Jessop and his wife for which he would have been entitled to be paid at least this amount, had he rendered fee billings. The Solicitor states that in addition to services performed for the Jessop Estate, listed in the draft fee billings, he also:

(i) provided services to James Joseph Jessop and his wife on the Estate of John Lapsley, Anne Jessop's father's estate, for which he rendered a bill dated March 5, 1996 in the sum of \$5,813.80 (Document Book, Tab 82), which bill was not paid; and

(ii) provided services on the sale of a cottage by Anne and James Joseph Jessop, for which he took approximately \$11,000 in unbilled fees. The Solicitor states that there were extremely difficult title problems which took 5 years to resolve and that he would have been entitled to bill more than \$11,000 on this sale transaction. The Solicitor states that the bill of the Township solicitors to his client for their review of the purchaser's and vendor's proposed solutions exceeded \$5,000.

189. In conclusion, the Solicitor misapplied \$73,067.10 of the funds belonging in part to the estate of Louis Joseph Jessop and in part to the Polos; the Solicitor improperly transferred \$10,085.24 from his trust account to his general account, and the Solicitor created a trust shortage in the amount of \$30,914.05, being the net amount payable to James Joseph Jessop. The Compensation Fund has paid \$31,437.69 to James Joseph Jessop for his claim.

Belgijzere Kelolli

Misapplication - \$100,770.68

Current Trust Shortage - \$97,949.01

190. Belgijzere Kelolli retained the Solicitor to act for her on the sale of a property at 4474 Heathgate Crescent, Mississauga to Cindy Chim and Ka Yiu Wong for \$250,000 (Document Book, Tab 83).

191. The transaction closed on June 28, 1996 and the Solicitor received \$101,175.18 in trust on behalf of Ms. Kelolli (Document Book, Tab 84).

192. After the deduction of fees, disbursements and some holdbacks, there was a balance of \$97,949.01 left in trust on behalf of Ms. Kelolli (Document Book, Tabs 85, 86 and 87). The Solicitor reported to Ms. Kelolli on the sale of her property on or about September 24, 1996 (Document Book, Tabs 88 and 89). Her intention was to apply the net sale proceeds to the purchase of another property and, until that time, she wanted the funds to remain in the Solicitor's trust account.

193. A reconstruction of the trust ledger for Ms. Kelolli from the trust cash books and transfer journals is in Table 17 below.

Table 17

DATE	DETAILS	RECEIPTS	PAYMENTS
June 28/96	Balance due on closing	101175.18	
June 28/96	Re/Max Realty Specialists Inc.		350
June 30/96	Transfer to Micalor & Zivanovic trust ledger (1)		90888.68
June 30/96	Transfer to Kolomaz Estate (1)		9882
June 30/96	Transfer to general re: Disbursement		54.5
Sept. 1/96	Transfer to general re: Fees & Disb.		924.72

DATE	DETAILS	RECEIPTS	PAYMENTS
Sept. 25/96	Canada Trust		1636.95
Sept. 25/96	Region of Peel		51.21
Sept. 25/96	Hydro Mississauga		155.07
Sept. 25/96	B. Kelolli (note: not cashed by client)		50.72
Sept. 30/96	Transfer from Ditchoff	2821.67	
	Total	103996.85	103996.85

194. The net sale proceeds from the sale of Ms. Kelolli's property were all misapplied by the Solicitor when, on or about June 30, 1996, the Solicitor transferred a total of \$100,770.68, marked (1) in table 17, to two unrelated trust ledger accounts without Ms. Kelolli's authorisation or knowledge.

195. To address a trust shortage in Ms. Kelolli's account, the Solicitor transferred \$2,821.67 to Ms. Kelolli's trust ledger from the Ditchoff trust ledger on or about September 30, 1996.

196. In conclusion, the Solicitor misapplied \$100,770.68 from Ms. Kelolli's trust ledger. The trust shortage was reduced to \$97,947.01 after the Solicitor misapplied \$2,821.67 from the Ditchoff trust ledger in September, 1996. The Compensation Fund has paid Ms. Kelolli the \$97,949.01 that should have been in the Solicitor's trust account.

Estate of Susan Federico / Kent Murphy / Sharon Gibb
 Misapplication - \$118,793.63
 Current Trust Shortage - \$117,913.59

197. Susan Federico, Kent Murphy and Sharon Gibb were siblings and jointly owned a property at 7327 Finnerty Sideroad in the Town of Caledon (the "Finnerty Property"). On May 14, 1996, Ms. Federico died. The Solicitor acted for the estate of Ms. Federico and Kent Murphy was the executor. A copy of the Certificate of Appointment of Estate Trustee and Ms. Federico's will are found at Tab 90 of the Document Book.

198. In September, 1996, the Solicitor also acted for the siblings on the sale of the Finnerty Property to a fourth sibling, Mark Murphy, for \$120,000 (Document Book, Tab 91). Mark Murphy was separately represented on the purchase (Document Book, Tabs 92 and 93).

199. A reconstruction of the trust ledger containing the entries relating to the sale of the Finnerty Property is contained in Table 18 below:

Table 18

DATE	DETAILS	RECEIPTS	PAYMENTS
Sept. 30/96	Net sale proceeds	118948.13	
Sept. 30/96	Transfer to DelTorre estate (1)		91516.67

Sept. 30/96	Transfer to Klazynski estate (1)		27276.96
Sept. 30/96	Transfer/payment re: disbursement		104.5
Oct. 1996	Transfer/payment re: disbursement		50
	TOTAL	118948.13	118948.13

200. The Solicitor misapplied \$118,793.63 when, on September 30, 1996, he improperly transferred that amount, marked (1) on Table 18, to unrelated client trust ledgers without the authorisation or knowledge of Kent Murphy or Sharon Gibb.

201. The improper trust transfers were made in order to eliminate trust shortages in the recipient trust ledger accounts.

202. In conclusion, the Solicitor misapplied \$118,793.63 held in the trust account for the benefit of Kent Murphy and Sharon Gibb of which \$117,913.59 was owed to the siblings on closing (Document Book, Tabs 94 and 95). Accordingly, the trust shortage was \$117,913.59 which amount has been paid to the clients by the Compensation Fund.

Dennis Kolomayz
Misapplication - \$108,136.49
Current trust shortage - \$39,416.49

203. Dennis Kolomayz died on December 25, 1994 and his brother, Raymond Kolomayz, was appointed the executor of the estate. The Solicitor was retained to act for the estate. A Certificate of Appointment of Estate Trustee With A Will was obtained on March 9, 1995 (Document Book, Tab 96).

204. In March and April, 1995, the Solicitor received a total of \$79,457.71 in trust on behalf of the estate, most of which was misapplied by the Solicitor in March, 1995 when it was transferred to various other unrelated trust ledger accounts without the authorisation or knowledge of Raymond Kolomayz (See transactions marked (1) in Table 19 below).

205. The estate consisted of a property at 2088 Ian Avenue, Mississauga, which was valued at \$145,000, and other assets valued at approximately \$77,000 (Document Book, Tab 97).

206. The deceased's mother, Mary Kolomayz, agreed to purchase the property at 2088 Ian Avenue from the estate for \$145,000, and the Solicitor acted for both the estate and Mary Kolomayz on the sale. The transaction closed on December 1, 1995. The estate took a mortgage back from Mary Kolomayz for \$105,000 and the balance of the purchase price of \$40,000 plus Land Transfer Tax of \$1,175 was paid by Mary Kolomayz to the Solicitor in trust on November 27, 1995 (Document Book, Tabs 98, 99, 100 and 101).

207. Most of the funds which were the net sale proceeds were misapplied by the Solicitor on January 31, 1996, when he transferred the funds to other unrelated client trust ledger accounts without Raymond Kolomayz' authorisation or knowledge. (See transactions marked (2) in Table 19 below).

208. On May 23, 1996, Raymond Kolomayz wrote to the Solicitor expressing concern with respect to the amount of time it was taking to finalize his brother's estate (Document Book, Tab 102). In order to meet part of his trust obligations to the estate, the Solicitor improperly transferred a total of \$68,900.00 from the trust accounts of other clients, which transfers were a misapplication of those funds (See transactions marked (3) in Table 19 below).

209. On June 26, 1996, a total of \$68,900.00 was paid to Raymond Kolomayz and other beneficiaries.

210. A reconstruction of the trust ledgers for the estate made from trust cash books and transfer journals is set out in Table 19 below:

Table 19

DATE	DETAILS	RECEIPTS	PAYMENTS
March 3/95	Ministry of Finance		2875
March 17/95	CIBC	69480.99	
March 22/95	TD Bank	6273.45	
March 31/95	Transfer to Maltby - mortgage (1)		19110
March 31/95	Transfer to Mic & Yim (Beatrice) (1)		3608.55
March 31/95	Transfer to Mic & Yim (College) (1)		1356.58
March 31/95	Transfer to Mic & Yim (Crawford) (1)		4214.2
March 31/95	Transfer to Mic & Yim (Farnham) (1)		2700.1
March 31/95	Transfer to Mic & Yim (Hurontario) (1)		26868.08
March 31/95	Transfer to Mic & Yim (Kaneff) (1)		2427.94
March 31/95	Transfer to Mic & Yim (King) (1)		5991.33
March 31/95	Transfer to Mic & Yim (Spadina) (1)		4127.27
March 31/95	Transfer to Mic & Yim (Sterling) (1)		822.95
March 31/95	Transfer to Mic & Yim (Tranmere) (1)		958.67
April 5/95	Michael G. DeCosimo		4000
April 7/95	Province of Ontario	10	
April 7/95	State Farm	177.27	
April 7/95	Government of Canada	3440	
April 28/95	Government of Canada	76	
May 31/95	Transfer to Reino - D'Ovidio (1)		397.04
July 5/95	Government of Canada	21.28	
November 17/95	Michael G. DeCosimo		4000
November 27/95	Mary Kolomayz	41175	
November 27/95	Toycotronics Inc.		100

DATE	DETAILS	RECEIPTS	PAYMENTS
November 27/95	Purolator		22
November 27/95	Minister of Finance		1175
November 30/95	Michael G. DeCosimo - disbursements		21.91
November 30/95	Transfer to Mic & Elsen (2)		2397.53
November 30/95	Transfer to Mic & Ford (2)		412.66
November 30/95	Transfer to Mic & Luc (New Stop) (2)		1554.91
November 30/95	Transfer to Mic & Lyn (2)		1193.33
November 30/95	Transfer to Mic & Munoz (2)		887.98
November 30/95	Transfer to Mic & Presto (2)		1028.94
November 30/95	Transfer to Mic & Spadacini (2)		454.16
November 30/95	Transfer to Reino - D'Ovidio (2)		6792.14
December 31/95	Michael G. DeCosimo - disbursements		143.59
January 31/96	Transfer to Bell - sale (2)		7000
January 31/96	Transfer to DKSA - sale (2)		5000
January 31/96	Transfer to Gougson - sale (2)		1667.7
January 31/96	Transfer to Joan Bran - Tymkow (2)		3750
January 31/96	Transfer to Mic & Elsen (2)		3594.43
June 26/96	Raymond Kolomayz - Executors fees		10500
June 26/96	Margaret Bushel - 5% of net estate		8200
June 26/96	Michael Byrne - 2.5% of net estate		4100
June 26/96	Robert Byrne - 2.5% of net estate		4100
June 26/96	Salvation Army - 25% of net estate		41000
June 26/96	Alice Nixon - accounting fees		1000
June 30/96	Transfer from Mazzilli - sale See Table 21 in Mazzilli below (3)	59018	
June 30/96	Transfer from Kelolli - sale See Table 17 in Kellolli above(3)	9882	
	Total	189553.99	189553.99

211. In total, the Solicitor misapplied \$108,136.49 of the funds he had received on behalf of the estate (transactions marked (1) and (2) in the above table).

212. In order to rectify the trust shortages, and to meet his obligations to the beneficiaries, the Solicitor then misapplied funds from other client trust ledgers.

213. The net amount of all of the improper transfers was \$39,416.49, being the balance of the funds which should have remained in the Kolomayz trust account after payment to the beneficiaries.

214. In conclusion, the Solicitor misapplied a total of \$108,136.49 of the estate's funds, but was able to meet most of his obligations to the beneficiaries by improperly transferring funds from other client accounts to the Kolomayz account, thereby reducing the trust shortage to \$39,416.49, which amount has been paid to the estate by the Compensation Fund.

Estate of Samuel Patience

Misapplication and Current Trust Shortage - \$144,414.77

215. The Solicitor and Mary MacDonald were named co-executors of the estate of Samuel Patience who died on April 6, 1996. A Certificate of Appointment of Estate Trustees With a Will was obtained on June 5, 1996 (Document Book, Tab 103). The principal beneficiary of the estate was Mary MacDonald.

216. The estate consisted of a property at 19 14th Street, Etobicoke, and cash in the amount of \$50,458.51 held in bank accounts at the TD Bank.

217. On July 4, 1996, the Solicitor received \$50,458.51 from the TD Bank in trust on behalf of the estate (Document Book, Tab 104). Most of these funds were misapplied by the Solicitor when, in July, 1996, he transferred the funds to various unrelated client trust ledgers without the authorisation or knowledge of Mary MacDonald (See transactions marked (1) in Table 20 below).

218. The estate property was sold on August 2, 1996, for \$105,000 (Document Book, Tabs 105 and 106).

219. On or about August 6, 1996, the net sale proceeds of \$100,395.93 were deposited into the Solicitor's trust account (Document Book, Tab 107). Most of these funds were misapplied by the Solicitor when, in July, 1996, he transferred the funds to various unrelated client trust ledgers without the authorization or knowledge of Mary MacDonald (See transactions marked (2) in Table 20 below).

220. A summary of the trust ledger entries reconstructed from the trust account cash books and transfer journals is contained in Table 20 below.

Table 20

DATE	DETAILS	RECEIPTS	PAYMENTS
June 28/96	Michael G. DeCosimo		5500
June 30/96	Transfer from Mazzilli	5485.57	
July 3/96	Michael G. DeCosimo		2500
July 4/96	TD Bank	50458.51	

DATE	DETAILS	RECEIPTS	PAYMENTS
July 16/96	Michael G. DeCosimo		1250
July 31/96	Transfer to Luciano - Yim trust ledger (1)		35298.42
July 31/96	Transfer to Mic & Zivanovic (1)		11410.09
August 2/96	Bank of Montreal		4000
August 2/96	TD Bank		5000
August 2/96	Ann Morris		100
August 6/96	Sale proceeds	100395.93	
August 6/96	Lorne Park Realty		1741
August 6/96	Greg Laurin		80
August 6/96	Etobicoke Water		123.89
August 9/96	Consumers Gas		231.05
August 31/96	Transfer to general re disbursement		50
August 31/96	Transfer to Castator - trust ledger account (2)		25529.84
August 31/96	Transfer to Holmes estate - trust ledger account (2)		55101.15
August 31/96	Transfer to Berkers estate (2)		2122.08
August 31/96	Transfer to Vieira - Szott (2)		3000
Sept. 30/96	Transfer to Klazinski estate (2)		2953.19
	Total	156340.01	155990.71

221. Most of the estate funds were misapplied by the Solicitor in the period from July to September, 1996 when he improperly transferred a total of \$135,414.77 to various unrelated client trust ledgers (these transfers are marked (1) and (2) in the table above).

222. The Solicitor also misapplied a further \$9,000 by paying \$4,000 of the estate's funds to the Bank of Montreal and \$5,000 to the TD Bank on August 2, 1996 for unrelated matters without the authorisation or knowledge of Mary MacDonald.

223. In conclusion, the Solicitor misapplied a total of \$144,414.77 of the funds he had received on behalf of the estate of Samuel Patience. As no funds have been paid to the beneficiary of the estate, the trust shortage is a total of \$144,414.77. The Compensation Fund has paid \$100,000.00 to Mary MacDonald for her claim.

Anna and Sabino Mazzilli
Misapplication - \$221,250.00

224. The Solicitor acted for Anna and Sabino Mazzilli on the sale of their property at 192 Russell Snider Drive, Nobleton (Document Book, Tab 108).

225. The transaction closed on July 31, 1996 and the Solicitor received \$234,053.19 in trust on behalf of his clients (Document Book, Tab 109, 110 and 111). The Mazzillis decided to leave \$230,000 of the closing proceeds in trust for the purpose of purchasing a new home, in the City of Vaughan, the closing of which was postponed to the end of November, 1996 (Document Book, Tabs 112 and 113).

226. Most of the \$230,000 was misapplied by the Solicitor when, on July 31, 1996, he improperly transferred funds to various other unrelated client trust ledger accounts.

227. A reconstruction of the trust ledger entries for the sale of the Mazzilli property is set out in Table 21 below.

Table 21

DATE	DETAILS	RECEIPTS	PAYMENTS
July 17/96	Mazzilli (this appears to be an unrelated transaction)		8750
July 31/96	Balance due on closing	234053.19	
July 31/96	Michael DeCosimo		937.83
July 31/96	Transfer to Laird - p/s (1)		95064.94
July 31/96	Transfer to De Luc - Div (1)		28000
July 31/96	Transfer to Spizzirri (1)		25000
July 31/96	Transfer to Polo - sale (1)		28470.88
July 31/96	Transfer to Berkers - estate (1)		4468.87
July 31/96	Transfer to CPL - Cotroneo (1)		2200
July 31/96	Transfer to Currie - RRSP (1)		11230.09
July 31/96	Transfer to DeCosimo - TD (1)		10697.63
July 31/96	Transfer to Edwards - Doracin (1)		1234.88
July 31/96	Transfer to Grandport #76 (1)		14882.71
August 1/96	Certain Searches		62.06

DATE	DETAILS	RECEIPTS	PAYMENTS
August 6/96	A. & S. Mazzilli		3053.3
	Total	234053.19	234053.19

228. Most of the net sale proceeds were misapplied by the Solicitor when, on or about July 31, 1996, he improperly transferred a total of \$221,250.00, marked (1) in table 21, to various unrelated client trust ledgers without the authorization or knowledge of the Mazzillis.

229. In conclusion, the Solicitor misapplied \$221,250.00 of the funds belonging to the Mazzillis from the sale of their property. However, the Mazzillis recovered these funds on or about November 21, 1996, when they obtained a trust cheque in the amount of \$230,000 (Document Book, Tab 114). The Solicitor states that this occurred without his knowledge.

Mary and Bernard Wilson / Royal Bank
Current Trust Shortage - \$279,423.13

230. Mary and Bernard Wilson retained the Solicitor to act on their behalf on a mortgage refinancing.

231. On November 15, 1996, the Solicitor deposited \$300,000 to his trust account being the amount of a new first mortgage the Wilsons had arranged on their home with the Royal Bank (Document Book, Tabs 115, 116 and 117).

232. Most of these funds were to be used to discharge their existing first mortgage with the Royal Bank. The amount required to discharge the first mortgage was \$279,423.13 (Document Book, Tab 118).

