

MINUTES OF SPECIAL CONVOCATION

Thursday, 27th April, 1989
9:30 a.m.

PRESENT:

The Treasurer (Mr. Lee K. Ferrier) Messrs. Arnup, Bastedo, Bragagnolo, Carey, Carter, Cullity, Farquharson, Mrs. Graham, Messrs. Henderson, Lawrence, Lerner, Lyons, Mrs. MacLeod, Messrs. McKinnon, Outerbridge, Poulin, Shaffer, Somerville, Sosa, Strosberg, Thom, Topp, Wardlaw, Mrs. Weaver and Mr. Yachetti.

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"IN PUBLIC"

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The Treasurer paid tribute to Mr. Tom Sosa, who had been appointed the Deputy Minister of Energy in the Provincial Government and thanked him for his efforts on behalf of the Law Society of Upper Canada.

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DISCIPLINE COMMITTEE

Re: AMITA MOHINI SUD, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. Stephen Sherriff spoke to the matter and requested that Convocation adjourn the matter until the Discipline Convocation in June. He indicated the adjournment was at the request of the solicitor and was consented to by the Law Society.

It was moved and seconded that the matter be adjourned until the June Discipline Convocation.

Carried

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Re: DAVID ELLIOTT WATERHOUSE, Niagara Falls

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Mr. John Broderick, Q.C. Mr. Stephen Sherriff appeared for the Society.

An adjournment until the June Discipline Convocation was requested. The Society did not oppose the adjournment on the solicitor's continuing undertaking not to practise and to cooperate with the Society's staff trustee.

It was moved and seconded that the solicitor be granted an adjournment to the June Discipline Convocation on his undertaking not to practise law and to cooperate with the staff trustee.

Carried

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27 April 1989

Re: BRUCE PERREAULT, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Mr. C. Mark. Mr. Shaun Devlin appeared for the Society.

The matter was stood down until later in the morning.

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Re: HERBERT GORDON MYLKS, Odessa

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Mr. T. Lockwood. Mr. Stephen Sherriff appeared for the Society.

Convocation had before it the Report of the Discipline Committee dated 27th March, 1989, together with an Affidavit of Service sworn 14th April, 1989 by Louis Kotholos that he had effected service on the solicitor by registered mail on 11th April, 1989 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 25th April, 1989 (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

A. Burke Doran, Q.C., Chair
Earl J. Levy, Q.C.
Ronald D. Manes

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

H. Reginald Watson
for the Society

HERBERT GORDON MYLKS
of the County
of Lennex and Addington
a barrister and solicitor

Thomas J. Lockwood, Q.C.
for the solicitor

Heard: December 6, 1988

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 16, 1988, Complaint D75/88 was issued against Herbert Gordon Mylks alleging that he was guilty of professional misconduct.

The matter was heard in public by a committee composed of A. Burke Doran, Q.C. as Chairman, Earl J. Levy, Q.C. and Ronald D. Manes. The Solicitor attended the hearing and was represented by his counsel Thomas J. Lockwood, Q.C. H. Reginald Watson appeared as counsel for the Law Society.

DECISION

The Complaint

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

(Para. 2; Complaint D75/88)

"(a) During the period April 1st, 1987 to June 30th, 1988, he misappropriated the sum of \$56,596.00, more or less, by withdrawing funds from his trust account for his own benefit.

(b) In or about August, 1987, he borrowed \$35,000.00, more or less, from his client, Wilbert Willard, without his client's knowledge or consent.

(c) In or about December, 1987, he borrowed the sum of \$20,000.00, more or less, from his client, Wilbert Willard, without the client's knowledge or consent, which sum has not been repaid as of August 30th, 1988.

(e) For the fiscal years ending March 31, 1984 through and including March 31, 1987, in order to disguise improprieties he filed false Form 2/3 declarations which failed to indicate the overdrawn trust ledger accounts that existed during those fiscal years.

(f) On or about May 12th, 1988, he deliberately misled the Society's audit examiner by advising that he was not indebted to any client when he knew such was not the fact.

(g) He failed to produce all the books, records and accounts required by the Regulations made pursuant to the Law Society Act for examination by the Law Society's auditor following reasonable demand by the auditor.

(h) He transferred funds from his trust account to his general account without first delivering a fee billing to his clients. The clients who were effected are as follows:

<u>CLIENT</u>	<u>AMOUNT</u>	<u>DATE OF TRANSFER</u>
Coville	\$1,309.00	November 23, 1987
Lines	2,000.00	October 6, 1987 & October 29, 1987
Hornby	1,057.00	March 3, 1988
Munroe	1,500.00	April 15, 1988
West	520.00	May 10, 1988

Evidence

The entirety of the evidence before the Committee on the issue of misconduct was in the form of the following Agreed Statement of Fact:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D75/88 and is prepared to proceed with a hearing of this matter on December 6th, 1988.

II. IN PUBLIC/IN CAMERA

2. The Solicitor and Counsel for the Law Society agree that this hearing should take place in public.

III. ADMISSIONS

3. The Society withdraws particular 2(d). The Solicitor has reviewed

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Complaint D75/88 with his counsel, Thomas Lockwood, Q.C., and admits particulars 2(a), (b), (c), (e), (f), (g) and (h), and admits that they constitute professional misconduct.

IV. FACTS

4. The Society commenced an audit examination of the Solicitor's practice on May 12th, 1988. The examination discovered significant shortages in the Solicitor's trust account with the result that co-signing controls were immediately implemented and the matter was escalated to a full audit which commenced on May 16th, 1988. During the first examination on May 12th, 1988, the Solicitor misled the Society's examiner by stating that he was not indebted to any client when in fact he was indebted to his client, Wilbert Willard.

5. The audit of the Solicitor's practice disclosed continuous shortages in his trust account subsequent to April 1st, 1987. It was not possible at that time for the Society to determine the exact estate of the Solicitor's financial affairs as he failed to produce the majority of his accounting records for the period prior to March 31st, 1987. Subsequent to the issuance of the Complaint, the Solicitor produced the outstanding records and co-operated with the Society. The shortages which were discovered were caused by the existence of overdrawn trust ledger accounts. In the period from April 30th, 1987 to January 31st, 1988, the month end trust listings disclosed overdrawn trust ledger accounts varying in total from a low of \$23,857.22 at August 31st, 1987, to a high of \$82,211.96 at December 31st, 1987.

6. The most extensively overdrawn account was that of Tri-Gen properties, which is the Solicitor's corporation. Since 1984 the Solicitor has used this trust ledger account mainly for personal transactions. The Society examined the Tri-Gen trust ledger accounts prior to April of 1987. These indicate that the Tri-Gen account was overdrawn for extended periods of time prior to April 1, 1987. The Society has not calculated the extent of these earlier misappropriations.

7. During the period April 1st, 1987, to April 30th, 1988, the Tri-Gen account was continuously overdrawn. The Solicitor misappropriated \$56,596.57 from his mixed trust account by issuing cheques on the mixed trust account which he charged to the overdrawn Tri-Gen account. The Solicitor issued and cashed the following cheques drawn on his trust account which he used for personal expenditures.

<u>DATE</u>	<u>PAYEE</u>	<u>AMOUNT</u>
April 1, 1987	Royal Trust	\$ 743.00
June 15, 1987	H. Gordon Mylks	2,500.00
August 28, 1987	H. Gordon Mylks	2,500.00
September 1, 1987	Bren Savage Ltd.	1,241.00
September 1, 1987	H. Gordon Mylks	1,000.00
September 1, 1987	H. Gordon Mylks	100.00
September 4, 1987	Eastern Rentals	1,862.57
September 11, 1987	H. Gordon Mylks	2,000.00
September 18, 1987	H. Gordon Mylks	2,000.00
September 28, 1987	H. Gordon Mylks	5,000.00
September 28, 1987	Robert K. Cooper in trust	2,800.00
October 9, 1987	H. Gordon Mylks	2,000.00
November 11, 1987	H.G. Mylks	250.00
November 16, 1987	Brendan Savage	4,100.00
December 10, 1987	Denise Mylks	10,000.00
December 24, 1987	H. Gordon Mylks	500.00
December 30, 1987	H. Gordon Mylks	2,000.00
January 13, 1988	H. Gordon Mylks	2,000.00
January 20, 1988	H. Gordon Mylks	3,000.00
January 29, 1988	H. Gordon Mylks	1,000.00
February 1, 1988	H. Gordon Mylks	3,000.00
February 19, 1988	H. Gordon Mylks	2,000.00
March 2, 1988	H.G. Mylks	5,000.00
		<u>\$56,596.57</u>

The funds used to cover these cheques belonged to other clients of his law practice whose funds were on deposit in his mixed trust account. Throughout this period of time, the Solicitor was providing services to three other clients and would be entitled upon an appropriate fee billing being rendered to recover his fees, in part or in whole, out of the monies in trust. However, the Solicitor admits that the total amount to which he would have been entitled if fee billings had been rendered would not equal the \$56,596.57 detailed above.