233. The Solicitor forwarded a trust cheque for \$279,423.13 to the Royal Bank, which cheque was returned for insufficient funds as the balance in the Solicitor's trust account at the close of business on November 18, 1996 was only \$269,409.64 (Document Book, Tab 119).

234. The Solicitor's trust account was frozen on November 22, 1996 and by that time, the balance in the trust account was only \$17,812.53.

235. In conclusion, the Solicitor has a trust liability to the Wilsons and/or the Royal Bank in the amount of \$279,423.13, being the difference between the \$300,000 deposited and the \$17,812.53 balance remaining (Document Book, Tabs 120 and 121).

Stephen and Cynthia Berneski
Current Trust Shortage - \$24,854.06

236. Stephen and Cynthia Berneski retained the Solicitor in or about October, 1996, to act on their behalf on a mortgage refinancing.

237. A new first mortgage for \$128,000 was obtained from Scotia Mortgage Corporation and the Solicitor discharged the existing first mortgage in favour of the Etobicoke Municipal Employees' Credit Union (Document Book, Tabs 122, 123 and 124). The refinancing transaction closed on October 28, 1996.

238. After paying property tax arrears and his fees and disbursements, there was a balance of \$64,854.06 left which the Solicitor should have paid in full to Mr. & Mrs. Berneski (Document Book, Tab 125).

239. On November 7, 1996 the Solicitor made a payment to the Berneskis of \$40,000.

240. On or about November 18, 1996 a trust cheque for the balance of \$24,854.06 was prepared and posted to the trust ledger account. However, the Solicitor never signed the cheque and the trust account was frozen by the Law Society on November 22, 1996.

241. In conclusion, the Solicitor had a trust liability of \$24,854.06 to Mr. & Mrs. Berneski, which amount has been repaid to the Berneskis by the Compensation Fund.

V. PRIOR DISCIPLINE

242. On May 19, 1978, the Solicitor was guilty of professional misconduct for borrowing from a client (\$20,000); failing to maintain in his trust account sufficient monies to meet his trust obligations to his clients; and failing to maintain proper books, records or accounts in connection with his practice. He received a reprimand in Committee.

DATED at Toronto, this 13th day of October, 1998."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Michael Gerrard DeCosimo be disbarred and struck off the Rolls.

REASONS FOR RECOMMENDATION

The Solicitor entered into a 62 page Agreed Statement of Facts in which he admitted all the allegations contained in particulars 2(a), (b), (c), (d), and (e) involving, inter alia, the misappropriation of approximately \$520,940.00, the misapplication of approximately \$1,625,802.00, and trust shortages of approximately \$1,501,132.00.

Particulars 2(a) to 2(e) are set out in paragraphs 37 - 65 and 82 - 102 of the Agreed Statement of Facts. Further, particular 2(b) is set out at paragraphs 110 - 124, 2(c) is set out at paragraphs 179 - 189, and 2(d) and 2(e) are set out at paragraphs 103 - 229 inclusive.

The Law Society submitted the following in support of its submission for disbarment:

1. Misappropriation of funds leads to disbarment.
2. There is a gross pattern of misconduct.
3. There was a large misappropriation of funds over a long period of time.
4. Many clients lost significant sums of money.
5. The Lawyers Fund for Client Compensation has paid 53 claims in excess of \$2,000,000.00.
6. There are 45 outstanding claims against the Compensation Fund.
7. The profession has been damaged collectively.
8. The Solicitor breached the trust placed in him by his clients.
9. The Solicitor's conduct shows a pattern and a failure to appreciate the principles of being a lawyer.

By way of mitigation, the Law Society submitted the following:

1. Once the problem came to light, the Solicitor co-operated fully with the Law Society as well as with his trustee in bankruptcy.
2. Some medical evidence was produced which indicated that the Solicitor may have been suffering from an inability to cope with his practice due to his psychological makeup.
3. The trust problems began in 1989 as set out in the Agreed Statement of Facts, coinciding with a drop in the real estate market.
4. The Solicitor contributed a significant amount of his own funds in an attempt to satisfy his clients.

However, the Society also pointed out that the Solicitor's placing of his own funds into his trust account was not the same as restitution. He made payments on behalf of defaulting investments, but many of his clients still lost their principal. In order for him to keep paying his old clients, he had to find new investors. By perpetuating this scheme, in the short-term, he saved his clients and himself, but increased the long-term damage.

The main question for the Committee was whether the mitigating factors were sufficient to reduce the penalty from disbarment to permission to resign.

The Law Society's position is quite clear in that, under the circumstances, the mitigating factors are not sufficient to take this matter out of the realm of disbarment.

The Committee accepts the principle that, where a Solicitor is found to have misappropriated trust funds, he should be disbarred unless there are strong extenuating circumstances indicating otherwise.

Dr. D.G. Glancy, Assistant Professor of the Department of Psychiatry at the University of Toronto, testified on behalf of the Solicitor. Dr. Glancy's report, dated June 10, 1998 was filed as Exhibit 5 to these proceedings. Dr. Glancy testified that the Solicitor had practised law since 1971 and it was not until the drop in the real estate market in the late 1980's that the mortgage investments that he made, on behalf of his clients, began to suffer. The Solicitor was hopeful that there would be a recovery in the real estate market. When the mortgagors were unable to meet their payments to the Solicitor's mortgagee clients and the properties were in danger of being lost, the Solicitor, in an effort to save the same, began to allocate funds from his trust account to meet the payments required by his mortgagee clients. The Solicitor believed that the difficulties would be short-term and that he could return the funds so allocated. As the market remained deflated, he felt obliged to continue in his efforts to keep all parties with vested interests afloat. He also invested monies of his own in an effort to keep the securities afloat.

Dr. Glancy indicated that at no time did the Solicitor prefer his interests over those of others. In regard to that statement, the Committee disagrees. In reviewing paragraph 34 of the Agreed Statement of Facts, a family home was purchased by the Solicitor's wife. The house had a value in excess of \$1,000,000.00. Many of the payments for the construction came out of the Solicitor's trust account. In addition, other payments from trust were taken for the benefit of the Solicitor (paragraph 37 of the Agreed Statement of Facts). Dr. Glancy agreed, on cross-examination by the Society, that his information on this point had come from the Solicitor, and that the Agreed Statement of Facts should take precedence over that information.

Dr. Glancy further reported that, as time passed, the Solicitor realized that he had serious problems. In 1989, he had approximately \$2,000,000.00 in family assets, but by 1996 he had used over \$1,000,000.00 of his family money to pay his clients. When he sold his family residence, he used \$340,000.00 of the sale proceeds to pay his clients. The Committee acknowledges that using significant funds of his own to pay his clients maybe a mitigating factor.

Dr. Glancy indicated that from 1990 on the Solicitor suffered from stress. He cut back on his holidays, although he would still go to their condominium in Florida at Christmas time.

By 1995, the Solicitor realized that there was no hope of salvaging his practice, but he found it difficult to seek assistance. In July of 1996, as a result of an NSF cheque having been written, the Law Society attended to do a spot audit. It was after this time that the Solicitor attended upon the Law Society to advise the Society of his situation. He realized that he could not save his clients and the investments. He then sought psychiatric consultation with Dr. Robert Hill, who did not give testimony before the Committee.

The Solicitor underwent psychological testing. As a result of the tests, Dr. Glancy concluded that, under stress, the Solicitor is susceptible to errors of judgement and may also experience concentration problems and indecisiveness. His lack of emotional awareness extends into the interpersonal sphere making it difficult for him to empathize with and appreciate other viewpoints.

The psychiatric assessment suggests that the Solicitor is not psychopathic or antisocial in his motivation. He is best understood as a person who does not recognize his own shortcomings, and has little insight or awareness into his own psychological makeup. Although he presents as brimming with self-confidence, he has, in fact, a fragile inner core of self-esteem.

When he found himself encountering financial problems, he was unable to acknowledge his shortcomings and, as a result, could not ask for help. The concept of letting others down and appearing less than perfect in their eyes was particularly difficult for him. He sought desperately to retain his sense of self-worth by attempting to fix the problem himself, which only caused him and his clients further problems. He did not feel able to seek help from a mentor and even excluded his wife from sharing his problems. Dr. Glancy indicated that the Solicitor's problems can be better understood as stemming from psychological difficulties rather than dishonesty.

Mr. Trudell, arguing on behalf of the Solicitor, indicated to the Committee as follows:

1. His client's membership in the Law Society should be terminated, but disbarment is inappropriate in the circumstances. He argues for permission to resign.
2. His client and his family have suffered greatly.
3. No one feels worse than the Solicitor himself.
4. The Solicitor's loss is enormous. He will carry it the rest of his life. He will lose that which is precious to him, namely, his right to practise law.
5. There is a narrow window between permission to resign and disbarment.
6. The Solicitor has tremendous support from his friends and family.

By way of extenuating circumstances, Mr. Trudell argued as follows:

1. His client did not set out to steal.
2. Not only did the clients lose money, but so did the Solicitor and his own family.
3. The Solicitor set out to make proper investments.
4. The Solicitor tried to protect the portfolio.
5. His motivation was not one of dishonesty.
6. He placed significant funds of his own into his trust account, particularly later on, to limit his clients' losses.
7. He had no dishonest intent.
8. He lost approximately \$750,000.00 of his own money and his family's money trying to keep his practice going. The Committee cannot ignore the fact that his depression started in 1990 and continued on a continuous basis until 1996.
9. He is not suffering from a mental disorder, but a psychiatric deficiency and, although he camouflaged it, he must have been under unbelievable pressure in order to keep his practice going.
10. He entered into an Agreed Statement of Facts. If he had not, the hearing could have lasted for months.
11. In no way does the Solicitor attempt to downplay the conduct set forth in the Agreed Statement of Facts, but after considering the above, the public and the Law Society may accept that termination by permission to resign is appropriate under the circumstances.

The Committee was impressed by the various letters of support that were filed on behalf of friends and family of the Solicitor. It appears that the Solicitor is a personable and giving person, who derives pleasure and pride from being kind to the people around him. The Committee was satisfied that it was likely never the Solicitor's intention to hurt any of his clients. We are satisfied that, in addition, on several occasions, he provided his time and legal services free of charge for clients in need, as well as other charitable causes, including providing free legal advice to his church, Girl Scouts, clients, and many family members and friends.

The Solicitor has been very fortunate that he has a very close-knit family with a loving wife and accomplished children. We are satisfied that some of his motivation was not greed but a vain attempt to protect his clients and family.

In addition, we reviewed a letter from his parish priest, who indicated that the Solicitor and his family were and are still respected members of their parish and the community.

In addition, at the hearing, the Solicitor insisted upon apologizing to his family, friends, and clients, whom he has harmed in this matter. The Committee is satisfied that he is truly remorseful and contrite.

However, the Committee also considered the seriousness of the misappropriations and other misconduct, and is satisfied that all the allegations in Complaint D379a/97 have been proven. The Solicitor, in fact, over a six or seven year period misused his trust account until exposure was imminent. Further, he admitted at paragraph 149 of the Agreed Statement of Facts that he gave false information to a client.

THE LAW

As previously stated, the governing principle, where a Solicitor is found to have misappropriated trust funds, is disbarment, unless there are strong extenuating circumstances indicating otherwise. It is the Committee's view that, although there are some extenuating circumstances such as entering into an Agreed Statement of Facts and using some of his own resources to reimburse his clients, they are not sufficient to retreat from the governing principle.

In the oft cited case of Bolton v. Law Society, [1993] 1. W.L.R. 512, at 518, it is stated:

"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case...

...The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending reinvestment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

On behalf of the Solicitor, it was argued that the Committee should follow the disposition of the Law Society in the case of Frank Radley Mott-Trille and grant the Solicitor permission to resign. In Mott-Trille, the allegations were misapplications and one misappropriation (\$45,000.00). In the Report and Decision of the Discipline Committee, the Chair, Gavin MacKenzie, stated at page 109 as follows:

"In such cases as *Milrod* (report adopted by Convocation on January 30, 1986) and *Cooper* (report adopted by Convocation on May 23, 1991) the benchers have emphasized that in cases involving misappropriation disbarment is not a penalty that should be reserved for practitioners who are wholly without redeeming qualities. Nor is the protection of the public the only purpose served by a disbarment order in such circumstances; of at least equal importance is the necessity of maintaining the reputation of the professional in the eyes of the public. Members of the public are entitled to reassurance that in discharging its privilege of self-government, the legal profession will unequivocally express the unacceptability of lawyers misusing clients' funds with the harshest penalty available, save when mitigating circumstances are such that well-informed members of the public would accept a departure from the general rule."

This Committee is of the view that, notwithstanding the mitigating circumstances herein, a well-informed public would not accept a departure from the general rule of disbarment in this matter. This Committee believes that to do otherwise than disbar the member would violate our duty to the public.

CONCLUSION

Based upon the Agreed Statement of Facts and considering the evidence totally, the Committee finds that the allegations in Complaint D379a/97 have been made out. This Committee accordingly recommends that the Solicitor be disbarred and struck off the Rolls.

Michael Gerrard DeCosimo was called to the Bar on March 26, 1971.

ALL OF WHICH is respectfully submitted

DATED this 18th day of December, 1998

Gerald A. Swaye, Q.C., Chair

Ms. Cameron asked that the following corrections be made to the Report:

- (1) - page 22, paragraph 73, the word "and" at the end of the 3rd line should be changed to the word "to" so that it would then read:

"...in the period January 15, 1991 to February 1, 1993..."

- (2) - page 62, paragraph 235, first line - the words "Wilsons and/or the" be deleted so that it would then read:

"...a trust liability to the Royal Bank..."

- (3) - page 62, paragraph 235 - that the words "being the difference between the \$300,000 deposited and the \$17,812.53 balance remaining" be deleted and the sentence end at "\$279,423.13".

- (4) - page 68, beginning of paragraph after the 1st number 6 should read "By way of" not "By was of"

It was moved by Mr. Crowe, seconded by Mr. Wilson that the Report be adopted as amended.

Carried

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

The Society's Counsel made submissions in support of the recommended penalty.

Mr. Trudell was instructed by the solicitor not to oppose the recommended penalty.

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

Carried

Re: William BROWN - Bowmanville

The Secretary placed the matter before Convocation.

Ms. Curtis and Messrs. Wilson, Carey, Wright and Chahbar withdrew for this matter.

Mr. Corbett appeared for the Society and Mr. Earl Levy appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 15th September, 1998, together with an Affidavit of Service sworn 24th September, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 18th September, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 6th October, 1998 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas J. P. Carey, Chair
Bradley H. Wright
Abdul A. Chahbar

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

Hugh Corbett
For the Society

WILLIAM BROWN
Of the City
of Bowmanville
a barrister and solicitor

Earl J. Levy, Q.C.
For the solicitor

Heard: June 3 and July 7, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 7, 1997 Complaint D303/97 was issued against William Brown alleging that he was guilty of professional misconduct.

The matter was heard in public on June 3 and July 7, 1998 before this Committee composed of Thomas J. P. Carey, Chair, Bradley H. Wright and Abdul A. Chahbar. The Solicitor attended the hearing and was represented by Earl J. Levy, Q.C. Hugh Corbett appeared on behalf of the Law Society.

DECISION

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

Complaint D303/97

2. a) He breached an Order of Convocation dated June 28, 1996, which suspended his rights and privileges as a member of the Law Society, including his right to practise law, by acting on behalf of clients throughout the period from June 28, 1996 to November 11, 1996.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D303/97 and is prepared to proceed with a hearing of this matter on a date to be set by the Hearings Management Tribunal.

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. ALLEGATION OF PROFESSIONAL MISCONDUCT

Particular 2a) He breached an Order of Convocation dated June 28, 1996, which suspended his rights and privileges as a member of the Law Society, including his right to practise law, by acting on behalf of clients throughout the period from June 28, 1996 to November 11, 1996.

IV. ADMISSIONS

3. The Solicitor has reviewed Complaint D303/97 and admits the particular contained therein. The Solicitor further admits that the said particular together with the facts as set out herein constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 21, 1969. He practises as a sole practitioner in Bowmanville, Ontario.

5. During the course of 1996, the Solicitor fell into arrears of his Errors and Omissions premiums.

6. By way of letter dated January 15, 1996 (letter found at page 4 of Tab 25, Document Book), LPIC advised the Solicitor that his proposal for a deferral plan in respect of his payment of his 1995 levies had been accepted by LPIC, on the condition that his 1996 levies be paid as they fall due.

7. By way of registered letter dated June 28, 1996 (Tab 1, Document Book), addressed to the Solicitor's last address according to the records of The Law Society, the Solicitor was advised that his rights and privileges as a member of the Society had been suspended by Convocation on June 28, 1996 for non-payment of his Errors and Omissions levy. The letter further advised that "*suspended members are required to pay a reinstatement fee of \$150.00 + \$10.50 G.S.T. = \$160.50 in addition to all other outstanding fees and levies in order to restore their membership to good standing*". Although a signed "acknowledgement of receipt" card in respect of the registered letter cannot be located, by way of letter dated June 6, 1997 (also at Tab 1, Document Book) Canada Post advised that its computerized letter tracking system indicates that the letter was delivered on July 4, 1996 "*based on a bar code scan taken at the time of delivery*".

8. On August 6, 1996, Glenn Stuart, discipline counsel for The Law Society, had a telephone conversation with the Solicitor in respect of a different discipline proceeding, being Complaint D147/96, which was then underway against the Solicitor and was heard shortly thereafter on August 14, 1996. During the course of his telephone conversation with the Solicitor, Mr. Stuart advised the Solicitor that he had been suspended effective June 28, 1996 for non-payment of his Errors and Omissions levy. In response, the Solicitor advised Mr. Stuart that he was already aware of the fact of his suspension and was trying to get sufficient funds together to pay the outstanding levy.

9. On or about September 11, 1996, the Solicitor made a payment of \$4,921.56 on account of his arrears of his Errors and Omissions levy. As it would turn out, on November 12, 1996 the Solicitor would be required to pay a further \$2,109.24 on account of his arrears together with the \$160.50 re-instatement fee in order to restore his membership to good standing (Tab 3, Document Book).

10. An audit of the Solicitor's practice was commenced on November 11, 1996. During the course of the audit, Janet Merkley, an Examiner with the Law Society's Audit and Investigation Department, obtained the following documentation which established that the Solicitor continued to practice law from June 28, 1996 to November 11, 1996 while suspended from the practice of law for non-payment of his Errors and Omissions levy:

(i) Jackson Real Estate Closing

11. The Solicitor acted for Calvin and Lynda Jackson with respect to a real estate transaction which was scheduled to close on July 15, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended:

- a. Solicitor's letter to National Trust Company dated July 8, 1996 advising that he acted for the vendors;
- b. Solicitor's letter to Walton & Kelly dated July 8, 1996;
- c. National Trust's letter to Solicitor dated July 8, 1996;
- d. Solicitor's account to client dated July 15, 1996;
- e. Solicitor's statement of adjustments;
- f. Solicitor's reporting letter to client dated August 26, 1996; and,
- g. Client ledger card showing monies received into and disbursed out of the trust account (Tab 4, Document Book).

(ii) Argue Real Estate Closing

12. The Solicitor acted for Allen Argue with respect to real estate transactions which were scheduled to close on August 1, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Solicitor's letter to TransCanada Credit dated July 30, 1996;
- b. Solicitor's letter to Bank of Montreal dated July 30, 1996;
- c. Solicitor's letter to Grant, Willcox Whetung dated July 31, 1996;
- d. Solicitor's account to client dated August 1, 1996;
- e. Solicitor's statement of adjustments;
- f. Solicitor's reporting letters to client dated October 7, 1996; and,
- g. Client ledger card showing monies received into and disbursed out of the trust account (Tab 5, Document Book).

(iii) Bate Real Estate Closing

13. The Solicitor acted for Jeffrey and Annette Bate with respect to a real estate transaction which was scheduled to close on August 1, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Charge/Mortgage of Land registered August 1, 1996 by Solicitor;
- b. Solicitor's account to client dated August 1, 1996;
- c. Solicitor's statement of adjustments;
- d. Solicitor's letter to Tax Department dated October 4, 1996;
- e. Solicitor's Final Report on Title to Firstline Trust Company dated October 4, 1996;
- f. Solicitor's reporting letter to client, Bate, dated October 4, 1996; and,

- g. Client ledger card showing monies received into and disbursed out of the trust account (Tab 6, Document Book)
- h. Solicitor's letter to Tax Department dated August 27, 1996;

(iv) Teasdale Real Estate Closing

14. The Solicitor acted for Corinne and Timothy Teasdale with respect to a real estate transaction which was scheduled to close on August 29, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Solicitor's letter to Tax Department dated August 27, 1996;
- b. Solicitor's letter to Building Department dated August 27, 1996;
- c. Solicitor's letter to Water Department dated August 27, 1996;
- d. Solicitor's letter to Clarington Hydro Electric Commission dated August 27, 1996;
- e. Direction to Solicitor dated August 28, 1996;
- f. Mortgage Advance Advice to Solicitor dated August 29, 1996;
- g. Solicitor's account to client dated August 29, 1996;
- h. Charge/Mortgage of Land registered by Solicitor on August 29, 1996;
- i. Statement of adjustments dated August 29, 1996;
- j. Solicitor's Final Report to CIBC dated October 7, 1996;
- k. Solicitor's reporting letter to clients dated October 8, 1996; and,
- l. Client ledger card showing monies received into and disbursed out of the trust account (Tab 7, Document Book).

(v) Robichaud/Finlay Real Estate Closing

15. The Solicitor acted for Paul Robichaud and Wendy Finlay with respect to a real estate transaction which was scheduled to close on August 30, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Solicitor's letter to Clarington Hydro Electric Commission dated August 27, 1996;
- b. Solicitor's letter to Building Department dated August 27, 1996;
- c. Solicitor's letter to Water Department dated August 27, 1996;
- d. Direction to Solicitor dated August 30, 1996;
- e. Charge/Mortgage of Land registered by Solicitor on August 30, 1996;
- f. Solicitor's account to clients dated August 30, 1996;
- g. Statement of adjustments dated August 30, 1996;
- h. Municipality of Clarington's letter to Solicitor dated September 25, 1996;
- i. Solicitor's Final Report to CIBC dated October 8, 1996;
- j. Solicitor's reporting letter to clients dated October 8, 1996; and,
- k. Client ledger card showing monies received into and disbursed out of the trust account (Tab 8, Document Book).

(vi) Harness Real Estate Closing

16. The Solicitor acted for Robert Harness with respect to a real estate transaction which was scheduled to close on September 27, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Solicitor's letter to Clarington Hydro Electric Commission dated September 23, 1996;
- b. Solicitor's letter to Building Department dated September 23, 1996;
- c. Solicitor's letter to Tax Department dated September 23, 1996;

- d. Statement of adjustments dated September 27, 1996;
- e. Charge/Mortgage of Land registered by Solicitor on September 27, 1996;
- f. Solicitor's account to client dated September 27, 1996;
- g. Solicitor's reporting letter to client dated October 25, 1996;
- h. Solicitor's Final Report to CIBC dated October 25, 1996;
- i. Client ledger card showing monies received into and disbursed out of the trust account; and,
- j. Transfer/Deed of Land showing Solicitor as the transferee's lawyer (Tab 9, Document Book).

(vii) Childs Real Estate Closing

17. The Solicitor acted for George and Linda Childs with respect to a real estate transaction which was scheduled to close on September 30, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Solicitor's letter to The Royal Bank of Canada dated September 23, 1996;
- b. Solicitor's letter to Strike, Salmers & Furlong dated September 24, 1996;
- c. Direction to Solicitor dated September 27, 1996;
- d. Direction from clients dated September 27, 1996 authorizing balance due on closing be payable to Solicitor;
- e. Solicitor's account dated September 30, 1996;
- f. Statement of adjustments dated September 30, 1996; and,
- g. Client ledger card showing monies received into and disbursed out of the trust account (Tab 10, Document Book).

(viii) Broome Real Estate Closing

18. The Solicitor acted for Dennis and Patricia Broome with respect to a real estate transaction which was scheduled to close on September 30, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Direction from clients dated September 28, 1996 authorizing proceeds of the mortgage be payable to the Solicitor;
- b. Charge/Mortgage of Land registered by Solicitor on September 30, 1996;
- c. Solicitor's account to client dated September 30, 1996;
- d. Solicitor's Final Report to CIBC dated October 11, 1996;
- e. Solicitor's reporting letter to clients dated October 11, 1996; and,
- f. Client ledger card showing monies received into and disbursed out of the trust account (Tab 11, Document Book).

(ix) Hockett Real Estate Closing

19. The Solicitor acted for William and Aileen Hockett with respect to a real estate transaction which was scheduled to close on October 10, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Solicitor's letter to CAW Legal Services Plan dated October 4, 1996;
- b. Direction to Solicitor dated October 8, 1996;
- c. Solicitor's reporting letter to clients dated October 10, 1996;
- d. Solicitor's account to clients dated October 10, 1996;
- e. Direction from clients authorizing balance due on closing be payable to Solicitor;
- f. Statement of adjustments dated October 10, 1996; and,

- g Client ledger card showing monies received into and disbursed out of the trust account (Tab 12, Document Book).

(x) Unsworth Real Estate Closing

20. The Solicitor acted for Terry and Linda Unsworth with respect to a real estate transaction which was scheduled to close on October 25, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Solicitor's letter to Shawn Campbell dated October 15, 1996;
- b. Solicitor's letter to Water Department dated October 23, 1996;
- c. Solicitor's letter to Tax Department dated October 23, 1996;
- d. Solicitor's letter to Building Department dated October 23, 1996;
- e. Solicitor's letter to Brampton Hydro Electric Commission dated October 23, 1996;
- f. Charge/Mortgage of Land registered by Solicitor on October 25, 1996;
- g. Statement of adjustments dated October 25, 1996;
- h. Solicitor's Report on Title to Royal Bank of Canada dated October 25, 1996;
- i. Solicitor's account to clients dated October 25, 1996;
- j. Solicitor's reporting letter to clients dated January 17, 1997;
- k. Client ledger card showing monies received into and disbursed out of the trust account; and,
- l. Transfer/Deed of Land showing Solicitor as transferee's solicitor (Tab 13, Document Book).

(xi) Wray Real Estate Closing

21. The Solicitor acted for Jeffrey and Teresa Wray with respect to a real estate transaction which was scheduled to close on November 1, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Solicitor's letter to James T. Wilbur dated October 29, 1996;
- b. Interim Report dated October 30, 1996 showing Solicitor acting for mortgagor;
- c. Charge/Mortgage of Land registered by Solicitor on November 1, 1996;
- d. Solicitor's reporting letter to clients dated November 25, 1996;
- e. Client ledger card showing monies received into and disbursed out of the trust account; and,
- f. Transfer/Deed of Land showing Solicitor as the transferee's solicitor (Tab 14, Document Book).

(xii) MacLean Real Estate Closing

22. The Solicitor acted for Walter and Lila MacLean with respect to a real estate transaction which was scheduled to close on October 4, 1996. The following documents evidence that the Solicitor practised in relation to this matter while he was suspended.

- a. Solicitor's letter to Water Department dated October 1, 1996;
- b. Solicitor's letter to Clarington Hydro Electric Commission dated October 1, 1996;
- c. Solicitor's letter to Building Department dated October 1, 1996;
- d. Direction re: Funds dated October 3, 1996;
- e. Statement of adjustments dated October 4, 1996;
- f. Solicitor's account to clients dated October 4, 1996;
- g. Solicitor's letter to Tax Department dated October 8, 1996;
- h. Solicitor's reporting letter to clients dated October 9, 1996; and,
- i. Client ledger card showing monies received into and disbursed out of the trust account (Tab 15, Document Book).

23. The Solicitor did not advise any of the aforementioned clients that he was not entitled to practise law during the period from June 28, 1996 to November 11, 1996, inclusive.

24. The Law Society Examiner also obtained the following additional material which further establishes that the Solicitor continued to practise law while he was suspended.

- a. Trust deposit slips from July to November 1996 showing monies being deposited into the Solicitor's trust account (Tab 16, Document Book);
- b. General deposit slips from July to November 1996 showing monies being deposited into the Solicitor's general account (Tab 17, Document Book);
- c. Trust bank statements and cancelled cheques from National Trust for the months of July to September 1996 (Tab 18, Document Book);
- d. Trust bank statements and cancelled cheques from CIBC for the months of July to September 1996 (Tab 19, Document Book);
- e. General bank statements and cancelled cheques from CIBC for the months of June to November 1996 (Tab 20, Document Book).

25. During the course of his November 11, 1996 meeting with Ms. Merkley, the Solicitor admitted to her that he had practised while under suspension.

26. On November 12, 1996, the Solicitor was reinstated after he satisfied the remaining arrears of his Errors and Omission levy in the amount of \$2,109.24 and paid his re-instatement fee in the amount of \$160.50 (Tab 3, Document Book).

V. PRIOR DISCIPLINE

27. On August 14, 1996, the Solicitor was found guilty of professional misconduct in Complaint D147/96 for failing to serve his client and failing to reply to the Law Society regarding two complaints. The Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$500.00.

28. The Solicitor has been administratively suspended for non-payment of his LPIC premiums on three occasions since November 1990.

DATED at Toronto, this 3rd day of June, 1998."

RECOMMENDATION AS TO PENALTY

The Committee recommends that William Brown be suspended for a period of six weeks and that he pay Law Society costs in the amount of \$2,500. Submissions may be made before Convocation as to the timing of the suspension and the payment of costs.

REASONS FOR RECOMMENDATION

In the view of the Committee, there are a number of mitigating factors in this case that require us to move downward from the general rule as set out in MacGregor and Laan for cases of practising while under suspension. In the Spring of 1995, the Solicitor got involved in what turned out to be a disastrous second marriage. He had ended his longstanding first marriage of almost 28 years for his second wife, and it appeared that this second marriage was built on infatuation and perhaps obsession on his part. In the words of his family lawyer, Mr. Cooper, who gave evidence:

"It seemed to me that he was so concerned and so upset about this relationship that he was really having difficulty focusing on anything else, including anything that I recommended he ought to do.....It seemed apparent to me that his life and his world revolved around (her) needs, wants, demands, requirements; it appeared to me, to his great detriment, both financially and emotionally and indeed, physically." (page 12 of the transcript)

Mr. Cooper had also observed the Solicitor physically deteriorate over the duration of his second marriage. On one occasion, Mr. Cooper noticed that the Solicitor could not hold a cup of coffee without using two hands, he was shaking so badly. There was corroborating evidence from Ms. Beitle, a secretary in the Solicitor's office, as well as the Solicitor's own evidence.

It appears that the Solicitor deluded himself to some degree about the marriage. He set his wife up in a lingerie business to which she devoted little time but from which she drew \$850 a week. He underwrote that venture to his financial detriment. After the lingerie business went bankrupt, he set her up in his office as a secretary. In addition to draining money from his practice, he apparently drained his other assets by placing third and fourth mortgages on the family home which is under power of sale.

It is also important to note that, while this suspension arose as a result of an LPIC premium nonpayment, approximately five-sevenths of the premium (almost \$5,000) was paid on September 11th, 1996, and a further \$2,000, by his evidence, was paid on November 12th. There seems to have been some innocent confusion in that period as to how much was owing to put the Solicitor in good standing. As it would turn out, on November 12, 1996, the Solicitor was required to pay a further \$2,194 on the account of arrears, together with the \$160.50 reinstatement fee, in order to restore his membership to good standing.

We also note that the Solicitor had a real estate practice and that, during the time of his practising under suspension, it appears that much of the work was in the nature of proforma letters or the type of work that would regularly be handled by the secretarial staff under supervision of the Solicitor.

The Solicitor spent much time away from his practice trying to cater to the needs of his wife. Every morning, he took her children to school first, allowing her to sleep in. He then chauffeured her from their residence to downtown Toronto while she was running the lingerie store, and then drove back to Bowmanville to his practice. He reversed this route in the afternoon. This daily routine could not help but put a strain on his ability to concentrate on his practice, and on his general ability to think clearly about the issues that he had to deal with.

As counsel for the Law Society pointed out, the Solicitor made choices. From the reasonable perspective of the Law Society, they were often the wrong choices. However, it is clear that the Solicitor's second marriage was disastrous for him. The family pressures on him exacted a heavy toll on his mental, financial, and physical health. Received in evidence is a letter from Dr. Patricia McEwan indicating the Solicitor may require bypass surgery in October, 1998.

In our view, all these factors, especially the fact that a significant payment was made to LPIC on September 11, 1996, mitigate the usual rule. While we do not ignore the serious issue of solicitors practising under suspension, we approve of the dicta in the Fejes decision that there should not be slavish adherence to a penalty based on a mathematical formula. A member of the Society should not benefit from practising while under suspension or from blatantly ignoring the rules of Society. However, in our view, the Solicitor did not thumb his nose at the Society, and the circumstances in this case are such that a penalty crafted to fit them is appropriate.

William Brown was called to the Bar on March 21, 1969.

ALL OF WHICH is respectfully submitted

DATED this 15th day of September, 1998

Thomas J.P. Carey, Chair

There were no submissions.

It was moved by Mr. Crowe, seconded by Mr. Topp that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 6 weeks and pay the Society's costs in the amount of \$2,500.

Counsel for the Society having filed a Notice of Disagreement made submissions seeking an increased penalty.

There were questions by the Bench.

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

There were discussions on whether to hear submissions from the solicitor's counsel.

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

Mr. Levy made submissions in support of the recommended penalty that there had been no error in principle.

Mr. Corbett made submissions in reply that the suspension should be for a period of 14 to 15 weeks and the issue of costs be left up to Convocation.

Mr. Levy requested the suspension commence at the end of June.

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

It was moved by Mr. Arnup, seconded by Mr. Topp that the recommended penalty be adopted and the solicitor be suspended for a period of 6 weeks commencing July 9th.

Carried

It was moved by Mr. Topp, seconded by Ms. Stomp that there be no costs.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that there was no error in principle and that the solicitor be suspended for a period of 6 weeks commencing July 9th and that there be no costs.

Convocation took a brief recess at 11:25 a.m.

The Treasurer withdrew from Convocation and Mr. Krishna took the Chair as Acting Treasurer.

Re: Thom Warren ARTHUR - Ridgeway

The Secretary placed the matter before Convocation.

Ms. Curtis, Ms. Angeles and Messrs. Topp and Scott withdrew for this matter.

Ms. Seymour appeared on behalf of the Society and Mr. Neil Campbell appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 2nd September, 1998, together with an Affidavit of Service sworn 15th September, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 11th September, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th March, 1999 (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

David W. Scott, Q.C., Chair
William D. T. Carter
Nora Angeles

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

Kathryn Seymour
For the Society

THOM WARREN ARTHUR
of the Town
of Ridgeway
a barrister and solicitor

Not Represented
For the solicitor

Heard: February 3, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 11, 1997 Complaint D292/97 was issued, and on November 7, 1997 Complaint D348/97 was issued against Thom Warren Arthur, alleging that he was guilty of professional misconduct.

The matter was heard in public on February 3, 1998 before this Committee composed of David W. Scott, Q.C., William D.T. Carter and Nora Angeles. The Solicitor did not attend the hearing, nor was he represented. Kathryn Seymour appeared on behalf of the Law Society.

DECISION

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

Complaint D292/97

2. a) He failed to provide a reply to the Law Society regarding deficiencies in his annual filing for the fiscal year ended June 30, 1995 despite letters dated July 19, 1996, August 20, 1996, October 21, 1996, January 22, 1997 and telephone requests on August 29, 1996, November 20, 1996, January 30, 1997, February 11, 1997, February 12, 1997 and June 3, 1997; and
- b) He failed to file with the Society within six months of the termination of his fiscal years ended June 30, 1996 and June 30, 1997, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Complaint D348/97

2. a) He failed to report to his client, Cataract Savings & Credit Union Limited, regarding certain mortgage transactions, despite several requests to do so;
- b) He failed to provide a reply to the Law Society regarding a complaint made by fellow solicitor, J.R. Boyce, on behalf of Cataract Savings & Credit Union Limited, despite letters dated June 26, 1997 and August 12, 1997 and telephone requests made on July 24, 1997 and July 25, 1997.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D292/97 and D348/97 and is prepared to proceed with a hearing of these matters on February 3 and 4, 1998.

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, R.S.O. 1990 c. S.22.

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D292/97 and D348/97 and admits the particulars. The Solicitor also admits that the particulars, together with the facts as set out below, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in March, 1977. He is a sole practitioner practising in Ridgeway, Ontario.

Complaint D292/97

Particular 2a) He failed to provide a reply to the Law Society regarding deficiencies in his annual filing for the fiscal year ended June 30, 1995 despite letters dated July 19, 1996, August 20, 1996, October 21, 1996, January 22, 1997 and telephone requests on August 29, 1996, November 20, 1996, January 30, 1997, February 11, 1997, February 12, 1997 and June 3, 1997; and

b) He failed to file with the Society within six months of the termination of his fiscal years ended June 30, 1996, and June 30, 1997, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

5. On or about June 18, 1996, the Law Society received a filing for the period ending June 30, 1995, which filing included the documents reproduced at Tab 1 of the Document Book.

6. On or about July 4, 1996, the Law Society received a letter from the Solicitor's accountant, Darren Chapelle, of the firm of Steinbachs & Chapelle, dated June 19, 1996, which indicated that, in preparing the Solicitor's T-1 tax return for December 31, 1995, the accountant became aware of certain transactions which were not in accordance with regulations of the *Law Society Act*, as follows:

"Fees were transferred to a trust account bearing the name 'agency'. This account was used by the member to pay office bills, make client disbursements, and make payments to third parties on account of the member.