8. At no time did the Solicitor actively conceal or take any steps to conceal these trust shortages, with the exception of the false Forms 2/3 described below. His staff kept detailed records of his trust accounts which, when examined by the staff of the Law Society, immediately disclosed the shortages and misappropriations.

9. The Solicitor had, for some years, been involved in very significant acrimonious marital discord concerning, among other things, access to the child of his marriage, all of which led to litigation, caused financial problems for the Solicitor, distracted his attention from his business affairs, and contributed to the significant personal problems experienced by him.

10. While these matters do not excuse the misappropriations and the other acts of professional misconduct which the Solicitor has admitted, they put tremendous pressure on him, and led him to find it difficult to cope with his business and professional responsibilities.

11. The Solicitor has made full restitution. His trust account is now balanced and the shortage has been eliminated. There are no outstanding Compensation Fund claims.

WILBERT WILLARD

12. The Solicitor represented Mr. Willard who advanced money for loans to other clients of the Solicitor. Mr. Willard had been a long-standing client of the Solicitor and was a knowledgeable and sophisticated investor who participated in several investments with the Solicitor as co-venturer. He had, for some years, invited the Solicitor to invest funds on his behalf but had, with the exception of the two occasions mentioned herein, known where the money was going although he appeared to trust the Solicitor and did not always pay close attention to the security obtained.

13. On August 28th, 1987, the Solicitor borrowed \$35,000.00 from Mr. Willard which the Solicitor deposited to his trust account. This sum was credited to the Tri-Gen ledger account and was used to reduce the overdrawn balance. The Solicitor repaid these funds on December 14th, 1987, by way of a trust cheque which was charged to the Tri-Gen trust ledger account and which continued to be in an overdrawn position.

14. On December 21st, 1987, the Solicitor borrowed a further sum of \$20,000.00 from Mr. Willard which was also deposited to his trust account. Again this was credited to the Tri-Gen trust ledger account which served to reduce the balance of the overdrawn account.

15. In both these borrowings, Mr. Willard thought that the borrower was another client of the Solicitor who was involved in the construction business. The Solicitor did not disclose to Mr. Willard that he was borrowing the money personally. The Solicitor did not arrange for independent legal advice for Mr. Willard and did not provide him with any security.

16. The second loan was repaid subsequent to the issuance of the Society's complaint, and no monies are now owing to Mr. Willard.

FORM 2/3

17. The Solicitor's year-end is March 31st. The Solicitor filed Forms 2/3 for the fiscal years ending March 31st, 1984, March 31st, 1985,

March 31st, 1986, and March 31st, 1987, which were false in that they failed to indicate all of the overdrawn trust ledger accounts that existed during those fiscal years.

18. During the Society's audit of the Solicitor's practice, the auditor reviewed the actual trust listing which had been prepared by the Solicitor each month and indicated the overdrawn trust ledger accounts. However, not all of these ledger accounts were mentioned on the Forms filed by the Solicitor. Of particular concern was the absence of the particulars respecting the overdrawn Tri-Gen ledger account.

19. During the course of the audit, the Society discovered that the Solicitor had breached the Regulation by transferring funds from this trust account to his general account without first delivering a fee billing to his clients. Samples of this breach include:

<u>CLIENT</u>	<u>AMOUNT</u>	<u>DATE OF TRANSFER</u>
Coville	\$1,309.00	November 23, 1987
Lines	2,000.00	October 6, 1987 & October 29, 1987
Hornby	1,057.00	March 3, 1988
Monroe	1,500.00	April 15, 1988
West	520.00	May 10, 1988

The transfer of these funds was to cover either fees legitimately earned or disbursements legitimately incurred by the Solicitor with respect to the named client.

DATED this 5th day of December, 1988."

The Committee accepted the Agreed Statement of Facts and made a finding of professional misconduct as particularized in Complaint D75/88.

RECOMMENDATION AS TO PENALTY

This Committee recommends that Herbert Gordon Mylks be granted permission to resign his membership.

REASONS FOR RECOMMENDATION

The Committee heard from both counsel and had the advantage of a joint submission with respect to penalty. The finding of misconduct was based on the Agreed Statement of Facts, which was also useful in assessing the appropriate penalty. The reasons for the joint submission were as follows:

"i) The Solicitor was called to the Bar on March 21, 1969. Prior to the incidents outlined in the Agreed Statement of Facts, the conduct of the Solicitor had been exemplary. He has no previous discipline record.

ii) The Solicitor has made full restitution. His trust account is now balanced and the shortage has been eliminated.

iii) There are no outstanding Compensation Fund claims.

iv) The Solicitor, with the guidance of the Society, is winding up his practice. Advertisements with respect to the sale of same have appeared in the recent editions of the Ontario Reports.

v) The misappropriations in question occurred during a period of intense marital discord which caused the Solicitor to totally neglect his practice and to become, in the words of his psychiatrist, Dr. Peter Kelly, 'dysfunctional and depressed to the point of suicidal rumination'.

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vi) The Solicitor is currently under active treatment by Dr. Kelly whose professional opinion is that the actions of the Solicitor do not support a 'finding of hidden criminal tendency'. Rather, the Solicitor is 'a poorly nourished individual, poorly able to make and sustain the stress of an intimate relationship or to endure the rigors and responsibilities of a professional practice'.

vii) The letters from, inter alia, Mr. Michael G. Hickey, Q.C., Rev. Hilary Merritt, Rev. Robert Merritt, Rev. and Mrs. Robert McCaw and His Honour Judge A. Peter Nasmith, show the Solicitor to be basically a man of honesty and integrity with the actions in question being totally out of character.

viii) In all the circumstances, it is jointly felt that the proposed disposition is the most appropriate one and is in keeping with the Society's obligation to protect the public interest and control members of the profession."

In addition, the Committee had letters from six different individuals, including a thorough psychiatric report from Dr. Peter F. Kelly. Some of the letters indicated that the witnesses would be happy to attend the hearing to testify if necessary. The Committee felt that unnecessary as the letters, being strong and clear, spoke for themselves.

It is our feeling that the joint submission as to penalty in this case is appropriate, as there are mitigating factors relating to Mr. Mylks's personal situation which were dealt with in the material before us. We are mindful that the great majority of cases involving defalcations results in the penalty of disbarment. However, this is one of the relatively few cases where, partly because there has been full restitution and partly because of the compelling facts of the tragedies that befell a person of otherwise good character, a lesser penalty can be considered.

In all of the circumstances, therefore, the appropriate disposition would be to allow Mr. Mylks to resign, and he is agreeable to doing so.

Herbert Gordon Mylks was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 21st day of March, 1969.

ALL OF WHICH is respectfully submitted

DATED this 27th day of March, 1989

"Burke Doran"
A. Burke Doran
Chair

There were no representations by either counsel in regard to the report.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Somerville, seconded by Mr. Yachetti, that the Report of the Discipline Committee dated 27th March, 1989 be adopted.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

Mr. Somerville read the recommendation as to penalty, that the solicitor be granted permission to resign.

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Neither counsel made representations on the issue of penalty.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Somerville, seconded by Mr. Lerner, that the solicitor be permitted to resign.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

The solicitor, counsel and the reporter retired.

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Re: BRUCE PERRAULT, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

The solicitor appeared with his counsel, Mr. C. Mark. Mr. Stephen Sherriff appeared for the Society.

Mr. Mark made a request that the matter be adjourned until the June Discipline Convocation.

It was moved by Mr. Somerville, seconded by Mr. Yachetti, that the adjournment be granted.