Cheques from this trust account bearing the name 'agency' were also made out to "cash". (Tab 2)

7. On or about June 26, 1996, the Solicitor wrote to the Law Society with respect to the discrepancies in the use of his trust account as reported by his accountant. In his letter, the Solicitor explained that *"the reason my trust account was used in such a fashion was due to Revenue Canada having placed a garnishee on my general account, therefore, making it impossible to transfer funds from my trust account to my general account, making it difficult to continue the daily operation of my business. This first occurred on or about September 26, 1994 and ceased November 30, 1995."* (Tab 2)

8. On or about July 19, 1996, the Law Society wrote to the Solicitor outlining various deficiencies with respect to the Solicitor's filing for the period ended June 30, 1995. The Law Society's letter advised the Solicitor that his Form 3, Report of Public Accountant, disclosed overdrawn trust ledger accounts which were permitted to exist uncorrected over a period in excess of one month, and noted that several overdrawn accounts had not been corrected. The Law Society further noted that the record required by subsection 1(j) of Section 15 of the Regulation was not maintained by the Solicitor, and requested that the Solicitor institute such a record forthwith. The Law Society requested that the Solicitor confirm to it within one month from the date of its letter (July 19, 1996), that the Solicitor had taken the necessary action to ensure that any overdrawn accounts were corrected and to ensure that, in future, overdrawn accounts would be corrected no later than the month following their occurrence (Tab 3).

9. On or about August 20, 1996, the Law Society wrote a follow-up letter to the Solicitor requesting a response to the Law Society's letter of July 19, 1996, referred to in paragraph 8 (Tab 4).
10. On or about August 29, 1996, the Solicitor telephoned the Law Society and indicated that he would speak to his bookkeeper after Labour Day weekend and would provide a response to the Law Society by the end of September, 1996.
11. On or about October 21, 1996, the Law Society again wrote to the Solicitor requesting a response to its letters of July 19, 1996 and August 20, 1996, and reminding the Solicitor of his obligations to respond promptly to communications from the Law Society pursuant to Rule 13, Commentary 3 of the Rules of Professional Conduct (Tab 5).
12. On or about November 20, 1996, a Law Society staff member telephoned the Solicitor and left a message on his voice mail with respect to the Law Society's letter of October 21, 1996, and requesting a response from the Solicitor (Tab 6).
13. On or about January 22, 1997, the Law Society directed a letter to the Solicitor by registered mail indicating that the Law Society had written to the Solicitor on several occasions in connection with his annual filing and had not received a satisfactory response from the Solicitor. Copies of the Law Society's earlier correspondence were attached to the registered letter. The Solicitor was advised that if he failed to respond within seven days of the date of the registered letter (January 22, 1997), the matter would be referred to the Discipline Committee for authorization of a formal Complaint (Tab 7).
14. On or about January 30, 1997, the Solicitor telephoned Tina Perryman, a Reviewer/Examiner in the Law Society's Forms Services Department, and indicated that he wanted to wind down his practice and had spoken with someone at the Law Society a few weeks earlier regarding the procedures for winding down a practice. The Solicitor further indicated that he was having difficulties with his bookkeeper and with his accountant. Ms. Perryman indicated that she would speak with her manager and would get back to the Solicitor (Tab 8).
15. On or about February 11, 1997, the Solicitor again telephoned the Law Society and spoke with Ms. Perryman indicating that he wanted to meet with someone at the Law Society to deal with his affairs. Ms. Perryman advised the Solicitor that she would have to get back to him. That same day, Ms. Perryman telephoned the Solicitor and explained what it was that the Law Society required from him, such as: deposit slips to verify that overdrawn trust accounts had been corrected. The Solicitor indicated that his accountant, Mr. Campbell, had been in possession of his trust account since December, 1996. The Solicitor indicated that he realized that the Law Society required his Form 2 for 1996, and that the Solicitor would be meeting with his accountant the following Monday (February 17, 1997) to discuss matters and to arrive at some form of agreement (Tab 9).
16. On or about February 12, 1997, the Solicitor telephoned Ms. Perryman and indicated that he had met with his accountant and would be "clearing everything up" (Tab 10).
17. On or about June 3, 1997, Ms. Perryman contacted the Solicitor and advised him that, to date, the Law Society had not received a response from him with respect to his filings for the fiscal period ended June 30, 1995. The Solicitor indicated that he had spoken with his accountant and would be forwarding information to the Law Society. Ms. Perryman advised the Solicitor that if she was not in receipt of the required information forthwith, the matter would be referred to Discipline as it had been outstanding for a long time. The Solicitor indicated that he would get back to Ms. Perryman that afternoon (Tab 11).
18. On or about the same day (June 3, 1997), Ms. Perryman received a telephone call from Mr. Erik Steinbeck, the accountant for the Solicitor, who indicated that he had spoken with the Solicitor and that they would be meeting the following morning to review the Solicitor's material and to complete the Solicitor's response to the Law Society. The accountant indicated that he would call Ms. Perryman the following day (Tab 14).

19. On or about June 17, 1997, Nadine Freed, Senior Secretary with Form Services in the Law Society's Audit & Investigation Department, spoke with the Solicitor's secretary, Diane, who advised that the Solicitor believed that his accountant had already sent the relevant material to the Law Society. Ms. Freed advised the Solicitor's secretary that, if the Law Society was not in receipt of his filings by June 24, 1997, the matter would be referred to the Discipline Committee (Tab 14).

20. On that same day, June 17, 1997, Ms. Freed spoke directly with the Solicitor and advised him that, if his filings were not received by June 24, 1997, the matter would be referred to the Discipline Committee (Tab 14).

21. To date, no filings have been made by the Solicitor.

22. The Solicitor has now also failed to file for his fiscal year end June 30, 1997.

23. The Solicitor's explanation of the circumstances giving rise to the complaint are contained in his letter of December 11, 1997 at Tab 15.

Complaint D348/97

Particular 2a) He failed to report to his client, Cataract Savings & Credit Union Limited, regarding certain mortgage transactions, despite several requests to do so;

b) He failed to provide a reply to the Law Society regarding a complaint made by fellow solicitor, J.R. Boyce, on behalf of Cataract Savings & Credit Union Limited, despite letters dated June 26, 1997 and August 12, 1997 and telephone requests made on July 24, 1997 and July 25, 1997.

24. On or about February 3, 1997, the Solicitor received a letter from his client, Cataract Savings & Credit Union Limited ("Cataract"), dated January 24, 1997, with respect to three mortgage loan transactions ("Bougie mortgages") that the Solicitor had handled on behalf of Cataract. Cataract's letter of January 24, 1997 was a request for certain documentation relating to three mortgage transactions, which transactions had been completed and registered on or about January 31st, June 20th, and June 28, 1996, respectively. Cataract's letter requested a response from the Solicitor by February 15, 1997, failing which, Cataract indicated that it would turn its files over to its solicitor, Randy Boyce of Martin Sheppard Fraser, for completion at Cataract's cost (Document Book, Tab 2).

25. By cheque dated June 28, 1996, the Solicitor had received payment from Cataract in the amount of \$49,717.12 with respect to the Solicitor's work on the Bougie mortgages (Tab 1).

26. By letter dated February 26, 1997, Randy Boyce of the law firm of Martin Sheppard Fraser wrote to the Solicitor requesting a response to Cataract's letter of January 24, 1997. Mr. Boyce indicated in his letter of February 26, 1997 that he hoped to avoid the necessity of having to complain to the Law Society, and requested the documentation within the following week (Tab 3).

27. By letter dated March 24, 1997, Mr. Boyce again wrote to the Solicitor requesting a response to Cataract's request for reporting documentation by no later than Thursday, March 27, 1997 (Tab 4).

28. Having received no response from the Solicitor, Mr. Boyce, on behalf of Cataract, wrote a complaint letter, dated June 11, 1997, to the Law Society with respect to the Solicitor's failure to report to Cataract regarding the Bougie mortgages. In his letter, Mr. Boyce indicated that the Solicitor had telephoned him on March 6, 1997, to advise that the Solicitor had just moved to new offices and was still in the process of locating and organizing files, but that the Solicitor expected to attend to Cataract's concerns by Monday, March 10, 1997. Finally, Mr. Boyce wrote that:

25th March, 1999

"We think we have already extended more consideration to Mr. Arthur than is appropriate and it would be unwise to delay further. There is no reason at this time for us to think that the problem is anything but lack of attention; however, we request that you make the appropriate enquiries and keep us advised." (Tab 5)

29. By letter dated June 26, 1997, the Law Society wrote to Mr. Boyce indicating that it had received his letter of complaint dated June 11, 1997, and was undertaking the requisite follow up (Tab 6).

30. On or about the same date, June 26, 1997, the Law Society wrote to the Solicitor enclosing a copy of the complaint letter and requesting the Solicitor's comments with respect thereto (Tab 7).

31. On or about Thursday, July 24, 1997, Jennifer Fairclough, a secretary in the Complaints Department of the Law Society, telephoned the Solicitor to follow up with respect to the Law Society's letter of June 26, 1997. Ms. Fairclough left a message requesting the Solicitor to return her call (Tab 8).

32. On or about the following day, Friday, July 25, 1997, the Solicitor returned the call to Ms. Fairclough and indicated that he was on his way to the Welland Registry to conduct some title searches and would be back in the office that afternoon at which time he would call Ms. Fairclough again (Tab 8).

33. Later that afternoon, the Solicitor called Ms. Fairclough and left a message on her voice mail indicating that he would call her again on Monday, July 28, 1997.

34. On or about Friday, July 25, 1997, Sylvia McAuley, a Complaints Officer with the Law Society, spoke with the Solicitor who explained that he had advised the complainant prior to the complainant's letter to the Law Society that the Solicitor had misplaced the Bougie mortgages file at his former offices. The Solicitor further indicated to Ms. McAuley that he was attempting to locate the file and was spending weekends searching for the file. Ms. McAuley advised the Solicitor to fax her a response on Tuesday, August 5, 1997, indicating whether or not the Solicitor had lost the file and detailing the Solicitor's efforts to locate the documents (Tab 8).

35. By letter dated August 12, 1997, the Law Society wrote to the Solicitor reminding him that it was still waiting for a response from him with respect to the Cataract complaint. The Law Society indicated that if it had not received a response from the Solicitor within the following week, the matter would be referred to the Discipline Committee. This letter was sent to the Solicitor by registered mail and was acknowledged as received by the Solicitor on August 25, 1997 (Tab 9).

36. Since the issuing of Complaint D348/97 on or about November 7, 1997, the Solicitor has made efforts to address his outstanding reporting requirements to Cataract (Tab 11). However, to date, certain matters remain outstanding.

V. PRIOR DISCIPLINE

37. On January 27, 1989, the Solicitor was found guilty of professional misconduct for failing to maintain his books and records on a current basis as required and for failing to file his Forms within six months of the termination of his fiscal years ending June 30, 1986 and June 30, 1987.

DATED at Toronto, this 2nd day of February, 1998."

Finding of the Committee on the Allegations of Professional Misconduct

In the present case there are two complaints involving the Solicitor. The first relates to allegations of failure to reply to enquiries from the Law Society relating to deficiencies in the Solicitor's annual filings for the fiscal year ended June 30, 1995, together with failure to file the requisite Certificate in the form prescribed by the Rules, together with a report from the Public Accountant in respect of the fiscal years ended June 30, 1996 and June 30, 1997, all contrary to s.16(2) of Regulation 708 of the *Law Society Act*.

The second complaint, D348/97, alleges a failure to report to his client, Cataract Savings & Credit Union Limited, with regard to certain mortgage transactions and the failure to provide a reply to the Law Society with respect to complaints arising out of this incident.

We were provided with an Agreed Statement of Facts and a representation from the Law Society that while the Agreed Statement of Facts has not been executed by the Solicitor, he had expressed his agreement to it and had agreed to the proposed penalty which is set out hereunder. The Solicitor did not attend the hearing in spite of having been served. We were provided with two books of documentary exhibits and we are satisfied, based upon the documentary evidence contained in these records, that the allegations of professional misconduct are made out. There will be a finding of professional misconduct against the Solicitor, Thom Warren Arthur, accordingly.

RECOMMENDATION AS TO PENALTY

Counsel for the Law Society communicated to the panel that the Solicitor was in agreement with the proposed penalty, specifically that in respect of the findings of professional misconduct on all counts, there should be a recommendation that the Solicitor be reprimanded in Convocation provided that all filings have been made and the requisite reporting to the client, Cataract Savings & Credit Union Limited, has been completed by the date upon which he appears in Convocation. In the event of the failure of either or both of these conditions, the Solicitor is to be suspended for a period of one month, definite, and indefinitely thereafter from month to month to commence at the end of the administrative suspension which is presently in effect until compliance has occurred. We accept the joint submission with respect to penalty and recommend it accordingly. Our reasons are as follows.

REASONS FOR RECOMMENDATION

As the basis for the penalty proposed, counsel for the Law Society supports the position outlined by the Solicitor in his letter dated December 11, 1997 (Tab 15 of Exhibit 2A). The Solicitor and his wife have apparently gone through a period of depression. The Solicitor's law practice suffered a significant reversal with the termination of his refugee practice and he then had staff difficulties in his office culminating in his personal bankruptcy in December 1997. He was hospitalized and generally had a very difficult time in his personal and professional life, at least through the years 1996 and 1997. A consideration of the particulars of the complaints demonstrates that it was in this period that he failed to respond to the enquiries of the Law Society, that he failed to meet the requirements of his annual filings, and that he failed in his responsibility to his client, the Cataract Savings & Credit Union Limited. In short, his situation deteriorated and he was unable to cope with it. In these circumstances, the penalty should be curative as much as punitive. A reprimand in Convocation seems entirely suitable in order to bring home to him his responsibilities to both his governing body and his clients. Accordingly, the panel recommends that the Solicitor, Thom Warren Arthur, be reprimanded in Convocation subject to compliance with the conditions outlined herein, failing which, upon the termination of his administrative suspension, he should be suspended for one month and from month to month thereafter until the conditions have been met.

25th March, 1999

All of which is respectfully submitted and recommended

Dated this 2nd day of September, 1998

David W. Scott, Q.C.
Chair

Ms. Seymour advised that the following sentence was incorrect:

- (1) - page 11, 3rd paragraph under the heading Finding of the Committee on the Allegations of Professional Misconduct - "We were provided with an Agreed Statement of Facts and a representation from the Law Society that while the Agreed Statement of Facts has not been executed by the Solicitor, he had expressed his agreement to it and had agreed to the proposed penalty which is set out hereunder."

Ms. Seymour stated that there was an executed Agreed Statement of Facts which was filed as Exhibit 3 before the Discipline hearing. Copies of the executed Agreed Statement of Facts were distributed to the Bench.

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation subject to compliance with the conditions outlined in the Report failing which, upon the termination of his administrative suspension, that he be suspended for 1 month and from month to month thereafter until the conditions have been met.

Both Counsel requested that Convocation go in camera to receive a medical report.

The public withdrew.

Copies of the medical report were distributed to Convocation in camera.

Both Counsel made submissions as to the solicitor's past difficulties and medical history.

The public was recalled and Convocation returned to open session.

Both Counsel made joint submissions in support of the 1 month suspension to commence at the end of his administrative suspension and to continue until his books and records are completed and that the solicitor not practice as a sole practitioner and that he provide a psychiatric report upon his return to practice stating that he is fit to practise law.

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

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the solicitor be suspended for 1 month definite to run concurrently with his administrative suspension and that such suspension continue until the solicitor's books and records are completed and further that a psychiatric report that he is fit to practice law is filed.

Carried

25th March, 1999

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for 1 month definite to run concurrently with his administrative suspension, such suspension continue until the solicitor's books and records are completed and further that a psychiatric report that the solicitor is fit to practice law is filed.

An additional correction to the report was made on page 12 under the heading of Reasons for Recommendation by amending the bankruptcy date from "December 1997" to "December 1996".

Re: Richard Alan DAWE - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Chahbar withdrew for this matter.

Ms. Cameron appeared on behalf of the Society. The solicitor was present and assisted by Mr. Anand, Duty Counsel.

Ms. Cameron on consent requested that the Complaint be withdrawn on the basis that there was no jurisdiction to pursue the Complaint the way it was framed which required the Discipline Committee and Convocation to enquire into whether the solicitor had committed an offence under the Criminal Code.

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

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that the Report not be adopted and that the Complaint be dismissed for want of jurisdiction.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the Report not be adopted and that the Complaint be dismissed for want of jurisdiction.

Re: Larry George FROLICK - Toronto

The Secretary placed the matter before Convocation.

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

Ms. Janet Brooks appeared for the Society and Mr. Anand, Duty Counsel appeared for the solicitor who was present.

The Report of the Discipline Committee dated December 18th, 1998 together with the Affidavit of Service was filed as Exhibit 1. The Acknowledgement, Declaration and Consent was filed as Exhibit 2.

There were no submissions.

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be given permission to resign if he complied with the conditions set out in the Report regarding client files, failing which the solicitor be disbarred.

25th March, 1999

Ms. Brooks advised that some of the conditions had not been met.

A joint submission by counsel was made that if the solicitor met the conditions by April 28th, 1999 to the satisfaction of the Secretary that the solicitor be granted permission to resign, failing which he be disbarred.

It was moved by Mr. Swaye, seconded by Mr. Copeland that the matter be put over to the Discipline Convocation in April.

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

The Swaye/Copeland motion to adjourn was voted on and carried.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the matter be adjourned to April 28th.

The solicitor agreed to waive the quorum requirement.

Re: David Mark MARCOVITCH - Toronto

Ms. Catherine Braid appeared for the Society and Mr. Anand appeared for the solicitor who was not present.

Ms. Braid advised that the solicitor had not completed his filings and requested that the previous Order of Convocation stand.

Mr. Anand, on the solicitor's behalf sought a 3 week extension or in the alternative permit the solicitor to continue to work on 5 outstanding client files.

Ms. Braid opposed the request.

Counsel, the reporter and the public withdrew.

It was moved by Ms. Ross, seconded by Mr. Swaye that the request be denied.

Carried

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

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

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

Acting Treasurer (Vern Krishna), Angeles, Arnup, Carey, Chahbar, Copeland, Crowe, Curtis, MacKenzie, Puccini, Ross, Scott, Stomp, Swaye and Wright.

.....

25th March, 1999

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IN PUBLIC

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Re: Bernard Hampton HAWKINS - St. Catherines

The Secretary placed the matter before Convocation.

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

Convocation had before it the Report of the Discipline Committee dated 3rd February, 1999, together with an Affidavit of Service sworn 5th March, 1999 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 19th February, 1999 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th March, 1999 (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

Gary L. Gottlieb, Q.C., Chair
Gordon Z. Bobesich
Thomas E. Cole

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

Kathryn Seymour
For the Society

BERNARD HAMPTON HAWKINS
of the City
of St. Catharines
a barrister and solicitor

Not Represented
For the solicitor

Heard: January 12, 1999

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 5, 1998 Complaint D138/98 was issued against Bernard Hampton Hawkins alleging that he was guilty of professional misconduct.