Carried

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Re: STANLEY FRANCIS DUDZIC, Hamilton

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Mr. Brian Greenspan. Mr. Shaun Devlin appeared for the Society.

Mr. Greenspan requested that the matter be adjourned until the June Discipline Convocation as he had just been retained and needed time to familiarize himself completely with the report. He agreed that any adjournment to the June Discipline Convocation be peremptory and be subject to the continuing undertakings by Mr. Dudzic not to take on any new clients and to have his practise supervised by the staff trustee.

It was moved by Mr. Somerville, seconded by Mr. Lerner, that the adjournment be granted on the continuation of the solicitor's undertakings.

Carried

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Re: WILLIAM GEOFFREY MILNE, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Mr. B. Bellmore. Mr. Shaun Devlin represented the Society.

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Mr. Carter, although present in Convocation, did not participate in the debate. Mr. Carey also did not participate in the debate.

Mr. Bellmore requested an adjournment of this matter as he had been informed by the solicitor's criminal counsel, Mr. Carter, that information had been received by Mr. Carter which might lead to an application for a re-trial. Mr. Bellmore requested the adjournment to allow investigation of the new information.

The Treasurer drew to Mr. Bellmore's attention the fact that the proceedings were in public and indicated whether or not he wished to make an application to have the matter heard In Camera. Mr. Bellmore indicated that in light of the nature of the information which might come out in the course of the application for adjournment, he would prefer to have the matter held In Camera.

The Treasurer then ordered the hearing to continue In Camera and members of the public were excluded.

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"IN CAMERA"

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IN CAMERA Content Has Been Removed

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"IN PUBLIC"

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Re: ANDREW NICHOLAS KUTNEY, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Ms. Janet Leiper. Mr. Shaun Devlin appeared for the Society.

Mr. Bastedo withdrew from Convocation and did not take part in the proceedings.

Convocation had before it the Report of the Discipline Committee dated 6th April, 1989, together with an Affidavit of Service sworn 26th April, 1988 by Dawna Robertson that she had effected service on the solicitor by registered mail on 18th April, 1989 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 27th April, 1989 (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

Jeffrey S. Lyons, Q.C., Chair
Netty Graham
Paul S.A. Lamek, Q.C.

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

John Petrosoniak & Scott Kerr
for the Society

ANDREW NICHOLAS KUTNEY
of the City
of Toronto
a barrister and solicitor

Janet Leiper
for the solicitor

Heard: September 29, 1987
January 25, 1989

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Three separate complaints are involved in this matter:

1. Complaint D44/87, sworn May 12, 1987, which alleged that the Solicitor was guilty of professional misconduct;
2. Complaint D65/87, sworn June 29, 1987, which alleged that the Solicitor was guilty of professional misconduct;
3. Complaint D141/87, sworn November 24, 1987, which alleged that the Solicitor was guilty of professional misconduct.

The matter was heard in public on September 29, 1987 and January 25, 1989 before this Committee composed of Jeffery S. Lyons, Q.C. as Chairman, Netty Graham and Paul S.A. Lamek, Q.C.

The Solicitor attended the hearing and was represented by counsel, Janet Leiper, on the latter date. John Petrosoniak appeared as counsel for the Law Society on September 29, 1987, while Scott Kerr served in that capacity on January 25, 1989.

DECISION

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

Para. 2; Complaint D44/87

"(b) he failed to reply to letters and telephone calls from the Law Society regarding complaints made by the following individuals:

- i) Diane Hyshka, a client
- ii) Mindy Rochweg, a fellow solicitor
- iii) Paul Dziak, a client."

Para. 2; Complaint D65/87

(a) He has failed to reply to letters dated October 22nd, December 22nd, 1986, January 22nd, February 23rd, March 23rd, and April 22nd, 1987, from the Law Society regarding questions arising from his annual Form 2/3 filing.

(b) He has failed to maintain currently at all times the books, records and accounts in connection with his practice required by Section 15(1) of the Regulations made pursuant to the Law Society Act.

(c) He has failed to reply to letters dated September 12th, October 23rd, December 3rd, 1986, and January 27th, 1987, from the Law Society's Audit Department requesting details pertaining to inadequacies disclosed upon an examination of his books and records.

(d) He has failed to make payment of his deductible under the Society's Errors and Omissions Insurance Plan, although properly called upon to do so. (Reference: Rule 13, Commentary 6; Rules of Professional Conduct)."

Para. 2; Complaint D141/87

"(a) Notwithstanding two previous complaints issued against him for failing to reply to Law Society correspondence, he failed to reply to numerous Law Society correspondence and telephone calls regarding his client, Agnes Nagymarosi.

(b) He failed to pick-up his registered mail from Canada Post.

(d) He failed to file with the Society within six (6) months of the termination of his fiscal year ending February 28th, 1987, a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act."

Evidence

The evidence before the Committee was in the form of two Agreed Statements of Fact. The text of the first Agreed Statement of Facts, dated September 29, 1987, is set out below:

"AGREED STATEMENT OF FACTS

I. SERVICE

1. The Solicitor accepts service of Complaints D44/87 and D65/87 and is prepared to proceed with a hearing of these Complaints on September 29th, 1987.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed both Complaints and admits all the particulars contained therein save and except paragraph 2(a) of Complaint D44/87.

IV. FACTS

Complaint D65/87

4. The Audit Department of the Society conducted a spot audit of the Solicitor's practice in March of 1981. The spot audit disclosed certain deficiencies in the Solicitor's books and records which were dealt with by correspondence.

5. A second spot audit of the Solicitor's practice was conducted in March and May of 1986. As a result of the Society's concerns after this audit the Audit Department prepared a formal report to the Secretary of the Society dated May 6th, 1986, detailing the problems with the books, records and accounts of the Solicitor's practice.

6. One of the matters dealt with in the audit report was the Solicitor's outstanding Forms 2/3 for the year ending February 28th, 1985, which were due on or before August 31st, 1985. The Solicitor filed the outstanding Forms on June 9th, 1986.

7. In lieu of a discipline hearing the Solicitor executed an undertaking to the Law Society stating that he would:

1. ensure that his books were properly maintained.
2. provide monthly filings to the Law Society
3. properly file future Form 2/3 reports.

A copy of the undertaking is attached as Appendix 1.

8. The Society conducted a third spot audit of the Solicitor's practice on seven occasions between March 7th and June 5th, 1986. On September 12th, 1986, the Society sent a letter to the Solicitor setting out the inadequacies disclosed by the spot audit. The Solicitor did not reply to this letter and a follow-up letter was sent to the Solicitor on October 23rd, 1986. Again the Solicitor did not reply and a third letter was sent to him dated December 3rd, 1986, again requesting a reply to the initial letter dated September 12th, 1986. Finally, on January 27th, 1987, the Society sent the Solicitor a fourth letter by registered mail requesting a reply within fifteen days. The Solicitor did not reply.

9. The deficiencies disclosed by the third audit include the following:

1. separate trust bank accounts for individual clients for which books were not maintained.
2. inactive trust ledger accounts.
3. lack of particulars in the general cash disbursement record.
4. accounting records generally in arrears in entering and posting.
5. trust bank reconciliations did not detail outstanding cheques.
6. trust bank reconciliations contained the same uncorrected reconciling items from month to month.