The matter was heard in public on January 12, 1999 before this Committee composed of Gary L. Gottlieb, Q.C., Chair, Gordon Z. Bobesich and Thomas E. Cole. The Solicitor attended the hearing and represented himself. Kathryn Seymour appeared on behalf of the Law Society.

DECISION

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

Complaint D138/98

2. a) The Solicitor breached an Order of Convocation dated April 25, 1997, suspending the Solicitor for non-payment of his Annual Fee, by continuing to practise law throughout the period from May 1, 1997 to August 1, 1997;
- b) The Solicitor breached an Order of Convocation dated September 26, 1997, suspending the Solicitor for non-payment of his Errors and Omissions Insurance Levy, by continuing to practise law throughout the period from October 1, 1997 to November 3, 1997; and
- c) The Solicitor breached ss. 8(c) of Section 14 of Regulation 708 under the *Law Society Act* by transferring funds from his trust account to his general account on account of fees for which billing or other written notification had not first been delivered to clients.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

The Solicitor admits service of Complaint D138/98 and is prepared to proceed with a hearing of this matter on January 12 and 13, 1999.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

The Solicitor has reviewed Complaint D138/98 and admits the particulars contained therein. The Solicitor also admits that the particulars, together with the facts set out below constitute professional misconduct.

IV. FACTS

The Solicitor was called to the Bar on April 14, 1978. The Solicitor practises primarily in the area of criminal law and at all material times the majority of his files were Ontario Legal Aid Plan accounts.

Particular 2 (a) The Solicitor breached an Order of Convocation dated April 25, 1997, suspending the Solicitor for non payment of his Annual Fee, by practising law throughout the period from May 1, 1997 to August 1, 1997.

25th March, 1999

By Notice of Annual Membership Fee Form sent December 9, 1996, the Solicitor was advised that the payment for his Annual Membership Fee for the 1997 year was due on January 1, 1997. Attached was a memorandum advising that, amongst other things, Members who had failed to fulfil their payment option by May 1, 1997 would be suspended by the Law Society pursuant to Section 36 of the *Law Society Act* (Document Book, Tab 1).

By Final Notice of Membership Fee Form sent April 10, 1997, the Solicitor as advised that the payment for his Annual Membership Fee for the 1997 year had been due on January 1, 1997. Attached was a memorandum advising that, amongst other things, Members who had failed to fulfill their payment option by May 1, 1997 would be suspended by the Law Society pursuant to Section 36 of the *Law Society Act* (Tab 2).

By registered letter dated May 2, 1997, the Law Society advised the Solicitor that his rights and privileges as a Member were suspended on May 1, 1997 as ordered by Convocation on April 25, 1997, as a result of his failure to pay the 1997 Annual Membership Fee. The Law Society enclosed a memorandum which set out the restrictions and obligations imposed on suspended members. The Solicitor was advised that failure to comply with these restrictions and obligations may result in disciplinary proceedings being instituted against him. This letter also advised that he would be required to pay all outstanding fees and levies, in addition to a reinstatement fee, in order to lift his suspension. A Canada Post Acknowledgement of Receipt card indicates that the letter was signed for and delivered May 9, 1997 (Tab 3).

On May 28, 1997, the Solicitor attended at the Law Society to discuss the payment of his Annual Membership Fee for 1997. The Solicitor advised that he believed that the Ontario Legal Aid Plan ("OLAP") would be putting him in funds with respect to his Legal Aid files within a week or two. (Tab 4).

On August 06, 1997, the Solicitor forwarded to the Law Society Accounts Department a cheque in the total amount of \$1,797.07, representing his 1997 Annual Membership Fee of \$1636.57 and the reinstatement fee of \$160.50 (Tab 5).

By letter dated September 18, 1997, George Avila ("Avila"), a Senior Records Co-ordinator with the Law Society, advised the Solicitor that his suspension had been terminated on August 1, 1997 as a result of his payment of the 1997 Membership Fee together with the reinstatement fee (Tab 6).

An audit of the Solicitor's books and records was subsequently instructed under sections 9 and 18 or Regulation 708 to determine whether or not the Solicitor had practised law while under suspension from May 1, 1997 to August 1, 1997 and from October 1, 1997 to November 3, 1997. The following represents the Society's findings with respect to the period from May 1, 1997 to August 1, 1997.

EVIDENCE THAT THE MEMBER PRACTISED LAW FROM MAY 1, 1997 TO AUGUST 1, 1997		
CLIENT	DATE	PARTICULARS
B. D. Price Threatening, Assault Tab 7	May 13, 1997	<ul style="list-style-type: none"> ·Solicitor met with Price with respect to charges pursuant to OLAP account. ·Solicitor attended at Youth Court in Niagara Falls with respect to adjournment as per OLAP account.
	June 24, 1997 July 22, 1997	<ul style="list-style-type: none"> ·Solicitor met with Price and his parents concerning charges as per OLAP account. ·Solicitor attended at Youth Court to set a date for guilty plea, reviewed Crown disclosure, met with Crown Attorney, Price and his parents concerning the charges as per OLAP account.
J. S. Mundinatz Impaired driving Tab 8	May 2, 1997 May 29, 1997 May 30, 1997 June 9, 1997	<ul style="list-style-type: none"> ·Solicitor signed an OLAP Certificate for Legal Aid - "Acknowledgement and Undertaking", acknowledging he had been retained by Mundinatz to provide his services. ·Solicitor reviewed the Crown's application to adjourn the trial due to police unavailability as per OLAP account. ·Solicitor met with Mundinatz and the Crown Attorney with respect to application for adjournment as per OLAP account. ·Solicitor appeared with Mundinatz in Provincial Court, consented to an adjournment of trial, and set a new date as per OLAP account. ·Solicitor met with Mundinatz following court appearances as per OLAP account. ·Copy of the Solicitor's handwritten notes with respect to the trial being adjourned
J. Mirkovich Theft Under x 2, Breach of ProbationTab 9	May 29, 1997 May 30, 1997 May 31, 1997 June 4, 1997	<ul style="list-style-type: none"> ·Copy of Solicitor's handwritten notes with respect to Mirkovich file ·Copy of Solicitor's handwritten notes made with respect to Mirkovich file ·Copy of client's Direction to her brother, dated May 31, 1997, witnessed by the Solicitor ·Copy of the Solicitor's letter addressed to OLAP enclosing a copy of the "Solicitor's Acknowledgement and Undertaking"

EVIDENCE THAT THE MEMBER PRACTISED LAW FROM MAY 1, 1997 TO AUGUST 1, 1997		
CLIENT	DATE	PARTICULARS
N. Caverhill Sexual interference x2 Tab 10	June 4, 1997	·Copy of Solicitor's handwritten notes made with respect to Caverhill file.
	June 13, 1997	·Copy of Solicitor's handwritten notes made with respect to the Caverhill file.
D. Allen Assault causing bodily harm, arson, etc. Tab 11	June 5, 1997	·Copy of Solicitor's letter addressed to OLAP enclosing the "Solicitor's Acknowledgement and Undertaking".
	July 4, 1997	·Copy of Solicitor's handwritten notes made with respect to Allen file.
C. L. Vukevich Criminal harassment Tab 12	July 3, 1997	·Solicitor met with Vukevich to review the facts and circumstances of the case and to obtain information about Vukevich as per OLAP account.
	July 9, 1997	·Solicitor requested Disclosure
	July 14, 1997	·Solicitor met with Vukevich at Courthouse as per OLAP account.
J. McMaster Public mischief Tab 13	July 7, 1997	·Copy of Solicitor's "Note to File"
F. Marshall Break and enter Tab 14	July 8, 1997	·Solicitor met with Marshall at the Niagara Detention Centre to discuss the charge as per OLAP account.
	July 16, 1997	·Solicitor attended at Provincial Court for adjournment as per OLAP account.
	July 31, 1997	·Solicitor attended at Provincial Court to set a date for preliminary hearing as per OLAP account. ·Solicitor met with Marshall to discuss the preliminary hearing as per OLAP account.

Particular 2 (b) The Solicitor breached an Order of Convocation dated September 26, 1997, suspending the Solicitor for non payment of his Errors and Omissions Insurance levy, by continuing to practise of law throughout the period from October 1, 1997 to November 3, 1997.

The Solicitor was on a monthly payment schedule for the payment of his Errors and Omissions Insurance ("LPIC") levy for the 1997 year.

By registered letter dated August 28, 1997, the Solicitor was advised by LPIC that the Royal Bank of Canada had returned his August 15, 1997 cheque in the amount of \$278.10, as "N.S.F." The Solicitor was requested to remit a certified cheque in the amount of \$303.10 to cover the installment payment and an additional \$25.00 service charge to LPIC before September 15, 1997. The Solicitor was advised that if payment was not received on or before September 15, 1997, that his name would be forwarded to Convocation for suspension and that pursuant to S. 36 of the *Law Society Act*, Convocation may suspend a Member's rights and privileges upon that Member's failure to pay any fee or levy payable to the Society within four months of the due date (Tab 15).

By letter dated October 1, 1997, the Law Society advised the Solicitor that his rights and privileges as a Member were suspended on October 1, 1997 as ordered by Convocation on September 26, 1997, as a result of his failure to comply with the Law Society's requirements respecting the Errors and Omissions Insurance Plan for 1997. The Law Society enclosed a memorandum which set out the restrictions and obligations imposed on suspended members. The Solicitor was advised that failure to comply with these restrictions and obligations may result in disciplinary proceedings being instituted against him. This letter also advised that he would be required to pay all outstanding fees and levies, in addition to a reinstatement fee, in order to lift his suspension. A Canada Post Acknowledgement of Receipt Card indicates that the Solicitor signed for the letter on October 9, 1997 (Tab 16).

By letter dated October 30, 1997, the Solicitor forwarded to LPIC's Customer Service Department two money orders for \$561.39 and \$181.00, in the total amount of \$742.39, as representing the total outstanding amount due on his LPIC account including the reinstatement fee and N.S.F. charges. This letter was received by LPIC on November 3, 1997 (Tab 17).

By memorandum dated November 4, 1997, Leslie Drevnig, an LPIC staff employee, advised Avila that the Solicitor had paid his outstanding Errors and Omission levy on November 3, 1997, and requested that the Solicitor be reinstated effective as of November 3, 1997 (Tab 18).

By letter dated November 3, 1997, Avila advised the Solicitor that his suspension had been terminated on November 4, 1997 as a result of his payment of the 1997 LPIC levy, together with the reinstatement fee (Tab 19).

An audit of the Solicitor's books and records was subsequently instructed under sections 9 and 18 or Regulation 708 to determine whether or not the Solicitor had practised law while under suspension during the period from October 1, 1997 and November 3, 1997. The following represents the Society's findings with respect to the period from October 1, 1997 to November 3, 1997:

EVIDENCE THAT THE SOLICITOR CONTINUED HIS PRACTISE OF LAW FROM OCTOBER 1, 1997, TO NOVEMBER 3, 1997		
CLIENT	DATE	PARTICULARS
D. J. Reid Break and enter Tab 20	October 1, 1997	·Solicitor met with Reid with respect to pre-disposition report as per OLAP account. ·Solicitor met with the Crown and with Reid's parents with respect to sentencing as per OLAP account.

EVIDENCE THAT THE SOLICITOR CONTINUED HIS PRACTISE OF LAW FROM OCTOBER 1, 1997, TO NOVEMBER 3, 1997		
CLIENT	DATE	PARTICULARS
D. J. Reid (continued)	October 1, 1997	<ul style="list-style-type: none"> ·Solicitor attended at Provincial Court in Welland and made submissions on sentencing as per OLAP account. ·Solicitor met with Reid following sentencing as per OLAP account.
G. O. Amos Robbery, threatening Tab 21	October 1, 1997 October 15, 1997	<ul style="list-style-type: none"> ·Solicitor attended at Provincial Court with respect to obtaining an adjournment in order to obtain a Legal Aid Certificate as per OLAP account. ·Solicitor attended at Provincial Court to set a date for the preliminary hearing as per OLAP account. · Solicitor reviewed Crown disclosure
D. M. Labrosse Child abduction Tab 22	October 8, 1997	<ul style="list-style-type: none"> ·Solicitor attended at Provincial Court in Welland with respect to adjournment as per OLAP account.
B. L. Starkie Communicating, prostitution Tab 23	October 9, 1997	<ul style="list-style-type: none"> ·Solicitor prepared for trial, including review of the Crown disclosure as per OLAP account.
	October 10, 1997	<ul style="list-style-type: none"> ·Solicitor met with Starkie with respect to entering a guilty plea as per OLAP account. ·Solicitor met with Crown Attorney with respect to entering a guilty plea and sentencing as per OLAP account. ·Solicitor attended at Provincial Court with Starkie, assisted in entering a guilty plea and made full submissions on sentencing as per OLAP account. ·Solicitor met with Starkie following sentencing as per OLAP account.

EVIDENCE THAT THE SOLICITOR CONTINUED HIS PRACTISE OF LAW FROM OCTOBER 1, 1997, TO NOVEMBER 3, 1997		
CLIENT	DATE	PARTICULARS
C. L. Vukevich Criminal harassment Tab 24	October 9, 1997 October 10, 1997	·Solicitor reviewed Crown disclosure as per OLAP account. ·Solicitor met with Vukevich, his sister and the Crown Attorney with respect to entering a guilty plea as per OLAP account. ·Solicitor attended at Provincial Court and assisted Vukevich in entering a guilty plea as per OLAP account
J. S. Mundinatz Impaired driving Tab 25	October 17, 1997 October 20, 1997	·Solicitor prepared for trial, including a review of the Crown disclosure as per OLAP account. ·Solicitor met with Mundinatz and with Crown Attorney with respect to trial as per OLAP account.
A. DiProse Breach of probation Tab 26	October 23, 1997	·Solicitor attended at Provincial Court with respect to adjournment to obtain Legal Aid Certificate as per OLAP account. ·Solicitor met with DiProse at the Courthouse following court appearance as per OLAP account.
B. E. Sackfie Mischief under Tab 27	October 27, 1997 November 2, 1997	·Solicitor attended at Provincial Court to set a date for guilty plea as per OLAP account. ·Solicitor met with Sackfie with respect to the charge and possibly entering a guilty plea as per OLAP account. ·Solicitor reviewed Crown disclosure and file as per OLAP account.

Particular 2 (c) The Solicitor breached s. 8(c) of Section 14 of Regulation 708, R.R.O. 1990, by transferring funds from his trust account to his general account on account of fees for which billing or other written notifications had not first been delivered to clients.

In and around 1993, the Solicitor's books and records were examined by the Law Society in accordance with section 18 of the Regulation made pursuant to the Law Society Act. The Solicitor was provided with a copy of the Examiner's report dated April 7, 1993, which noted several deficiencies in the Solicitor's bookkeeping practises.

By letter dated July 22, 1993, the Solicitor was advised that, amongst other things, the Examiner's report had indicated that the Solicitor had failed to either bill or otherwise provide written notification to clients before transferring monies from his trust account to his general account for fees, contrary to ss. 8(c) of section 14 of Regulation 708. The Solicitor was instructed to institute a strict procedure to ensure that all billings were prepared, delivered, entered and posted before transfers were made from his trust account to his general account on account of fees earned, and to further confirm to the Law Society in writing that this procedure was in place. (Tab 28)

The Society's audit further revealed that, between June, 1996 and April, 1998, the Solicitor had transferred the sum of \$4,720.68 from his mixed trust account to either his general account or personal account, on account of fees for which billings or other written notification had not been delivered to clients as required as follows :

EVIDENCE OF SOLICITOR'S PRETAKING OF FEES FROM TRUST PRIOR TO BILLING

CLIENT	DATE MONIES TRANSFERRED	AMOUNT TRANSFERRED	DATE FEE BILLING/S ISSUED TO CLIENTS	DELAY IN ISSUING FEE BILLINGS (DAYS)
Scott	June 4, 1996	\$100.00	April 15, 1998	681
Crandell	August 23, 1996	\$500.00	April 26, 1998	612
Crandell	August 27, 1996	\$250.00	April 26, 1998	608
Scott	August 30, 1996	\$100.00	April 15, 1998	594
Scott	September 19, 1998	\$100.00	April 15, 1998	575
Scott	September 19, 1996	\$100.00	April 15, 1998	574
Scott	June 3, 1997	\$100.00	April 15, 1998	317
Janzen	June 6, 1997	\$513.70	April 26, 1998	325
Scott	June 12, 1997	\$150.00	April 15, 1998	308
Crawford	June 13, 1997	\$428.00	April 15, 1998	307
Garner	June 19, 1997	\$150.00	April 15, 1998	301
Kwan	July 2, 1997	\$100.00	April 26, 1998	299
Kwan	July 3, 1997	\$100.00	April 26, 1998	298
Kwan	July 29, 1997	\$100.00	April 26, 1998	272
Kwan	August 13, 1997	\$750.00	April 26, 1998	257
Kwan	September 30, 1997	\$100.00	April 26, 1998	209
Kwan	October 3, 1997	\$100.00	April 26, 1998	206
Kwan	November 20, 1997	\$100.00	April 26, 1998	158
Kwan	November 21, 1997	\$100.00	April 26, 1998	157
Jackson	January 5, 1998	\$121.00	April 15, 1998	101

CLIENT	DATE MONIES TRANSFERRED	AMOUNT TRANSFERRED	DATE FEE BILLING/S ISSUED TO CLIENTS	DELAY IN ISSUING FEE BILLINGS (DAYS)
Manceau	January 16, 1998	\$150.00	April 15, 1998	90
Culp	January 30, 1998	\$150.00	April 15, 1998	76
Alexander	February 5, 1998	\$200.00	April 15, 1998	70
Trottier	March 19, 1998	\$50.00	April 15, 1998	28
Garner	April 7, 1998	\$7.98	April 15, 1998	9
TOTAL		\$4,720.68		

(Tab 29)

By letter dated May 25, 1998, the Society advised the Solicitor that, amongst other things, the review of his books and records had revealed sufficient evidence to support a charge of practising while under suspension against him, as well as evidence that the Solicitor had transferred money from his trust account to his general account on account of fees for which billings or other written notifications had not first been delivered (mailed) to clients as required by ss. 8(c) of Section 14 of the Regulation. The Society advised that both matters were being referred to Discipline, and that any representations submitted to the Society before June 8, 1998, would be included in the Report to the Discipline Committee. (Tab 30)

By letter dated June 11, 1998, the Solicitor advised the Society that it was never his intention to practice law while under suspension, but that he had found it difficult to discontinue working on client matters particularly with respect to his legal aid cases. The Solicitor advised that, amongst other things, he had been concerned that many of his clients who were mentally ill criminally accused would be disadvantaged if he were to abandon them. The Solicitor further advised that he fully intended to repay the Legal Aid Plan for monies received on certificates for work performed while he was under suspension. The Solicitor also advised that his failure to submit accounts on trust transfers was due to his lack of secretarial help, and that he was attempting to effect a number of administrative and bookkeeping changes by hiring part-time help so that his paperwork would be done regularly. (Tab 31)

V. DISCIPLINE HISTORY

On May 11, 1982, the Solicitor was found guilty of professional misconduct and was reprimanded in Committee for failing to account promptly to his clients Mr. and Mrs. Viscusi, and for failing to serve Mr. and Mrs. Viscusi in a conscientious, diligent and efficient manner.