7. deposit slips did not contain full particulars.
8. overdrawn trust ledger accounts were allowed to remain uncorrected for more than one month.
10. In addition to breaching his undertaking by not properly maintaining his books and records, the Solicitor also failed since January of 1987 to file the trust comparisons required by paragraph 2.
11. The Solicitor filed his Form 2/3 for the year ending February 28th, 1986. However, the Form 2 statutory declaration was not sworn by the Solicitor. On October 22nd, 1986, the Society wrote to the Solicitor asking him to swear his statutory declaration and have a commissioner take his affidavit and then return the declaration to the Society. The Solicitor did not reply to this letter and a further letter was sent to him on December 22nd, 1986. When no reply was received to these two letters, a third letter was sent on January 22nd, 1987. Again the Society received no reply and a fourth letter was sent to the Solicitor dated February 23rd, 1987. When no answer was received to this letter a registered letter was sent to the Solicitor dated March 23rd, 1987. Finally, the matter was referred to the Discipline Department and on April 22nd, 1987, another registered letter was sent to the Solicitor by the Discipline Department requesting that the Solicitor reply to the five letters from the Society.
12. A claim was made to the Errors and Omissions Insurance Department of the Society against the Solicitor by a former client, Geza Nemeth. Pursuant to that claim, the Insurance Department made a payment of \$2,259.15 and notified the Solicitor on November 6th, 1986, that this payment had been made and that as the deductible applied the Solicitor should provide a cheque to the Society for this amount. When the Solicitor did not reply to this letter, a further letter was sent dated January 15th, 1987, again informing the Solicitor of the outstanding deductible of \$2,259.15. When the Solicitor did not reply to this letter, a registered letter was sent dated February 23rd, 1987, informing the Solicitor that in accordance with a direction of Convocation, the matter had been referred to the Discipline Department.
13. On March 9th, 1987, the Discipline Department wrote to the Solicitor with respect to the outstanding deductible. Again there was no response and the Discipline Department attempted to contact the Solicitor by telephone. When this was not successful, a registered letter was sent to the Solicitor dated June 17th, 1987, respecting the outstanding deductible. The Solicitor did not reply or pay the deductible.
14. On August 4th, 1987, when the hearing for these matters was set to proceed, the Solicitor attended at the Law Society and obtained an adjournment to September 29th, 1987. At that time, he paid the full amount of the outstanding Errors & Omissions deductible being \$2,259.15.

D44/87

15. The Solicitor represented Dianne Hyshka during her divorce proceedings which started on September 23rd, 1982. The Solicitor properly represented her through numerous motions. However, when the Decree Absolute was to be finalized in the latter part of 1986, the Solicitor did not complete it promptly. Eventually, on February 20th, 1987, she wrote to the Law Society requesting its assistance in obtaining some information from the Solicitor. Part of the delay is attributable to the husband's solicitor not forwarding certain documents promptly. Prior to that Miss Hyshka had left dozens of telephone messages and in one instance had even sent the Solicitor a letter enclosing four quarters so that the Solicitor could call her at no expense to himself. The Solicitor states that he wrote to Miss Hyshka in early 1987 explaining the delay, but Miss Hyshka denies receiving that letter.

16. Miss Hyshka wrote to the Law Society on February 20th, 1987, complaining that she was not able to communicate with the Solicitor, that she was unaware of what was happening with her file and that she felt that the Solicitor had not acted in a professional manner. Miss Hyshka sent a copy of this letter to the Solicitor. The Society wrote to the Solicitor on March 17th, 1987, requesting his comments. When no reply was received, a further letter was sent to the Solicitor on April 9th, 1987. The Solicitor did not reply to this letter and when Miss Hyshka contacted the Society on May 4th, 1987, she was informed that the Solicitor had still not replied.

17. Miss Hyshka then terminated the Solicitor's retainer and retained Mr. Ronald Balinsky to represent her in the matrimonial proceedings. On June 16th, 1987, the Solicitor informed Mr. Balinsky's office that he would forward the Hyshka file forthwith. The Solicitor did not honour this commitment and on June 26th, 1987, Mr. Balinsky wrote the Solicitor requesting that the file be forwarded, a copy of which was sent to the Society. Upon receipt of this letter, the Society wrote to the Solicitor asking that he attend to the matter immediately. the file was forwarded to Mr. Balinsky prior to August 4th, 1987.

18. On February 2nd, 1987, Ms. Mindy Rochweg complained to the Society respecting the Solicitor. The Society wrote to the Solicitor by letter dated February 27th, 1987, requesting his comments. When the Society did not receive a reply from the Solicitor a further letter was sent dated March 16th, 1987. The Solicitor had responded to Ms. Rochweg on January 30th, 1987, and March 5th, 1987. The Solicitor responded to the Law Society on June 1st, 1987.

19. The Dziak file arose as a result of a complaint made by Mr. Paul Dziak to the Society about another lawyer. At that time, Mr. Dziak was being represented by the Solicitor and the Society attempted to speak with the Solicitor respecting his client's complaint. The Society contacted the Solicitor several times by telephone in November of 1986. None of the calls were returned and a letter was written to the Solicitor dated November 17th, 1986, requesting that he contact the Society. The Solicitor did not reply to this letter and several more telephone calls were made which went unanswered. A registered letter was sent to the Solicitor dated January 13th, 1987, requesting that the Solicitor contact the Society and reminded the Solicitor of his obligation to reply. A further letter was sent to the Solicitor dated January 23rd, 1987, stating that if a reply was not received, discipline action would be instituted. The Solicitor did not reply.

20. On March 27th, 1987, the Society delivered a letter to the Solicitor's offices respecting the Hyshka, Rochweg and Dziak matters and reminded the Solicitor that he had failed to reply on all these files and requested that he take immediate steps to address the outstanding issues.

22. The Solicitor attended at the Society on June 2nd, 1987, to set a date for Complaint D44/87 to proceed. At that time, he provided the Society with handwritten replies to the Rochweg and Dziak matters. No reply has been received respecting the Hyshka complaint.

The Solicitor was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on March 23rd, 1973.

DATED at Toronto this 29th day of September, 1987."

The second Agreed Statement of Facts, dated November 10, 1988, is as follows:

"AGREED STATEMENT OF FACTS

I. ACKNOWLEDGEMENTS

1. The Solicitor acknowledges all the facts outlined in the Agreed Statement of Facts dated September 29, 1987 which was tendered before

this Discipline Committee as Exhibit 3. He further acknowledges that there is no issue with respect to Service or Jurisdiction respecting either of complaints D44/87, D65/87 or D141/87. Finally, it is agreed that this hearing should be held in public pursuant to Section 9 of the Statutory Powers Procedure Act.

II. FACTS

Failing to respond - Complaint D141/87 Particular 2(a)

2. On June 29, 1987, the Society received a complaint from the Solicitor's client, Agnes Nagymarosi. Ms. Nagymarosi retained the Solicitor pursuant to a Legal Aid Certificate. Legal Aid paid the Solicitor's account in full on June 20th, 1986.

3. Ms. Nagymarosi telephoned her Solicitor's office on numerous occasions and attended at the Solicitor's office in an attempt to have her divorce finalized. She was given explanations for the delays and told that the matter would be completed soon thereafter. On June 25, 1987, the client swore a re-drafted Affidavit to obtain the Decree Absolute. On June 29, 1987, Ms. Nagymarosi wrote to the Law Society complaining about the delay on her file.

4. The Society wrote to the Solicitor on July 6, 1987 requesting his reply to Ms. Nagymarosi's complaint. There was no response to that letter.

5. On July 24, 1987 the Society wrote again to the Solicitor requesting that he reply to Ms. Nagymarosi's complaint within 10 days. Again, no reply was forthcoming. Initially the problem was that the Solicitor had moved and there was no forwarding address for his mail. On September 24, 1987, the Solicitor's current address was determined

and another letter sent by registered mail. Although the Solicitor was at this office, he claimed his registered mail late. As a result, this letter was returned to the Society. On November 6, 1987, Mr. Scott Kerr, the staff lawyer handling Ms. Nagymarosi's complaint against the Solicitor, personally attended at the Solicitor's office with the Society's demand letters for a response to this complaint, and tacked the envelope and letter to his door. No reply was immediately forthcoming.

6. On January 14, 1988, the Solicitor responded to Ms. Nagymarosi's complaint indicating that the Decree Absolute was finally obtained and entered on September 2, 1987.

Failing to pick up Registered Mail - Complaint D141/87 Particular 2(b)

7. As mentioned previously, the Solicitor failed to pick up registered mail on time addressed to his office regarding the Agnes Nagymarosi complaint. In addition, a registered letter sent October 19, 1987, by Mrs. Ellie Rosen, Discipline Hearing Co-Ordinator for the Law Society, indicating that the Solicitor's hearing was scheduled to proceed on November 12, 1987, before this seized committee, was unclaimed by the Solicitor. The address and postal code were correctly marked on the envelope. As a result, the Discipline Committee convened and five witnesses appeared to testify on the Law Society's behalf. This Committee granted a further adjournment in order that the Solicitor be personally served with notice of the hearing.

8. The Solicitor acknowledges that he is under an obligation to maintain office staff and facilities adequate to a lawyer's practice and that failure to claim registered letters on time falls short of this requirement. The Solicitor apologizes for any inconvenience this may have caused the Committee members and the available witnesses.

Failing to appear in court - Michael Lapoint - Complaint D141/87 Particular 2(c)

9. The Solicitor acted for Michael Lapointe in a Highway Traffic Act

matter during 1987. At the first appearance he appeared on Mr. Lapointe's behalf and had his name entered on the records. The matter was set down for trial for September 8, 1987 at 9:00 a.m.

10. On the morning of September 8, 1987, Mr. Lapointe appeared at the Provincial Offences Court located at the East Mall in Etobicoke, Ontario. The record shows that Mr. Lapointe indicated he tried to locate the Solicitor for the previous week and a half by leaving messages on his answering service. His Worship L. Tatangelo, was upset at the fact that a trial date had been scheduled and the Solicitor had not appeared. However, in order to prevent any prejudice to Mr. Lapointe, he adjourned the matter for three days.

11. On September 11, 1987, the Solicitor once again did not appear when Mr. Lapointe's matter was first called. As a result, the matter was stood down for later in the morning.

12. Later that same morning, the Lapointe case was recalled. Mr. Kutney did appear for Mr. Lapointe. When questioned about why he had failed to appear on September 8, 1987, the Solicitor replied that he had failed to mark the date in his calendar and that during the week of September 8, he was on holidays. The Justice of the Peace admonished the Solicitor in open court for his failure to appear, indicating that the court dockets were full and that witnesses were needlessly inconvenienced. The Solicitor apologized to the court.

13. The matter was ultimately put over from March 15, 1988.

Failure to File Form 2/3 - Complaint D141/87 Particular 2(d)

14. Each member of the Law Society is required to file annually a properly completed Form 2/3 within 6 months after his last fiscal year.

15. The Solicitor failed to file his requisite Form 2/3 for his fiscal year ending February 28th, 1987 within the prescribed period. The Solicitor did file his Forms on April 26, 1988, approximately 8 months after they were due.

DATED at Toronto, this 10th day of November, 1988."

The Committee accepted the agreed statements of facts and made a finding of professional misconduct as particularized in Complaints D44/87, D65/87 and D141/87.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Andrew Nicholas Kutney be reprimanded in Convocation subject to certain undertakings, as follows:

1. that he agree not to practise other than as an employed solicitor or as a partner in a law firm, and if he is a partner in a law firm that the books and records would be the responsibility of the other solicitor or solicitors of the law firm of which he is a partner;
2. that he pay the costs of the Law Society's investigation in the amount of \$1,500 within six months of Convocation's order;
3. that his present undertaking not to practice continue until these matters are dealt with by Convocation.

REASONS FOR RECOMMENDATION

The Solicitor was called to the Bar in 1973 and has been practising on his own since 1975. In March 1981, a spot audit revealed

certain deficiencies in the Solicitor's books and records. A further audit was conducted in March and May of 1986 and a report was prepared at that time detailing the problem with the books, records and accounts of the Solicitor's practice. At that time one of the matters dealt with in the audit report was the Solicitor's outstanding Form 2/3 for the year ending February 28, 1985, which was subsequently filed. In lieu of a discipline hearing the Solicitor executed an undertaking to the Law Society indicating that he would maintain his books, provide monthly filings to the Law Society and file future Forms 2/3.

A third spot audit was conducted and certain deficiencies were disclosed. Correspondence was forwarded to the Solicitor on four occasions to which the Solicitor did not reply. There was also a failure to reply to correspondence pertaining to Form 2/3; five letters were sent to which there was no reply. In addition, there was a claim made to the Errors and Omissions Insurance Department involving a client, Geza Nemeth, in which the Insurance Department requested payment of the deductible. Again, five letters were sent. Payment was not received until September 29, 1987 when the Solicitor attended at the Law Society to obtain an adjournment with respect to one of the particulars of a complaint involving the deductible.

There were some further complaints involving three clients, Dianne Hyshka, Mindy Rochweg and Paul Dziak. In all these instances, the Solicitor failed to reply to telephone calls or correspondence or both with respect to these three clients, resulting in complaints to the Law Society and again, the failure of the Solicitor to respond to letters forwarded to him by the Law Society with respect to the complaints raised by the clients.

When the hearing was adjourned with respect to the particulars of the earlier complaints (this matter having originally been before the Committee September 29, 1987 and finally being decided on January 25, 1989), a further complaint was established in an Agreed Statement of Facts involving another client, Agnes Nagymarosi. The Solicitor had failed to respond to the client's telephone calls; the client even attended at the Solicitor's office in order to obtain a Decree Absolute. Finally, after the Society contacted the Solicitor on July 24, 1987, he obtained the Decree Nisi and forwarded the same to his client on September 2, 1987.

The Solicitor gave a written undertaking not to practice from January 1, 1988 until the date of the hearing. The Solicitor has supported himself since January 1, 1988 by being involved in another enterprise. According to his counsel, he lost interest in his practice and, as his counsel has indicated, "he should have pulled the plug earlier".

The Committee was concerned that there was a pattern of conduct which continued even after certain particulars of two complaints were established by an Agreed Statement of Facts. It is, therefore, recommended that the appropriate penalty would be a reprimand in Convocation subject to the undertakings set out above.

Andrew Nicholas Kutney was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 23rd day of March, 1973.

ALL OF WHICH is respectfully submitted

DATED this 6th day of April, 1989

"J. S. Lyons"
Chair

The report of the Discipline Committee was amended in that paragraph 2(b) D 141/87 regarding the solicitor's failure to pick up

registered mail was amended to show that particular had not been established. The amendment was agreed to by the Society's counsel.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Somerville, seconded by Mr. Topp, that the Report of the Discipline Committee dated 6th April, 1989 be adopted.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were advised of Convocation's action.

Submissions were presented with respect to penalty.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Somerville, seconded by Mr. Topp, that the Recommendation as to Penalty, that the solicitor be reprimanded in Convocation subject to giving certain undertakings as set out in the Recommendation as to Penalty be adopted.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

The solicitor waived his right to appeal and requested that the penalty of reprimand be carried out forthwith.

Counsel, the public and the reporter withdrew.

The solicitor was reprimanded by the Treasurer.

The solicitor retired.

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CONVOCATION ADJOURNED AT 11:00 A.M.

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CONVOCATION RESUMED AT 11:05 A.M.

.....

PRESENT:

The Treasurer (Mr. Lee K. Ferrier) Messrs. Arnup, Bastedo, Carey, Carter, Cullity, Mrs. Graham, Messrs. Lawrence, Lerner, Lyons, McKinnon, Outerbridge, Poulin, Shaffer, Sosa, Thom, Topp, Wardlaw, Mrs. Weaver and Mr. Yachetti.

.....

"IN PUBLIC"

.....

Re: ROBERT ANDREW KOMINAR, Windsor

Mr. Somerville placed the matter before Convocation

The reporter was sworn.

The solicitor attended with his counsel, Mr. B. Greenspan. Mr. Shaun Devlin appeared for the Society.

Convocation had before it the Report of the Discipline Committee dated 7th November, 1988 together with an Affidavit of Service sworn 14th November, 1988 by Louis Kotholos that he had effected service on the solicitor by registered mail on 10th November, 1988 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 27th April, 1989 (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

Samuel Lerner, Q.C. (Chair)
Gordon H.T. Farquharson, Q.C.
Thomas M. Wood, Q.C.

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

John T. Petrosoniak
for the Society

ROBERT ANDREW KOMINAR
of the City
of Windsor
a barrister and solicitor

Brian Greenspan
for the solicitor

Heard: May 11, 1988
September 22, 1988
October 3, 1988

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 11, 1988, Complaint D42/88 was issued against Robert Andrew Kominar, alleging that he was guilty of professional misconduct.

The matter was heard on May 11, September 22 and October 3, 1988 before this Committee, composed of Samuel Lerner, Q.C. as Chairman, Gordon H.T. Farquharson, Q.C. and Thomas M. Wood, Q.C. Mr. Kominar attended the hearing and was represented by his counsel Brian Greenspan. John Petrosoniak appeared as counsel for the Law Society.