DATED at Toronto this 12th day of January, 1999."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Bernard Hampton Hawkins be suspended for one month on the basis of his undertaking dated January 12, 1999.

REASONS FOR RECOMMENDATION

There was an Agreed Statement of Facts in this matter and the Committee found that the professional misconduct consisted of the particulars as set out in complaint D138/98. The facts in this case consisted of the following: that the solicitor practised while under suspension for non-payment of membership fees for a period of three months, that he practised law under suspension for non-payment of insurance premiums for an additional one month, and that there was a pretaking of fees. The details of pretaking of fees are set out in a table which is paragraph 21 of the Agreed Statement of Facts and shows that by and large the pretakings were for exceedingly small amounts and that cumulatively the total amount was \$4,720.68.

The Committee accepted the joint submission of the Law Society and the solicitor as to penalty, namely that there be a one month suspension and that the solicitor enter into an undertaking which was provided to us and which is exhibit 4. The only modification that we made to the undertaking is to the second item with regards to a mentoring scheme. The modification was that the mentoring scheme will be in place for one year. So, therefore, the solicitor will be submitting monthly trust comparisons to the Law Society as stated in the undertaking for a period of one year; the mentoring scheme will be for a period of one year; and the solicitor shall repay the amount of \$2,031.29 to the Ontario Legal Aid Plan as set out in the undertaking.

With regards to the solicitor's discipline history, which is set out in paragraph 24 of the Agreed Statement of Facts, I have this comment to make at the outset. It is my understanding that discipline history should not be introduced if it is older than ten years. However, that is my understanding. What the Committee has agreed is that this discipline history is from 1982 and since there is no other discipline history since that time the Committee is not giving any weight to this matter from 1982 and we do not consider it to be of any account with regards to today's disposition.

The Committee is aware of the general principle that generally speaking where a solicitor has practised while under suspension the penalty should be equal to the period of practice while under suspension plus an additional one month. However, we are recommending a penalty of only one month because we feel that is appropriate in view of the circumstances I am going to outline later, and also in view of what was stated in the O'Donnell case and in the Fejes case. In the O'Donnell decision, third paragraph, page 2, it stated as a general rule, as decided in MacGregor, solicitors who practice while under suspension should not be put in a better position as a result of being disciplined than they would be in if they had complied with their obligation not to practice. For this reason it is appropriate that solicitors who practice while under suspension be suspended for at least as long as the period during which they practised while under suspension. The specific penalty in each case, however, should reflect a multitude of considerations, some of which are referred to above, and many of which are not susceptible to a mathematical formula.

The Fejes decision at page 14, paragraph 2, stated that the Committee recognizes that the principle espoused by Convocation is sound in terms of a need to effect deterrence and to impose a proportional penalty. However, the principle should not become an inflexible irreducible tariff, otherwise the imposition of penalty is reduced to slavery to a mathematical formula without consideration of individual circumstances or the principle of the totality of the penalty.

In the present matter, we have a sole practitioner practising criminal law. The evidence given was that the solicitor represents many mentally challenged clients who have a difficulty finding lawyers to represent them. The evidence was also that the solicitor gave up most of his cases because of his suspension for non-payment of membership fees and insurance premiums except the Legal Aid ones where the clients would have had difficulty getting other lawyers to represent them. Indeed, this case is truly exceptional because while on the face of it there was a total of four months that the solicitor practised while under suspension, the evidence was that, in fact, the total number of hours that the solicitor worked over the entire four month period was only 28 to 30 hours.

25th March, 1999

This case is also truly exceptional because again we heard that the solicitor has derived no income from this work because it was Legal Aid work and you cannot be paid for Legal Aid work that was done while you were under suspension. Therefore, for some of the work the solicitor has not been paid, and any of the work for which he has been paid he will be reimbursing Legal Aid.

We have also heard that any period of suspension longer than one month would cause financial hardship to the solicitor and his practice.

In addition there were some trying events in the solicitor's personal life and we received that information in camera and it is set out at tab 6 of the solicitor's brief, which is exhibit 5.

The solicitor's brief also contains some superb letters going to the character and conscientiousness and professional services of the solicitor. A letter of Provincial Judge W.D. Morrison confirms that the solicitor has worked with many accused persons who have suffered from various forms of mental disability, that the solicitor has an ability to work well with these types of people, and the patience and experience which he brings to this kind of work is appreciated by the court. The letter of Provincial Judge Morrison was at tab 2 of the solicitor's brief.

The letter of M. Kitchen, Administrative Justice of the Peace for Niagara North, which is at tab 3, confirms what was already stated in the letter of Judge Morrison.

There was also a letter at tab 4 of the solicitor's brief from R. J. Hoolihan, Q. C., a very well-known and well-respected Crown Attorney in the region, stating that the level of expertise and experience which the solicitor brings to his representation of mentally ill offenders is a service which is necessary for the efficient running of the justice system. Mr. Hoolihan also states that the service that the solicitor provides is very conscientious.

A letter at tab 5 of the solicitor's brief, is a letter from David Crowe, a colleague of the solicitor who has known him for at least ten years and has referred matters to him. Mr. Crowe states that Mr. Hawkins provides faithful service to his clients at the highest level of practice. Mr. Crowe goes on to state that he knows of no other individual who has either the expertise or dedication to provide the type of service to mentally disabled clientele such as the expertise and dedication provided by Mr. Hawkins.

For all these reasons we feel that the one month suspension and the undertaking given by the solicitor is the appropriate recommendation to make to Convocation.

Dated at Toronto this 3rd day of February, 1999

GARY LLOYD GOTTLIEB, Q.C.
- CHAIR

There were no submissions.

It was moved by Ms. Ross, seconded by Mr. Carey that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for 1 month on the basis of his undertaking dated January 12th, 1999.

Ms. Seymour advised that the solicitor had paid all but \$124 to the Ontario Legal Aid Plan.

25th March, 1999

The public withdrew and Convocation went in camera.

The solicitor, although he was aware that Mr. Anand, Duty Counsel was available to assist him, advised Convocation that he wished to make his own submissions.

The public was recalled and Convocation returned to open session.

Both the solicitor and the Law Society's Counsel made submissions in support of the recommended penalty.

The solicitor requested that the suspension commence May 1st.

The Society was not opposed.

It was moved by Ms. Ross, seconded by Mr. MacKenzie that the solicitor be suspended for 1 month commencing May 1st and that the solicitor comply with the conditions set out in the Undertaking.

Carried

Re: Joan Diane Teskey FINLEY - Woodbridge

The Secretary placed the matter before Convocation.

Ms. Amanda Worley appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 31st August, 1998, together with an Affidavit of Service sworn 2nd October, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 30th September, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 9th November, 1998 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Richmond C. E. Wilson, Q.C., Chair
Robert P. Armstrong, Q.C.
Gerald A. Swaye, Q.C.

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

Amanda Worley
For the Society

JOAN DIANE TESKEY FINLEY
of the Town
of Woodbridge
a barrister and solicitor

Not Represented
For the solicitor

Heard: August 18, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 13, 1998 Complaint D367/97 was issued, and, on June 4, 1998 Complaint D69/98 was issued, against Joan Diane Teskey Finley alleging that she was guilty of professional misconduct.

The matter was heard in public on August 18, 1998 before this Committee composed of Richmond C.E. Wilson, Q.C., Chair, Robert P. Armstrong, Q.C. and Gerald A. Swaye, Q.C. The Solicitor did not attend the hearing, nor was she represented by counsel. Amanda Worley appeared on behalf of the Law Society.

DECISION

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

Complaint D367/97

2. a) The Solicitor failed to produce to the Law Society the books and records of her practice for examination, despite requests to do so, in breach of section 18 of Regulation 708 made pursuant to the *Law Society Act*.

Complaint D69/98

2. a) The Solicitor failed to file with the Law Society, within the time prescribed by the Regulations, the form(s) required under section 16 of Regulation 708 made pursuant to the *Law Society Act*, for each fiscal period subsequent to her fiscal year ending October 31, 1994.

Evidence

The evidence before the Committee consisted of the testimony of two members of the Law Society staff, Marie Morley and Nadine Freed.

Ms. Morley provided the Committee with a Document Book consisting of copies of the file in the Audit and Investigation Department regarding that department's efforts to examine the books and records of the Solicitor commencing February 4, 1997 to date. Those records indicate efforts to reach the Solicitor by telephone on twenty-seven occasions. On two occasions the calls were accepted. On one occasion the Solicitor left a voice message for Ms. Morley requesting that Ms. Morley attempt to reach the Solicitor and that "perhaps you could call me any day next week around the noon hour. I'll stay close to the phone". Ms. Morley attempted to reach the Solicitor "around the noon hour" on seven business days including four days the following week. On no occasion were these calls accepted.

Ms. Morley did reach the Solicitor and offered to assist her in obtaining the allegedly missing documents, requested the opportunity to review the books and records in the absence of the documents, and offered to assist the Solicitor in completing the self-reporting forms. In every instance, although appointments were committed to, Ms. Finley cancelled the appointments the day before the appointed hour.

Clearly, the Solicitor has been offered the best assistance but none has been accepted.

25th March, 1999

Ms. Freed provided a Document Book including copies of the file of the Solicitor in the Forms Services Department. The last annual return covers the period to October 31, 1994.

Notice of Default for 1995 was mailed May 10, 1996. Final Notice of Default was mailed June 10, 1996 by registered mail and receipt was acknowledged. The file continues with telephone calls and letters enlisting the co-operation of the Solicitor in complying with her duty to the Society. There is a copy of a notation of a call by Ms. Freed to the Law Foundation to ascertain whether the Solicitor appeared to have an active Trust Account. The response noted that the bank had remitted interest as late as April 1996.

Notwithstanding the clear efforts of both Departments to properly acquire the information needed by the Society to comply with its mandate to protect the public, the Solicitor to date has provided nothing.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the Solicitor be reprimanded in Convocation provided that the filings for October 31, 1995, 1996 and 1997 are completed to the satisfaction of the Society and that she produces her books and records in sufficient time to properly review the same, both matters to be attended to prior to Convocation. In the event that either or both of these matters is not completed, we recommend a suspension of two months definite and month to month thereafter until all filings and books and records have been completed. There shall be costs paid to the Society of \$400.

REASONS FOR RECOMMENDATION

The Solicitor did not attend the hearing and provided no form of explanation for her defaults. She entered into no agreed fact statement and evidence was provided that, while the Society provided offers of assistance in completing the required information, all offers were declined at the last moment with the minimum of excuse.

While the Committee sensed that the Solicitor may have ceased practice some years ago, at least as late as 1996 interest from a trust account was being received by the Law Foundation. This Solicitor will either determine to attend to her responsibilities as a member of the Society in a timely manner or not. There must be some sanction for the default which is now well over two years. We are also aware that the last filing for the October 31, 1994 fiscal year was only obtained on threat of discipline and was finally completed in January 1997. Membership in the Society has its responsibilities. This lawyer appears to have forgotten this requirement.

Joan Diane Teskey Finley was called to the Bar on March 26, 1965.

ALL OF WHICH is respectfully submitted

DATED this 31st day of August, 1998

Richmond C.E. Wilson, Q.C. (Chair)

Ms. Worley addressed the issue of service and requested Convocation to proceed in the solicitor's absence.

It was moved by Mr. Carey, seconded by Mr. Copeland that the Report be adopted.

Carried

25th March, 1999

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation provided her filings had been completed and she produced her books and records to the satisfaction of the Society failing which the solicitor be suspended for 2 months definite and month to month thereafter until filings and books and records are completed and further that the solicitor pay costs in the amount of \$400.

A correction was made on page 3 of the Report as follows:

- page 3, 2nd paragraph under the heading Reasons for Recommendation - that the date "January 1997" be deleted and replaced with "March 1996"

Ms. Worley advised that the filings and books and records had not been completed and made submissions in support of the 2 month suspension.

Counsel, the reporter and the public withdrew.

It was moved by Ms. Ross, seconded by Mr. Carey that the solicitor be suspended for 1 month.

Carried

It was moved by Ms. Puccini but failed for want of a seconder that the matter be adjourned.

It was moved by Ms. Ross, seconded by Mr. Carey that costs be waived.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 1 month definite and month to month thereafter until all filings and books and records were completed and that the Society's costs be waived.

Re: Paul Donald Vincent CANNON - Hamilton

The Secretary placed the matter before Convocation.

Messrs. Carey and Crowe withdrew for this matter.

Mr. Corbett appeared on behalf of the Society and Mr. Anand appeared on behalf of the solicitor. The solicitor was not present.

The Report of the Discipline Committee dated February 5th, 1999 together with the Affidavit of Service was filed as Exhibit 1.

Convocation had before it the Report of the Discipline Committee dated 5th February, 1999, together with an Affidavit of Service sworn 19th February, 1999 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 11th February, 1999 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas J. P. Carey, Chair
Marshall Crowe
Thomas E. Cole

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

Hugh Corbett
For the Society

PAUL DONALD VINCENT CANNON
of the City
of Hamilton
a barrister and solicitor

Not Represented
For the solicitor

Heard: December 15, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Complaint D91/98 was issued against Paul Donald Vincent Cannon on October 2, 1998 alleging that he was guilty of professional misconduct.

The matter was heard in public on December 15, 1998 before this Committee composed of Thomas J.P. Carey, Chair, Marshall Crowe and Thomas E. Cole. The Solicitor did not attend the hearing, nor was he represented by counsel. Hugh Corbett appeared on behalf of the Law Society.

DECISION

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

Complaint D91/98

2. a) The Solicitor failed to serve his client, the estate of Anne Marie Hodson, in a conscientious, diligent and efficient manner by failing to wind up the estate in a timely manner;
- b) The Solicitor failed to respond to the Law Society, despite letters to him dated November 26, 1997, April 9, 1998 and May 21, 1998 and a telephone message left at his offices on March 11, 1998.

Reasons for Finding

The Committee has heard the evidence on both counts, and there is a finding on count 2(a) that the Solicitor failed to serve his client, the estate of Anne Marie Hodson, in a conscientious, diligent and efficient manner by failing to wind up the estate in a timely manner.

The Committee heard from Mr. Kennedy on that count, and simply put, there were egregious delays not accounted for. It would appear that, for whatever reason, the Solicitor became paralysed into a state of inertia and took long periods of time in response to this estate. This estate began with the death of Anne Marie Hodson in 1992 and the final distribution was in October of 1998.

On all of the evidence, it is an overwhelming case that the estate was not served in a diligent and efficient manner.

As to count 2(b), the Committee heard from Ms. McAulay. We were referred to letters of November 1997, April and May 1998 and March 1998, and a telephone message; and despite her concerns and her interest in what the problem was that was affecting the Solicitor, she received no timely response from the member. That lack of response has continued to the present time. The member did not appear at the hearing and as we heard his last response to the Society was in answer to some correspondence. There was a voice mail message transcribed on November 2, 1998 at 7:21 in the morning.

All of the evidence shows that the Solicitor has failed to respond in a timely fashion to his professional body and there is a finding on that count.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Paul Donald Vincent Cannon be reprimanded in Convocation if by the time the matter is heard in Convocation he has wound up the outstanding estate matters to the satisfaction of the Society, failing which, the Committee recommends that the Solicitor be suspended for thirty days and month to month thereafter until he has satisfied the outstanding compliance request of the Law Society.

REASONS FOR RECOMMENDATION

We have here a situation where the member's non-responsiveness to the beneficiaries of the Hodson estate over a period of several years and non-responsiveness to his professional body, has led to matters which were not complicated, going on for some considerable time. Specifically, the estate went on for six years when it could have been wound up, even making allowances for the delays, some delays in getting certificates. All of those matters were dealt with in 1995.

It is clear that there is some sort of personal difficulty that is affecting Mr. Cannon, but we have only the sparsest evidence of that. He has indicated that he has personal difficulties, and there is some indication from a former partner that he may be suffering from burnout. He certainly left a larger firm and went out on his own. Unfortunately, he did not attend the hearing, he has not responded since early November to the Law Society, and we are left only to speculate that there is some problem that has rendered him unable to deal with these very important matters in an appropriate and timely way.

The hope is that, if Mr. Cannon needs some practice help, needs some personal help, that he will seek it. He has no discipline record. It is not the wish of this Committee to punish a person who may be suffering from stress, burnout or emotional problems. However, in the absence of evidence of these problems, the Committee's hands are tied.

It is clear that the estate has not yet been brought into a final state and that is why the recommendation is that if he has wound up all the outstanding matters, there will be a recommendation for a reprimand at Convocation. Otherwise, if the procrastination of the Solicitor continues, he will be facing a thirty day suspension. Such suspension to continue month to month until the member has satisfied the outstanding compliance request of the Law Society. Hopefully, Mr. Cannon will receive this strong message from his professional body and will respond well before the matter goes to Convocation.

Paul Donald Vincent Cannon was called to the Bar on April 6, 1979.

ALL OF WHICH is respectfully submitted

DATED this 5th day of February, 1999

Thomas J. P. Carey, Chair

Mr. Corbett addressed the issue of service.

It was moved by Ms. Curtis, seconded by Ms. Ross that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if the outstanding estate matters had been wound up to the satisfaction of the Society, failing which, the solicitor be suspended for 30 days and month to month thereafter until he complied.

Convocation was advised that the estate matters had not been completed.

It was moved by Ms. Curtis, seconded by Ms. Ross that the solicitor be suspended for 30 days and month to month thereafter until the estate matters had been completed.

Carried

Re: Richard STANWICK - Toronto

The Secretary placed the matter before Convocation.

Mr. Chahbar withdrew for this matter.

Mr. Corbett appeared on behalf of the Society and Mr. Anand appeared on behalf of the solicitor. The solicitor was not present.

The Report of the Discipline Committee dated January 19th, 1999 together with the Affidavit of Service was filed as Exhibit 1.

Convocation had before it the Report of the Discipline Committee dated 19th January, 1999, together with an Affidavit of Service sworn 4th February, 1999 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 29th January, 1999 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Nancy L. Backhouse, Chair

Thomas E. Cole

Abdul A. Chahbar

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

Hugh Corbett
For the Society

RICHARD STANWICK
of the City
of Toronto
a barrister and solicitor

Not Represented
For the solicitor

Heard: December 1, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Complaint D108/98 was issued on July 15, 1998 and Complaint D147/98 was issued on October 9, 1998 against Richard Stanwick alleging that he was guilty of professional misconduct.

The matter was heard in public on December 1, 1998 before this Committee composed of Nancy L. Backhouse, Chair, Thomas E. Cole and Abdul A. Chahbar. The Solicitor did not attend the hearing, nor was he represented. Hugh Corbett appeared on behalf of the Law Society.

DECISION

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

Complaint D108/98

2. a) He failed to provide a written response to the Law Society regarding a Complaint by Ms. Cogo despite letters dated September 2, 1997 and November 7, 1997;
- b) He has breached Section 18 of Regulation 708 under the Law Society Act as he failed to produce to the Law Society the books and records of his practice for examination, despite requests to do so.

Complaint D147/98

2. a) The Solicitor misled his client, Ronald Webb by:
- i) leading Mr. Webb to believe that the Solicitor had commenced, and was advancing, a wrongful dismissal action on his behalf, including conducting settlement negotiations, when in fact the Solicitor had not issued or served a Statement of Claim or taken any other steps as instructed by Mr. Webb to advance his claim; and
 - ii) failing to disclose to Mr. Webb that the Solicitor had been administratively suspended effective June 1, 1998 for failing to pay his errors and omissions insurance levy, thereby leading Mr. Webb to believe that the Solicitor was a member in good standing permitted to advance his claim.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

The Facts

Complaint D108/98

Counsel for the Law Society filed Affidavits of Kelly Tobin, Lisa Massicotte, Lisa Steinberg, Christine Schmidt and Cathy Riches, all of the Law Society's Complaints Department, from which the following evidence emerged.

The Law Society received a complaint from Mr. John Cogo and Ms. Thea Cogo alleging professional misconduct against the Solicitor. The Solicitor responded to the letter of complaint and rendered an account to the client which purported to reflect the services which the Solicitor had performed as well as a trust statement. The account showed a fee of \$7,100.00 and funds received of \$7,100.00. The Cogos then provided the Law Society with cancelled cheques paid to the Solicitor totalling \$15,100.00. The Law Society requested a copy of the Solicitor's trust ledger in the Cogo matter.

The Solicitor next sent the Law Society a copy of a letter that he had sent to the Cogos with a revised account in the amount of \$15,100.00. To date he has not provided his trust ledger, his final reporting letter or work dockets notwithstanding numerous requests for the same.

Marie Morley, an Examiner with the Audit Department at the Law Society testified that she was instructed to perform an audit on the Solicitor in December 1997. She attended on several occasions at the Solicitor's office and left numerous messages. The Solicitor failed to produce any books or records and Ms. Morley was unable to conduct her audit.

Complaint D147/98

Ronald Webb testified that he had retained the Solicitor in March 1998 in regard to a wrongful dismissal matter. He provided the Solicitor with a retainer of \$1,605.00. Thereafter he had great difficulty in contacting the Solicitor. The Solicitor advised Mr. Webb that he was advancing a wrongful dismissal action on his behalf including conducting settlement negotiations. In fact, no negotiations were conducted and no action was commenced. The client decided to terminate the relationship on September 18, 1998. He requested a refund of his retainer less any fee for work performed and the return of his file. He has not, to date, received an account, a return of his file or the refund of his retainer.

The Solicitor was administratively suspended on March 31, 1998 for failure to pay his LPIC dues. He failed to inform Mr. Webb that he was no longer a member in good standing permitted to practise law.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Richard Stanwick be suspended for one month definite following the conclusion of his administrative suspension, and continuing from month to month thereafter until such time as the Solicitor:

1. produces his books and records;
2. returns his file to Mr. Webb and accounts for the retainer.

The Committee further recommends that the Solicitor pay Law Society costs of \$1,000.

REASONS FOR RECOMMENDATION

The Solicitor's conduct raises serious concerns about his failure to comply with the Rules of Professional Conduct. The discrepancy between the Solicitor's conflicting trust statements and the funds shown to have been paid by the client has not been explained. When asked to produce his trust ledger and other documents related to the Cogo matter, he has failed to do so. He has failed to co-operate with the Law Society by producing his books and records for examination when requested to do so or in taking any part in this hearing.

The Solicitor misled his client, Ronald Webb by leading him to believe that the Solicitor had begun a law suit on his behalf including settlement negotiations when the Solicitor had taken no steps to advance Mr. Webb's claim. He then failed to disclose to Mr. Webb that he had been administratively suspended.

The Solicitor may have a perfectly good answer to the complaints. However, until such time as he lives up to his obligation to produce his books and records and the requested documentation, he may not be permitted to practise law and should be suspended.

Richard Stanwick was called to the Bar on April 5, 1979.

ALL OF WHICH is respectfully submitted

DATED this 19th day of January, 1999

Nancy Backhouse, Chair

Mr. Corbett addressed the issue of service.

Mr. Anand advised that he had spoken to the solicitor who did not dispute the finding and instructed Duty Counsel not to oppose the recommended penalty.

It was moved by Mr. Copeland, seconded by Ms. Ross that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for 1 month definite following the conclusion of his administrative suspension, such suspension to continue from month to month thereafter until the solicitor produced his books and records and returned a client file and further, that the solicitor pay costs in the amount of \$1,000.

25th March, 1999

There were no submissions.

It was moved by Ms. Ross, seconded by Mr. Swaye that the recommended penalty be adopted.

Carried

Re: John Douglas WRIGHT - Stratford

The Secretary placed the matter before Convocation.

Mr. Chahbar withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 19th January, 1999, together with an Affidavit of Service sworn 5th March, 1999 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 22nd February, 1999 at the solicitor's address at 50 Morrison Street, Stratford (marked Exhibit 1), together with the Report and Affidavit of Service sworn 4th February, 1999 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 29th January, 1999 at the solicitor's address at 1144 Ontario Street, Stratford (marked Exhibit 2), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 3rd March, 1999 (marked Exhibit 3). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Nancy L. Backhouse, Chair
Thomas E. Cole
Abdul A. Chahbar

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

Elizabeth Cowie
For the Society

JOHN DOUGLAS WRIGHT
of the Town
of Stratford
a barrister and solicitor

Duty Counsel
For the solicitor

Heard: December 1, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 20, 1998 Complaint D85/98 was issued against John Douglas Wright alleging that he was guilty of professional misconduct.

The matter was heard in public on December 1, 1998 before this Committee composed of Nancy L. Backhouse, Chair, Thomas E. Cole and Abdul A. Chahbar. The Solicitor attended the hearing and was represented by Duty Counsel. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D85/98

2. a) He misappropriated the sum of \$20,374.68, more or less, from his mixed trust bank account;
- b) He misapplied the sum of \$41,473.15, more or less, from his mixed trust account by disbursing funds to the estate of Mabel Moran when he held no funds in trust for that estate.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D85/98 and is prepared to proceed with a hearing of this matter on a date to be set.

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 D85/98 and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1970 and practised as a sole practitioner in London, Ontario. He is currently administratively suspended and has been since December 31, 1995.
5. The Solicitor declared personal bankruptcy on November 14, 1996.
6. At the time the Solicitor ceased to practise, his books and records were in arrears. The books and records have since been reconstructed to a certain extent to January 31, 1996. However, a complete reconstruction has not been possible due to numerous missing records. The reconstruction was initially assembled by the Solicitor's accountants and a copy of their reconstruction is attached hereto as Exhibit 1[1].

Particular 2(a) He misappropriated the sum of \$20,374.68, more or less, from his mixed trust bank account.

7. An investigation auditor of the Law Society conducted his own independent reconstruction of the Solicitor's mixed trust account. The unexplained deposits and unauthorized withdrawals are summarized in the table below:

DATE	ITEM	SOURCE DOCUMENT	EXHIBIT	AMOUNT WITHDRAWN (DEPOSITED)
Feb 95	bank service charge charged to trust bank account by the bank	February 1995 Bank Statement Bank of Nova Scotia (trust)	2	12.37
Feb 95	no explanation given	Trust Accounting	1	-100
Mar 95	no explanation given	Trust Accounting	1	0.1
Mar 95	bank service charge charged to trust bank account by the bank	March 1995 Bank Statement Bank of Nova Scotia (trust)	3	0.56
Apr 95	no explanation given	Trust Accounting	1	-200
Apr 95	no explanation given	Trust Accounting	1	-1.12
Apr 95	transferred to Solicitor's general account	April 1995 Bank Statement Bank of Nova Scotia (trust)	4	12000
		April 1995 Bank Statement Royal Bank (trust)	5	
		April 1995 Bank Statement Royal Bank (trust)	6	
Apr 95	bank service charge re: new cheques charged to trust bank account by the bank	April 1995 Bank Statement Royal Bank (trust)	5	44.56
Apr 95	bank service charge re: new cheques charged to trust bank account by the bank	May 1995 Bank Statement Royal Bank (trust)	7	153.76

DATE	ITEM	SOURCE DOCUMENT	EXHIBIT	AMOUNT WITHDRAWN (DEPOSITED)
Apr 95	no explanation given	Trust Accounting	1	0.56
Jun 95	payment to staff Member, Kim Kelly	June 1995 Bank Statement Canada Trust (trust) and cheque	8	559.05
Jun 95	payment to Solicitor	July 1995 Bank Statement Canada Trust (trust) and cheque	9 10	2000
Jul 95	payment re: Solicitor's photocopier lease	July 1995 Bank Statement Canada Trust (trust) and cheque	9 11	575.23
Jul 95	no explanation given	Trust Accounting	1	-800
Jul 95	no explanation given	Trust Accounting	1	-1
Aug 95	no explanation given	Trust Accounting	1	-1500
Aug 95	bank service charge charged to trust bank account by the bank	August 1995 Bank Statement Canada Trust (trust)	12	19
Aug 95	payment to Solicitor	August 1995 Bank Statement Canada Trust (trust) and cheque	12 13	3000
Sep 95	payment to Solicitor	September 1995 Bank Statement Canada Trust (trust) and cheque	14 15	50
Sep 95	payment to staff Member, Kim Kelly	September 1995 Bank Statement Canada Trust (trust) and cheque	14 16	350
Oct 95	apparently a deposit made by Solicitor	October 1995 Bank Statement Canada Trust (trust)	17	-50

DATE	ITEM	SOURCE DOCUMENT	EXHIBIT	AMOUNT WITHDRAWN (DEPOSITED)
Oct 95	bank service charge charged to trust bank account by the bank	October 1995 Bank Statement Canada Trust (trust)	17	19
Nov 95	payment to Solicitor	November 1995 Bank Statement Canada Trust (trust) and cheque	18	1000
Dec 95	payment to Solicitor	December 1995 Bank Statement Canada Trust (trust) and cheque	19	1500
Jan 96	payment of personal expense of Solicitor	January 1996 Bank Statement Canada Trust (trust) and cheque	20	15.27
Feb 96	bank service charge re: new cheques charged to trust bank account by the bank	February 1996 Bank Statement Canada Trust (trust)	21	25.17
Feb 96	payment to Lanier re: office equipment	February 1996 Bank Statement Canada Trust (trust)	21	1702.17
TOTAL				<u>20374.68</u>

8. With respect to the \$12,000 misappropriation in April, 1995, at that time the Solicitor changed his mixed trust bank account from the Bank of Nova Scotia to the Royal Bank of Canada. He transferred \$24,760.28 from the Bank of Nova Scotia account. Of this amount, only \$12,760.20 went to the new mixed trust bank account at the Royal Bank. The remainder, \$12,000.00, was transferred to his new general account at the Royal Bank. That \$12,000.00 was then disbursed from his general account during April 1995 for non-trust related items as follows:

Date	Chq No.	Payee	Amount	Cancelled Chq Exhibit #	Bank Stmt Exhibit #
Mar 29/95		Cheque order	34.27	22	6
Apr 5/95		Barbara Van Bakel	1,500.00	22	6

Date	Chq No.	Payee	Amount	Cancelled Chq Exhibit #	Bank Stmt Exhibit #
Apr 5/95		Union Gas	191.88	22	6
Apr 8/95	197	Lorne Cory	20.00	22	6
Apr 8/95	198	Steve Ogilvie	20.00	22	6
Apr 6/95		Sharon Aldridge	30.24	22	6
Apr 5/95		Royal Bank - Visa	288.00	22	6
Apr 8/95		Bev's Movers	417.30	22	6
Apr 5/98		Bell Canada	39.11	22	6
Apr 5/95		London Hydro	87.34	22	6
Apr 5/95		London Hydro	194.19	22	6
Apr 5/95		Bell Canada	218.53	22	6
Apr 5/95		Bev's Movers & Cartage	312.98	22	6
Apr 5/95		Bank of Nova Scotia	583.00	22	6
Apr 5/95		The Bank of Nova Scotia	276.00	22	6
Apr 5/95		Bell Mobility	438.71	22	6
Apr 5/95		Amex Bank of Canada	3,275.00	22	6
Apr 15/95	9	John Wright	200.00	23	24
Apr 13/95	101	Sharon Aldridge	37.10	23	24
Apr 17/95	1	Minister of Finance	11.00	23	24
Apr 8/95	195	Big Sisters	250.00	23	24
Apr 5/95		Union Gas Limited	1,139.81	23	24
Apr 17/95	5	London Hydro	174.62	23	24
Apr 17/95	4	London Hydro	388.38	23	24
Apr 5/98		London Life	414.45	23	24
Apr 17/95	8	Savin Canada	119.49	23	24

Date	Chq No.	Payee	Amount	Cancelled Chq Exhibit #	Bank Stmt Exhibit #
Apr 21/95	12	John Wright	1,238.05	23	24
Apr 11/95	11	John Wright	200.00	23	24
TOTAL			<u>12,099.45</u>		

Particular 2(b) He misapplied the sum of \$41,473.15, more or less, from his mixed trust account by disbursing funds to the estate of Mabel Moran when he held no funds in trust for that estate.

9. Mabel Moran died on September 27, 1987. Her son, Richard Russell, was the executor to her estate. At the time of her death she had resided at 47 David Street, London, Ontario, with her second husband, Leonard Moran. Mrs. Moran owned that residence solely. Subsequent to her death, a dispute arose between Mr. Russell and Mr. Moran as to Mr. Moran's share of the estate of Mrs. Moran. The Solicitor acted for the estate of Mabel Moran, having been retained by Richard Russell for that purpose. He did not act for either Mr. Russell or Mr. Moran.

10. In 1993, the property at 47 David Street was sold, the transaction closing on May 20, 1993. The Solicitor acted for the vendor on that transaction. The Solicitor received into his mixed trust account the net amount due on closing, \$100,286.45.

11. Due to the dispute between Mr. Russell and Mr. Moran, Mr. Russell instructed the Solicitor to hold the funds in trust pending receipt of further instructions.

12. The Solicitor's books and records are incomplete, however, a partial reconstruction has determined that the Solicitor disbursed the funds from his trust account as follows:

Date	Chq No.	Payee	Amount of Cheque	Balance to be Disbursed	Exhibit Number
May 20/93		Balance received on closing		100,286.45	
May 21/93	12652	Canada Trust Realty - commission	2,704.00	97,582.45	25
May 21/93	12653	John Wright - legal fees	865.70	96,716.75	
	12755	Little & Wright - register discharge	27.00	96,689.75	
Mar 29/94	13355	J. Harding in trust - solicitor for Moran	18,750.00	77,939.75	26

Date	Chq No.	Payee	Amount of Cheque	Balance to be Disbursed	Exhibit Number
Mar 29/94	13356	Lerner & Assoc - solicitors for Russell	4,658.77	73,280.98	27
Aug 17/94	13757	Lerner & Assoc - solicitors for Russell	4,807.83	68,473.15	28
Sep 7/94	13807	John Wright - legal fees	3,210.00	65,263.15	29
Sep 7/94	13808	Estate of Mabel Moran	38,290.15	26,973.00	30
Sep 9/94	13811	Estate of Mabel Moran	27,000.00	(27.00)	31

13. With the exception of the payment of the real estate commission and the registration of the discharge, the Solicitor's file contains no documentation to support or authorize the Solicitor to make any of the above-noted payments.

14. On or about September 28, 1994, Mr. Russell attended at the Solicitor's office and informed the Solicitor that, by his calculations, there should be approximately \$40,000.00 left in the estate account. The Solicitor did not check his accounting records, but made out a further cheque to the estate of Mabel Moran in the amount of \$41,473.15. A copy of this cheque is attached hereto as Exhibit 32. That cheque was not cashed by the estate until January 9, 1995. A copy of the January 1995 bank statement is attached hereto as Exhibit 33.

15. The effect of the issuing and negotiation of the cheque was to increase the overdraft in the estate of Mabel Moran trust sub-ledger account to \$41,500.15.

16. The Law Society has made attempts to convince Mr. Russell to repay the monies. These attempts have been unsuccessful. A copy of correspondence dated April 22, 1998, to Mr. Russell is attached hereto as Exhibit 34.

Effect of the Misappropriation and the Misapplication

17. The misappropriation of \$20,374.68 and the misapplication of \$41,473.15 total \$61,847.83. These funds should have been held in the Solicitor's trust account to the benefit of other clients.

18. As a result of the Law Society's investigation, co-signing controls were placed on the Solicitor's mixed trust bank account by the Law Society on March 29, 1996. At that time there was a total of \$4,133.65 in the mixed trust bank account. That total remains unchanged to date.

19. On April 2, 1996, the Law Society obtained an order under Section 42 of the *Law Society Act* with respect to the Solicitor's practice. The mixed trust bank account of the Solicitor is now under the control of the office of the Staff Trustee of the Law Society of Upper Canada.

20. There have been four claims made on behalf of clients to the Compensation Fund of the Law Society. These claims are as follows:

Claimant Name	Claim Paid Out	Claim Made, Not Yet Paid	Total Claim
Bilcliffe	53,030.62	0.00	53,030.62
Saunders	18,086.77	0.00	18,086.77
McKernan	1,215.13	0.00	1,215.13
Knebl	0.00	1,000.00	1,000.00
Total			<u>73,332.52</u>

21. The difference between the claims and the amount misappropriated or misapplied by the Solicitor is \$11,484.69 (\$73,332.52 - \$61,847.83). This difference is further reduced to \$7,351.04 by the \$4,133.65 contained in the Solicitor's mixed trust account.

22. Due to the incomplete state of the Solicitor's books and records, the Society has been unable to determine the specific destination of the \$7,351.04, nor has the Solicitor been able to provide an explanation for the missing funds.

V. DISCIPLINE HISTORY

23. The Solicitor has no discipline history.

DATED at Stratford this 9th day of October, 1998."

RECOMMENDATION AS TO PENALTY

The Committee recommends that John Douglas Wright be granted permission to resign.

REASONS FOR RECOMMENDATION

The Solicitor admits misappropriating \$20,000.00 and misapplying \$41,000.00 from his trust account. This occurred at a time when the Solicitor was significantly under the influence of alcohol. He has subsequently sought help for his alcoholism.

The Solicitor has no prior disciplinary record. The misappropriation and the misapplication appeared to have resulted from sloppy book-keeping rather than from a deliberate intention to defraud clients. No clients ultimately suffered a loss, although that was due to the clients all receiving full reimbursement from the Lawyer's Compensation Fund rather than from the Solicitor.

The Solicitor was co-operative and has at all times taken full responsibility for his actions. He has no expectation of practising law again. He lives in a small community and is now working in the hotel industry and doing volunteer work. He asks for permission to resign rather than face disbarment. This would enable him to keep his employment and continue to do volunteer work. Under the circumstances, the Committee was of the view that the public would be adequately protected if the Solicitor was permitted to resign.