DECISION

The Complaint

The following particulars of professional misconduct were found, based on the evidence, to have been established:

(Paragraph 2, Complaint D42/88)

"(a) commencing in 1986, he persistently misled clients as to the status of litigious and other matters he had undertaken on their behalf both before and during the Law Society's

investigation of his practice. Examples of affected clients include:

Irene Joan Chittick
Michael Grice
Derek Broughton
Shirley Begley
Charles Stewart
David Dumeah
Dr. Peter Courey

- (b) he failed to communicate with fellow solicitor, Gabriella Bonn, concerning his handling of the Edward Jones estate file despite numerous and protracted efforts to obtain information from him.
- (c) he failed to file with the Society within six (6) months of the termination of his fiscal year ending December 31st, 1986, a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act."

Evidence

The Committee received in evidence the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D42/88 and agrees to proceed with a hearing of this matter before the Discipline Committee on May 11, 1988.

II. IN PUBLIC/IN CAMERA

2. The Solicitor and Counsel for the Law Society agree that the hearing should take place in public except for any personal and medical details which may be raised.

III. BACKGROUND

3. The Solicitor was a sole practitioner who carried on his practice in Windsor, Ontario until January, 1988, and he is currently practising in association with Louis Mullins in Windsor. He was called to the Ontario Bar on April 6th, 1982. He has never been before the Discipline Committee. The Solicitor obtained his B.A. in 1974, his M.A. in philosophy in 1975 and his LL.B. in 1980. He attended the University of Windsor for all of these degrees. He is currently on the faculty of the University of Windsor, Department of Philosophy. He was married May, 1974 and has three children aged 4, 8 and 11.

IV. FACTS

Misleading Clients - Particular 2(a)

Michael Grice

4. In early 1986, Michael Grice began working with ASAP Computer Products in Windsor, having recently left a job at Affordable Computers. As a result of his new position, Mr. Grice took his 1979 Honda to Heritage Motors in Amherstburg to have a new engine installed. When the new engine was installed, however, it did not perform properly. At this point, Mr. Grice had paid \$1,500 of a \$2,000 repair bill. Because of the continuing difficulties with the car, Mr. Grice took it back to Heritage Motors. Since Mr. Grice wanted his car repaired before paying the final \$500, Heritage Motors seized his car and refused to release it. Also, shortly thereafter, Mr. Grice was fired from ASAP Computer Products.

5. In August, 1986, Mr. Grice consulted the Solicitor about suing Heritage Motors and ASAP Computer Products. During the following months, Mr. Grice met with the Solicitor regularly and was always assured that the actions were progressing satisfactorily.

6. On several occasions, Mr. Grice made trips to the Courthouse as directed by the Solicitor, but his matters never proceeded. The Solicitor would advise him that the other side was not ready to proceed or that certain paperwork was not in order. The Solicitor finally advised Mr. Grice that he had received Judgment in these actions and that he was present when the Judge signed the Order. In fact, no action was ever commenced.

7. In April, 1987, Mr. Grice inadvertently overheard the Solicitor speaking with a member of his family about his depression and poor emotional health. Thereafter, Mr. Grice and the Solicitor had numerous discussions concerning the Solicitor's on-going emotional problems. At about this time, Mr. Grice was in dire need of money to pay his landlord and other creditors. One of these creditors was Rose City Ford, through whom he had leased a car as a substitute for his Honda. Mr. Grice asked the Solicitor when he could expect to receive the money from these actions. The Solicitor indicated that the funds would be forthcoming, but that in the meanwhile he would loan Mr. Grice some money. A cheque in the amount of \$2,000 was written on the Solicitor's General Account on April 16, 1987 and made payable to Michael Grice. Mr. Grice deposited that cheque and immediately issues cheques to Rose City Ford for the lease on his car. The Solicitor's cheques were returned N.S.F. and as a result so were Mr. Grice's.

8. At this time, Mr. Grice loaned his car to a friend who drove it to the United States. Since Mr. Grice was three months in arrears on his lease, Rose City Ford set out to repossess his car. When the car could not be located Rose City Ford pressed criminal charges against Mr. Grice. Before Mr. Grice was arrested, however, the Solicitor contacted the leasing company and the police to explain the situation. He also provided Mr. Grice with another cheque for \$2,000.

9. In mid-May, 1987, the Solicitor issued another cheque to Mr. Grice for \$1,000 which was also returned N.S.F. The Solicitor paid Mr. Grice in cash to make up for this cheque. Finally, the Solicitor continued to make further cash loans to Mr. Grice up until October, 1987, totalling approximately \$1,000. Altogether, approximately \$4,000 was loaned to Mr. Grice throughout this period, it was understood that these loans would be paid back when the actions were completed. No action was ever begun.

Derek Broughton

10. Mr. Broughton's wife obtained unlawful custody of their child by means of a void Court order. Mr. Broughton took physical possession of their child and was charged with abduction as a result. In July, 1987, Mr. Broughton came to the Solicitor for representation with respect to the abduction matter, and, to pursue a custody order and divorce. The Solicitor acted for Mr. Broughton pursuant to a legal aid certificate.

11. Since July, 1987, the Solicitor has instructed Mr. Broughton to be at the District Court in Windsor at a specified time and date on numerous occasions. These were to be Court appearances with respect to the custody matter. When Mr. Broughton would arrive at the Courthouse, the Solicitor would advise him that either the Judge was not able to hear his case that day, or that his wife's lawyer was not present, or that paper work was not done. On the last occasion that Mr. Broughton went to Court, he noticed that his name was not on the Court list. The Solicitor had earlier advised Mr. Broughton to undergo a psychological assessment and requested that his wife do the same. Mr. Broughton did have a psychological assessment performed, but his wife did not. As a result, the Solicitor told his client that his "case was as good as won", and that he would get custody of his child. On numerous other occasions the Solicitor advised Mr. Broughton that he would have his son within the week. This never came about.

12. On January 7, 1988, the Solicitor told Mr. Broughton that the custody matter would be settled by January 13, 1988. When Mr. Broughton contacted the Solicitor on January 13, 1988, the Solicitor said there had been an asbestos scare in the Court building and he was not able to get in to file the paper work. He stated that he would get it done the following week.

13. There was work being done to the Courthouse which involved removing ceiling tiles made of asbestos. The Courthouse, however, was not closed. When the Solicitor attended at the Courthouse, he was advised nothing could be done for him until the ceiling tiles were repaired. The repairs were completed by January 18, 1988.

14. As of April 27, 1988, no Petition for Divorce has been issued on Mr. Broughton's behalf in Windsor.

Shirley Begley

15. Ms. Begley retained the Solicitor in September, 1987 to obtain a Separation Agreement. The Solicitor advised her that it would take no more than two to three weeks to seek exclusive possession of the house and interim custody. The Solicitor said that ultimately the Agreement would also deal with the matter of support. He also indicated to her that he was using a process server to serve her husband as if a Court action was to take place. In mid-December, 1987, the Solicitor told Ms. Begley he appeared in Court and obtained a custody and possession order. Although the Solicitor had not in fact obtained the custody and possession order, Ms. Begley had de facto custody of the child and possession of the home by virtue of her husband's consent.

16. The Solicitor further stated that the matter of support would be handled the following day in Court. He advised her to call him the following day. Ms. Begley attempted to do so but her calls were not returned. A few days later, when she was speaking with her husband about the separation, he indicated that this was the first he had heard of it and that he had not been served any documents.

17. On January 6, 1988, she attended the Solicitor's office demanding her file and asking whether or not she had a legal separation. The Solicitor replied that she did have custody and the house. When Ms. Begley demanded to see documentation to support the legal separation, the Solicitor confided that her husband had not been served with any document. He did, however, promise to have her husband served the necessary papers filed so she could have her Order for Interim Support by that Friday. No papers with respect to interim support were filed by the Solicitor.

Charles Stewart

18. Mr. Stewart was charged with two counts of driving while suspended. In October, 1986, he retained the Solicitor for the first count and paid him a \$300 retainer.

19. The trial date was set for January 19, 1987 and after a full trial Mr. Stewart was convicted. Mr. Stewart instructed the Solicitor to appeal his conviction. Count two proceeded later that day on an ex parte basis, and a second conviction was entered against him.

20. Approximately one week later, Mr. Stewart received a letter from the Provincial Court advising him that the fine was \$253.75 for count one and a further \$253.75 for count two. Pursuant to Mr. Stewart's inquiries, the Solicitor advised him that he must pay the fine for count one even though an appeal had been launched. The Solicitor advised Mr. Stewart that the appeal would be heard on April 15, 1987, at 9:00 a.m.