John Douglas Wright was called to the Bar on March 15, 1970.

ALL OF WHICH is respectfully submitted

DATED this 19th day of January, 1999

Nancy L. Backhouse, Chair

There were no submissions.

It was moved by Ms. Ross, seconded by Ms. Stomp that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be permitted to resign.

Ms. Cowie made submissions in support of the recommended penalty.

Counsel, the reporter and the public withdrew.

Mr. Wright moved an amendment to the Reasons for Recommendation as follows:

- page 11, 2nd paragraph under heading Reasons for Recommendation - that the 2nd sentence be changed to read: "The misappropriation and misapplication appeared to have resulted "partly from sloppy book-keeping and partly from wilful blindness" rather than from a deliberate intention to defraud clients." The next sentence was to be deleted.

It was moved by Ms. Ross, seconded by Mr. Wright that the recommended penalty as amended be adopted.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be granted permission to resign and that the Report be amended on page 11 in the 3rd paragraph by changing the wording to read: "The misappropriation and misapplication appeared to have resulted partly from sloppy book-keeping and partly from wilful blindness rather than from a deliberate intention to defraud clients" and that the sentence in that paragraph be deleted.

Re: Bruce Allan CLARK - Granville, New York

The Secretary placed the matter before Convocation.

Messrs. Wright and Carey and Ms. Angeles withdrew for this matter.

Ms. Cowie appeared for the Society. Mr. Anand appeared on behalf of the solicitor who was not present.

The Report of the Discipline Committee dated December 17th, 1998 together with the Affidavit of Service as filed as Exhibit 1. The Acknowledgement, Declaration and Consent was filed as Exhibit 2.

25th March, 1999

Convocation had before it the Report of the Discipline Committee dated 17th December, 1998, together with an Affidavit of Service sworn 4th January, 1999 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 18th December, 1998 (marked Exhibit I), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 30th December, 1998. 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

Bradley H. Wright, Chair
Elvio L. DelZotto, Q.C.
Nora Angeles

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

Elizabeth Cowie
For the Society

BRUCE ALLAN CLARK
of the City
of Granville, NY
a barrister and solicitor

Not Represented
For the solicitor

Heard: November 3, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Complaint D110/98 was issued on July 16, 1998 against Bruce Allan Clark alleging that he was guilty of conduct unbecoming a barrister and solicitor.

The matter was heard in public on November 3, 1998 before this Committee composed of Bradley H. Wright, Chair, Elvio L. DelZotto, Q.C. and Nora Angeles. The Solicitor did not attend the hearing nor was he represented. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D110/98

2. a) On or about February 20, 1997, he was found guilty of contempt of court by the Honourable Judge N. Friesen of the Provincial Court of British Columbia, Criminal Division;

- b) on or about February 21, 1997, he was convicted by the Honourable Judge T.C. Smith in the Provincial Court of British Columbia, Criminal Division, that he on or about the 15th day of September, 1995, at or near the District of 100 Mile House, in the Province of British Columbia, did resist a peace officer, engaged in the execution of his duty, contrary to Section 129(a) of the Criminal Code.

RECOMMENDATION AS TO PENALTY

The Committee finds Bruce Allan Clark guilty of conduct unbecoming a barrister and solicitor and recommends that he be disbarred and struck off the Rolls.

REASONS FOR RECOMMENDATION

1. The Member was called to the Bar on March 26, 1971. He is presently residing in Granville, New York and refuses to return to Canada. Service was properly effected. We were advised by duty counsel that the Member had declined the assistance of duty counsel other than to inform us that the Member would not appear before us and was content to rely solely on the motion material he had previously filed. There is no agreed statement of facts.
2. It is not contested by the Member that he was convicted of contempt of court and of resisting a police officer as set out in Particulars 2(a) and 2(b) respectively of Complaint D110/98. The Member appealed his conviction for contempt of court to the British Columbia Court of Appeal which unanimously dismissed the appeal on March 14, 1997 (The Court of Appeal's Oral Reasons for Judgment were filed before us as Exhibit 3, Tab 11).
3. The Committee accepts that, absent compelling circumstances of mitigation (not present here), contempt of court and resisting a police officer are sufficiently serious as to constitute conduct unbecoming a barrister and solicitor. To understand the Committee's recommendation of disbarment, it is necessary to understand the background to this matter.
4. The Oxford English Dictionary ("OED") contains the following definitions:

"Genocide" Annihilation of a race.

"Misprision" A wrong action or omission, specifically, a misdemeanour or neglect of duty on the part of a public official.

"Misprision of Treason" An offence or misdemeanour akin to treason or felony, but not liable to the capital penalty. Later misunderstood as meaning only concealment of a person's knowledge of treasonable actions or designs.

"Treason" 2. Law. (a) High t. Violation of a subject of his allegiance to his sovereign or to the state.

Osborn's Concise Law Dictionary, Sixth Edition, contains the following definitions:

"Actus non facit reum, nisi mens sit rea" The act itself does not constitute guilt unless done with a guilty intent. [Often shortened to "actus reus" or "guilty act".]

"Mens rea" An evil intention, or a knowledge of the wrongfulness of an act.

“Misprision of Treason” Where a person who knows that some other person has committed high treason does not within a reasonable time give information thereof to a judge of assize or justice of the peace.

5. The Member has for many years accused a great number of people including judges, benchers, and police officers, of the crimes, *inter alia*, of genocide, misprision of treason, and treason. His argument is based on an assertion that an edict issued by Queen Anne of Great Britain in 1708 in respect of a dispute between an aboriginal population in Connecticut and the Connecticut colonial government applies to modern Canadian constitutional law. Every one of the many duly constituted Canadian courts and tribunals, including the Supreme Court of Canada, to which he has presented his argument has rejected it. The Member claims that the courts have failed to hear him. This is not so. They have heard him, but they have rejected his argument. He does not accept the rulings.
6. The Member did not attempt, in an effort to justify his conduct, to adduce before us any evidence, credible or otherwise, of the crimes that he asserts have been committed. It is patent that the judiciary, benchers, and police of this country have not engaged in genocide or treason, and cannot, therefore, have engaged in misprision or misprision of treason. There is neither the *actus reus* nor the *mens rea* on their part to annihilate a race or betray our country. We add ourselves to the list of courts and tribunals who reject the Member’s argument.
7. As a result of the Member’s behaviour arising in 1992, Complaint D36/94 was issued against him. The Member appeared before a Committee of Convocation in December 1994 and April 1995. The Report and Decision of that Committee was issued on July 10, 1995 recommending his disbarment. On July 6, 1995, the Supreme Court of Canada refused the Member leave to appeal the case of *R. v. Williams* (1994) 52 B.C.A.C. 296 in which the Member had challenged the jurisdiction of Canadian courts. On November 23, 1995, Convocation ordered that the Member be reprimanded rather than disbarred. The Reasons of Convocation were issued on June 19, 1996. The reprimand was finally administered in February 1998 by teleconference because of the Member’s refusal to attend in person.
8. The Member perpetrated the acts that were to result in the convictions against him for contempt of court and assaulting a police officer before Judge Friesen of the Provincial Court of British Columbia, sitting in 100 Mile House, on September 15, 1995, i.e., two months after (1) a Committee of Convocation had recommended the Member’s disbarment and (2) leave to appeal *Williams* (supra) had been refused.
9. On September 15, 1995, the Member tried to portray himself before Judge Friesen as counsel for several accused in a bail hearing in a highly-charged matter known as the “Gustafsen Lake Stand-off”. Judge Friesen refused to recognize him because he was not listed on the court docket. The Member then used a vulgar expression, termed Judge Friesen’s court “a kangaroo court”, spoke loudly and aggressively, flung papers which struck the court reporter on the arm and face, and assaulted a police officer by making contact with his leg or groin. Judge Friesen cited the Member for contempt and later scheduled a hearing of the matter. The Member undertook to appear before Judge Friesen on the contempt matter and on that basis was permitted to leave. The Member breached his undertaking by failing to appear; instead, he sent a letter in which he challenged the jurisdiction of the court. The court was forced to issue a bench warrant. The Member was not detained until well over a year later.
10. Upon learning of the convictions in British Columbia for contempt of court and resisting a police officer, the Society issued Complaint D110/98 against the Member. He then brought a motion (1) claiming an abuse of process and (2) seeking to attend the hearing by conference call. On September 29, 1998, a Committee of Convocation comprised of Daniel Murphy, Chair, Susan Elliott, and Michael Adams heard his motions. A transcript of the hearing was entered before us as Exhibit 1, Tab 1.
11. The motions Committee considered whether the events leading to Complaint D110/98 may have been dealt with in Complaint D36/94. Referring to the facts underlying D110/98, Ms. Elliott stated the following at Exhibit 1, Tab 1, Page 33, line 6, et seq.:

Well, our main concern is that these facts, the underlying facts, have been rolled up in a Convocation matter already . I think that's our overwhelming concern. Even though the convictions weren't entered, the facts, the basis for them was certainly - I don't know if the transcript will help you much because I think we can agree that the essence of these facts were rolled up in all the other facts before Convocation and that disturbs us, for lack of a better word.

12. Speaking to the Society's counsel, Mr. Adams and Ms. Elliott stated the following at Exhibit 1, Tab 1, Page 40, Line 3, et seq.:

(Mr. Adams) I believe the question we put to you was that the conduct that occurred in B.C. was inseparable from the conduct for which he [the Member] received discipline before Convocation in 1995....

(Ms. Elliott) That's my concern.

13. The motions Committee then heard submissions from the Society's counsel and concluded that the material facts leading to Complaint D110/98 had not been before Convocation during its deliberations in Complaint D36/94 in November 1995 such that Complaint D110/98 was not an abuse of process. By November 1995, the Member had only been cited for contempt and resisting a police officer, but not yet convicted. The Committee then heard and denied his motion to attend the full hearing by teleconference.

14. The Chair of the motions Committee advised the Member that his motions had been denied and that the hearing would proceed before another committee, and urged him to appear before the new committee or at least have counsel who could make representations on his behalf. Whereupon the Member advised the motions Committee at Exhibit 1, Tab 1, Page 48, line 6, et seq. as follows:

I can tell you that I have no intention of doing that. I am content with the matter going to Convocation on the basis [of] the affidavit material I've filed....and I'm also content, sir, that if you and the Law Society of Upper Canada have such a different value system than I do, you may as well get on to it. I really don't really belong with you crowd....I have nothing further to say. I'm content with the matter being disposed of in absentia and I have no desire to appear further before the committeeI'm asking this committee of its own motion to recommend that Convocation commission an inquiry of the Law Society's ongoing misprision of treason and fraud and complicity in genocide...

15. We agree with the findings of the motions Committee. As of the date of the proceedings before us, the Member had not filed an appeal of the motions Committee's rulings. The Member has now widened his accusations of genocide to include the Society. We were unruffled by that accusation and it played no part in our deliberations.

16. It is helpful to quote passim from the Reasons for Judgment of Judge Friesen in Regina v. Bruce Clark in the contempt of court matter released on February 21, 1997 (Exhibit 3, Tab 8, pp 5 and 11-13):

....In 25 years on the Bench I had never witnessed such anger and violence, except by mentally ill persons....

In these rare "in the face of the court" contempt citations, when a contemnor is arrested, he is brought back from cells at the first opportunity to show cause why he should not be cited. After a brief cooling-off period, the contemnor is usually regretful. An apology is encouraged and accepted. There is then no further penalty and no criminal record associated with the citation.

This is not such a case. Clark deliberately challenged the authority of this court in a most contemptuous, discourteous and angry manner accompanied by some violence. In this way he attempted to intimidate the court to accept his legal argument - an argument which has been rejected on some 40 consecutive attempts.

Despite time in custody, and having had the last 16 months to think about this matter while at large, Clark shows little remorse. He portrays himself as a "prisoner of war", as a "Solhenitzyn" contemned (sic) to a psychiatric ward for speaking the truth. He calls himself a "fugitive for justice" [emphasis is in the original] while at large on a warrant for his arrest for contempt and assault.

He continues to refuse to accept rulings of our courts.

The Law Society of Upper Canada held extensive disciplinary hearings in April 1995. Clark was found guilty of many charges by a panel, was considered ungovernable, and faced disbarment. On review, another panel reversed most of the findings and found him guilty of only a few charges, and governable. Surprisingly, and regrettably, the Law Society of Upper Canada seemed to condone much of Clark's hectoring as "zealous" advocacy - necessary because judges did not give him a proper audience, or consider his argument. That is a false premise. [bold emphasis is in the original]. Judges have listened patiently and carefully to his argument. Must a court listen to the same legal argument for the 41st time when that argument has been heard, considered and rejected 40 consecutive times at all levels in Canada?

As already mentioned, the Supreme Court of Canada refused to hear the Williams, (supra) appeal. Clark then had another setback on September 12, 1995 in the Supreme Court of Canada. He refused to accept these rulings. On September 15, 1995, three days later, he added some violence to his submission in 100 Mile House.

After September 15, 1995, Clark continued his campaign to argue his rejected thesis in the courts. In R. v. Ignace et al (Prov. CT. (sic) B.C. 100 Mile House #5786 Oct. 6 '95) in another matter (Clark again made his complete submission in his application to appear as counsel in the Gustafsen Lake case) Barnett J., ended his reasons by saying:

"-- I am convinced that two propositions are clear beyond all doubt."

"First, Mr. Clark, contrary to his statements, is not a friend of any court in British Columbia, or the Supreme Court of Canada. His writings and remarks are beyond being merely scandalous and outrageous. The Chief Justice of Canada was absolutely correct when he told Mr. Clark on September 12, [1995] that:

'LAMER C.J.: I must say, Mr. Clark, that in my 26 years as a judge I have never heard anything so preposterous and presented in such an unkind way. To call the judges of the Supreme Court of Canada and the nine hundred and seventy-five (975) High Court judges of Canada accomplices to genocide is something preposterous. I do not accept that and think you are a disgrace to the bar.'

Second, Mr. Clark apparently knows essentially nothing about the conduct of a criminal trial in Canada. He has repeatedly asked this court to make orders that it cannot possibly make, and he has repeatedly protested orders that this court must make. The various documents filed by Mr. Clark in this court, the Supreme Court of British Columbia, and the Court of Appeal are, in large part, an utter farrago of nonsense...."

Lamer, C.J. made the above comments to Clark only three days before he (Clark) appeared before me in 100 Mile House; Barnett J. made his comments three weeks later. After evading the warrant for his arrest for 16 months, he continues his attack on the courts in a most contemptuous way. The apology for having spoken a few ill-chosen words does not purge his profound, intractable continuing contempt. He clearly intends to continue his campaign to scandalize the courts as soon as he is released....

....In my view, his intransigent contempt for all Canadian Courts, his deception, and his willingness to resort to violence in the face of the court also jeopardizes the legitimate aspirations and interests of the aboriginal cause....The imposition of the conditional sentence is inappropriate in these circumstances.

....I impose a prison sentence of three months.

17. Judge Friesen's expression of regret over the Society's handling of Complaint D36/94 played no part in our determinations.

18. It is also helpful to quote passim from the unanimous Oral Reasons for Judgment of the

British Columbia Court of Appeal in Regina v. Bruce Clark released on March 14, 1997 (Exhibit 3, Tab 11, pp 5-11):

....the appellant was not convicted of contempt until....some 17 months after the contemptuous conduct occurred. The time lapse was due almost entirely to the breach by the appellant of his solemn undertaking given both in writing and verbally, to appear and be dealt with....

....There is a surprising aspect to the appeal and even to the fact of an appeal. It is that the appellant had admitted to the Provincial Court Judge 17 months earlier that his conduct constituted contempt....

There can be no doubt that the events occurred in a duly constituted court or that the Provincial Court Judge was clothed with the authority to conduct bail hearings. If there ever was any uncertainty about jurisdiction, and I do not think there was, it was put to rest by R. v. Williams (1994) 52 B.C.A.C. 296, leave to appeal to the Supreme Court of Canada refused on July 6, 1995 two months before the 100 Mile House episode.....

It is notable, I think, in this case that there is no suggestion that the appellant was unfairly treated. There could hardly be. At every stage of the show cause hearing he was offered assistance. He had every opportunity to give and lead evidence. He had the right of cross-examination and the opportunity to tender documentary exhibits and to make submissions. He enjoyed every element and ingredient of a fair hearing and even to the extent that the Crown was moved to observe in its factum that "an examination of the transcripts reveals.... that Judge Friesen treated the Appellant with courtesy and patience throughout". In my opinion, that is a fair and accurate observation.... there are no grounds here to support a bias allegation....

In my opinion, no impartial reviewer of the record in this case would come to any other conclusion than that the appellant was properly convicted of contempt in the face of the court. It is my further opinion that the same impartial reviewer would inevitably come to the conclusion that the requirements of natural justice and procedural fairness were met at every stage of the proceedings.

The appellant is in the position he now finds himself as a consequence of his own conduct. He cannot reasonably expect to be exonerated by seeking to indict the trial judge and the process that brought him to book.

25th March, 1999

19. The Member's conduct before Judge Friesen was outrageous. He acted in serious contempt of court and never expressed genuine and full remorse. He resisted a police officer, this time involving more than a technical touching, but a kick to the leg or groin. He breached his undertaking to a judge to reappear at the contempt hearing. He remained at large for more than a year.

20. The Member refuses to accept the consistent rejection of his legal argument by several courts at several levels. Instead, he spreads his accusations of egregious crimes to anyone with whom he disagrees. He demonstrably does not respect the rule of law or his obligation to be governed by the Society.

21. The Member's conduct does not involve financial defalcation and no one doubts the sincerity with which he believes in his Queen Anne argument. Nevertheless, his conduct is so unbecoming a member of the legal profession and so consistently flouts the proper authority of the courts and his governing body that the Committee is compelled to conclude that he is ungovernable, not only by the Society but by the Canadian courts, and should be disbarred. It is unfortunate for the Member that his career must end in this fashion, but end it must. If he wishes to pursue his argument further, it is recommended that he do so as a private citizen, and not as a member of the Law Society of Upper Canada.

ALL OF WHICH is respectfully submitted

DATED this 17th day of December, 1998

Bradley H. Wright, Chair

Mr. Anand had been advised by the solicitor that he would not attend Convocation and instructed Mr. Anand to file the materials he had submitted including a letter dated March 15th, 1999.

Those materials were before Convocation.

Ms. Cowie made submissions in support of the adoption of the Report.

It was moved by Mr. Copeland, seconded by Mr. Swaye that the Report be adopted.

Carried

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

Ms. Cowie made submissions in support of the recommended penalty.

It was moved by Ms. Ross, seconded by Ms. Stomp that the solicitor be disbarred.

Carried

CONVOCATION ROSE AT 3:50 P.M.

Confirmed in Convocation this 30 day of April, 1999

Harvey T. Strusberg

Treasurer