21. Mr. Stewart attended at the Courthouse on April 15, 1987, but the Solicitor did not appear in Court that day.

As a result, Mr. Stewart went to his office only to find that he was not there either. Later in the day, he contacted the Solicitor by telephone and was advised that the appeal had been put over to May 15, 1987 and that there was no reason for Mr. Stewart to attend. Subsequently, the Solicitor advised Mr. Stewart he won his appeal.

22. In July, 1987, Mr. Stewart was stopped by the police and charged with driving while suspended. Shortly thereafter, Mr. Stewart contacted the Ministry of Transportation and Communications in Toronto and Windsor, which revealed that two convictions were registered against him for driving while suspended and no appeals had been filed. Mr. Stewart made further inquiries with the Provincial Court which revealed those two convictions and also that no appeals had been filed. When Mr. Stewart confronted the Solicitor with this information, he was told that it was the Court's clerical error and that he would look into it. The Solicitor has not returned Mr. Stewart's phone calls since that time. A search of the Court records indicates that no appeal had been made.

Dr. Peter Courney

23. Dr. Courey held a mortgage on a property owned by his friend Patrick Reed. By January, 1987, Dr. Courey was well aware that Mr. Reed was in a poor financial state and was in no position to continue making payments on the mortgage. By the end of February or early March 1987, Dr. Courey retained the Solicitor to pursue a Power of Sale on this property. His instructions to the Solicitor were to issue the Power of Sale so that he may protect himself. Dr. Courey advised the Solicitor, however, that he would personally handle the eviction of the Reeds. By May, 1987, the Power of Sale was served by registered mail on Mr. Reed, but it was not registered on title.

24. Shortly after this, Dr. Courey approached a Real Estate agent in order to list the property for sale. It was at this time he learned of substantial tax arrears. Dr. Courey brought this information to the attention of the Solicitor who indicated that he would take care of the matter from funds previously received. The Solicitor thought his office issued a cheque to pay the outstanding taxes.

25. Subsequent to advancing this money, Dr. Courey became aware that the tax arrears continued. When he confronted the Solicitor as to why the taxes had not been paid, the Solicitor advised him that there had been a problem with the cheque and he would take care of it. Still later, Dr. Courey learned that the tax arrears had still not been paid. Throughout the summer of 1987, on repeated occasions by telephone, and once in person, the Solicitor assured Dr. Courey that the taxes were paid. This was not the case. The taxes were paid by the Solicitor on January 18, 1988.

Irene Joan Chittick

26. Mrs. Chittick divorced her husband in 1981. Her husband's business had been in financial difficulty with the Provincial Bank (now the National Bank) and action was taken against the Chittick's with respect to an outstanding loan of \$40,000. Since the bank was attempting to secure its interest with respect to this loan by attaching any available assets including the Chittick's matrimonial home, it was decided to take legal action to protect Mrs. Chittick's interest. Mrs. Chittick's lawyer was Mr. Perfect.

The Solicitor was Mr. Perfect's student-at-law and this file was referred to the Solicitor to have this work done after he was called to the Bar.

27. The Solicitor indicated he would commence two actions against the bank in order to protect Mrs. Chittick's interests. One was to be in her name only, and the other was to be in her and her husband's name. This all occurred in 1984. The Solicitor issued a Statement of Claim in the name of Gordon and Irene Chittick versus the National Bank of Canada in 1984 in Windsor. On January 25, 1984, the Solicitor attempted to obtain a Default Judgement but was unsuccessful because of a lack of particularity in the Specially Endorsed Writ.

28. Since that time, Mrs. Chittick had been advised that the action was commenced and that this matter was progressing. On a number of occasions, the Solicitor instructed Mrs. Chittick to meet him at the Courthouse in Windsor because the matter was to proceed.

29. Mrs. Chittick was a long-time secretary and currently teaches typing and shorthand at a Windsor high school. She has made copious shorthand notes of virtually every telephone call and conversation to the Solicitor.

30. On Wednesday, August 26, 1987, the Solicitor advised her that the materials were ready except that it needed a Master's signature. The Solicitor told Mrs. Chittick he would pick it up on Friday. She could not get a hold of the Solicitor Friday despite six phone calls to his office.

31. On Tuesday, September 1, 1987, the Solicitor advised Mrs. Chittick that she would have her money in 10 days to two weeks. When two weeks were up, Mrs. Chittick called the Solicitor but he stated he heard nothing further.

32. On Tuesday, September 29, 1987, Mrs. Chittick attended at the Solicitor's office. He advised her something had to be taken from the Court Master to the Sheriff. He said he would have a copy by noon the next day. He did not get it because he said he was in Court all day.

33. On Thursday, October 7, 1987, Mrs. Chittick again went to his office. The Solicitor told her that her papers were not with the ones he had picked up at the Court office but he would pick them up on Friday and deliver them to her at school. He did not.

34. On Tuesday, October 13, 1987, the Solicitor told Mrs. Chittick that he would have to go before a Judge because he could not get anything done through the Court office. He said he would do this within a week.

35. On Thursday, November 26, 1987, he advised Mrs. Chittick that he spoke with the Court that morning and that it would be ready in a few days.

36. On Tuesday, December 15, 1987, he told Mrs. Chittick that he went to Court to pick up the papers but the Master had them in his briefcase. On Friday, January 22, 1988, Mrs. Chittick went to his office and was told by the Solicitor that the papers were still with the Court Master.

37. On Tuesday, December 15, 1987, he told Mrs. Chittick that he went to Court to pick up the papers but the Master had them in his briefcase. On Friday, January 22, 1988, Mrs. Chittick went to his office and was told by the Solicitor that the papers were still with the Court Master.

38. On Friday, January 29, 1988, Mrs. Chittick went to the Court house as instructed by the Solicitor. When the Solicitor arrived, she was told it was not necessary to see the Master, since the bank had not put in a Statement of Defense so the Master could carry on and do the accounting himself.

39. On Friday, March 18, 1988, the Solicitor told Mrs. Chittick that Judgment was signed that week. She thought that Judgment had been obtained long before.

40. The preceding are but a few of the telephone calls, conversations and meetings with the Solicitor. Throughout this period Mrs. Chittick was always told something further had to be done. A search of the Court file was conducted on April 27, 1988, and the Court files show no action since 1984.

41. In March, 1988, Mrs. Chittick attended at Mr. Ducharme's office, who at this time was attempting to assist the Solicitor, and signed an affidavit in order to have this matter revived.

David Dumeah

42. In November, 1987, Mr. Dumeah purchased a vacant lot in Windsor with the intention of constructing a building for his business. The Solicitor was retained to do the legal work for the purchase. Shortly thereafter, Mr. Dumeah approached the Toronto-Dominion Bank in order to arrange financing for the construction. The loan was to be approximately \$66,000.00. The Solicitor's duties were to transfer title of the property into the names of Mr. and Mrs. Dumeah, as well as draw the necessary security documents required by the Toronto-Dominion Bank.

43. The Toronto-Dominion Bank would not advance the funds to Mr. Dumeah until the Solicitor registered the documents required by them. The Solicitor had the documents prepared, but when the package was presented to the bank for approval the bank rejected them as incomplete. Several weeks went by during which time Mr. Dumeah placed two or three telephone calls per week to the Solicitor. Most of these calls were not returned. When Mr. Dumeah was able to speak to the Solicitor, he was assured that the bank had been in touch with him and everything was in place. However, when the Solicitor was advised that the bank had not received complete documentation, the Solicitor stated that he would have the papers at the bank the following morning. This did not happen.

44. Mr. Dumeah finally retained Mr. Phillip McCulla in February of 1988, who completed the outstanding legal work. Mr. Dumeah states that the Solicitor's delay in registering the required documentation cost him approximately \$1,000 in bank charges.

Failure to Communicate with Fellow Solicitor - Particular 2(b)

48. The Solicitor acted for the Estate of Edward James Jones. Mr. Jones died on January 31, 1987. The assets of the deceased consisted of a life insurance policy payable directly to the children, a car with a bank loan payable against it and virtually no cash. The Solicitor was not paid a retainer. Mr. Jones' ex-wife, Debbie A. Jones, retained Ms. Gabriella Bonn to represent her two children who are beneficiaries of this will. On February 4, 1987, Ms. Bonn spoke with the Solicitor at which time she determined he acted for the Estate and that there was a will in existence.

On February 11, Ms. Bonn wrote to the Solicitor requesting his cooperation in obtaining the necessary papers required to file for Canada Pension, as well as a status report on the probate of the will. The Solicitor did not respond. Ms. Bonn wrote a follow-up letter on March 4, 1987 to the Solicitor requesting his assistance and cooperation. The Solicitor again did not respond. The Solicitor was not receiving instructions from the Executrix, who was the deceased's sister, and who was not on speaking terms with Debbie Jones.

49. On April 21, 1987, Ms. Bonn wrote to the Solicitor stating that if he did not respond, she would file a Citation against the Estate. Since no response was forthcoming from the Solicitor, Ms. Bonn obtained a Citation Order on April 27, 1987. These letters went unanswered. Furthermore, Ms. Bonn made telephone calls on February 10, 19, March 3, 17, 26, April 9 and 21, 1987. On April 22, 1987, the Solicitor returned one or two calls to Ms. Bonn but was unable to reach her.

50. Ms. Jones complained to the Society about the Solicitor's delay in handling her late ex-husband's estate. The Law Society wrote to the Solicitor on May 19, 1987 and the Solicitor responded to the Law Society's inquiries on June 5, 1987.

Failure to File Form 2/3 - Particular 2(c)

51. The Solicitor's fiscal year end is December 31. All members of the Law Society are required to file annually a Statutory Declaration and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules pursuant to the Law Society Act, which form is commonly referred to as a Form 2/3.

For the fiscal year ending December 31, 1986, the Solicitor had until July 1, 1987 to file his Form 2/3. He did not file his form in a timely manner and as a result was subject to a late filing penalty. In January, 1988, the Solicitor was suspended for non payment of his late filing fee. Two weeks after the formal complaint was issued against him by the Society, the Solicitor filed the required Form 2/3 and paid the outstanding \$600.00 late filing fee. This matter was therefore resolved on February 15, 1988.

DATED at Toronto this 11th day of May, 1988."

The Committee accepted the Agreed Statement of Facts and made a finding of professional misconduct as particularized in paragraph 2 of Complaint D42/88.

RECOMMENDATION AS TO PENALTY

This Committee recommends that Robert Andrew Kominar be reprimanded in Convocation on the condition that:

1. a committee be convened forthwith to determine, pursuant to s.35 of the Law Society Act, his capacity to practise law;
2. the Solicitor undertakes not to practise law except under direct supervision until Convocation has dealt with the report of the committee convened pursuant to s.35.

REASONS FOR RECOMMENDATION

In the opinion of your Committee, this is a situation where the Solicitor is unable to function as a lawyer because of the stress which he undergoes in attempting to conduct his practice alone and in coping with his personal problems at the same time.

The letters of recommendation received by the Committee leave no doubt he enjoys a good reputation in his community, and among his colleagues in the law.

The offers of assistance are encouraging. However, the matters complained of are all relevant to his inability to recognize his problems and to seek advice and assistance.

Had there been evidence of misuse of clients' funds, this Committee would have considered a more drastic penalty. As it is, he will be able to practise only under the direct supervision of another member of the Bar. This concession is made because the Committee is aware that he needs the employment in order to support himself and his family, and because of the offers he has received.

The recommendation that a Section 35 hearing be convened is to determine whether his personality and his capacity to undertake the responsibilities incumbent upon him are such that he is unable to practise as a sole practitioner or in any capacity as a lawyer.

Robert Andrew Kominar was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 6th day of April, 1982.

ALL OF WHICH is respectfully submitted

DATED this 7th day of November, 1988

"Samuel Lerner"
Samuel Lerner, Q.C.
Chair

There were no representations in regard to the report.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Somerville, seconded by Mr. Yachetti, that the report of the Discipline Committee dated 7th November, 1988 be adopted.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were advised of Convocation's action.

Submissions were made with respect to an amended Recommendation as to Penalty because the solicitor is not practising and therefore do Section 35 when he re-enters practise of law.

The matter was stood down to allow counsel time to re-draft.

The solicitor, counsel and the reporter retired.

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Re: ROBERT ALLAN HORWOOD, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

The solicitor attended on his own behalf. Mr. Stephen Sherriff appeared for the Society.

Convocation had before it the Report of the Discipline Committee dated 22th March, 1989, together with an Affidavit of Service sworn 14th April, 1989 by Louis Kotholos that he had effected service on the solicitor by registered mail on 11th April, 1989 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 26th April, 1989 (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

Allan M. Rock, Q.C., Chair
Donald H.L. Lamont, Q.C.
Mary P. Weaver

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

H. Reginald Watson
for the Society

ROBERT ALLAN HORWOOD
of the City
of Toronto
a barrister and solicitor

(not represented by counsel)
for the solicitor

Heard: November 15, 1988

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 9, 1988, Complaint D74/88 was issued against Robert Allan Horwood, alleging that he was guilty of professional misconduct.

The matter was heard in public on November 15, 1988 and March 3, 1989 by this Committee composed of Allan M. Rock, Q.C. as Chair, Donald H.L. Lamont, Q.C. and Mary P. Weaver, Q.C.

Mr. Horwood attended the hearing and represented himself. Mr. Reginald Watson appeared on behalf of the Law Society.

DECISION

The Complaint

The following particulars of professional misconduct were alleged, admitted by Mr. Horwood, and found to be established:

Paragraph 2: (Complaint D74/88)

(a) He failed to provide complete and meaningful replies in a prompt fashion to letters and telephone calls from the Law Society respecting his books and records.

(b) He failed to file with the Law Society within six (6) months of the termination of his fiscal year ending January 31, 1985, January 31, 1986, January 31, 1987 and January 31, 1988, a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation made pursuant to the Law Society Act.

Evidence

On November 15, 1988, the Committee received in evidence as Exhibit 2 an Agreed Statement of Facts. We reproduce hereunder the relevant facts to which counsel for the Law Society and Mr. Horwood agreed in that document:

"4. The Society conducted an audit investigation of the Solicitor's practice on September 11th, September 15th, October 7th and October 19th, 1987. Pursuant to the Society's audit a letter of inadequacies was sent to the Solicitor detailing eleven deficiencies with his books and records. On November 3rd, 1987, the Society wrote to the Solicitor requesting that the Solicitor respond within one month of the date of the letter and confirm that he had taken the necessary action to correct the deficiencies and to provide certain material information. The Solicitor did not reply and on February 1st, 1988 the Society wrote the

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Solicitor requesting a reply. A further letter was sent to the Solicitor on March 9th, 1988 again requesting a reply. On April 20th, 1988, the Society sent a registered letter to the Solicitor requesting a reply. Due to the Solicitor's failure to reply and his past discipline history, the Audit Department issued a formal report. After the report was issued, numerous attempts were made throughout June, July and August of 1988 to communicate with the Solicitor and obtain a reply. No reply was forthcoming and the Society issued Complaint D74/88.

5. In addition to the general concerns respecting deficiencies, the Society is also concerned about the Solicitor's failure to reply and cooperate with the Society's auditor respecting books and records for the Yake Estate.

6. The Solicitor is the sole executor and the solicitor for the estate. Following a complaint from a beneficiary, the Society attempted to audit the Yake Estate matter. The Solicitor has failed to produce any accounting documentation for the estate and has failed to reply to the Society's communications respecting this matter.

7. The Solicitor has also failed to reply to correspondence from the Law Society respecting a complaint from clients, Dianna Hostan and John Priestman. Standard letters have been sent by the Society to the Solicitor requesting his reply in order for the Society to properly respond to the concerned clients. The Solicitor has failed to reply to the Society.

Particular 2(b)

8. The Solicitor's year end is January 31st. He has failed to file with the Society within six months of the termination of his fiscal year end, the statutory declarations in the form prescribed by the Rules (Form 2) and the report duly completed by a public accountant and signed by the member in the form prescribed by the Rules (Form 3) for the years ending January 31st, 1985, January 31st, 1986, January 31st, 1987, and January 31st, 1988.

DATED at Toronto this 15th day of November, 1988."

After having found Mr. Horwood guilty of professional misconduct on November 15, 1988, the Committee adjourned the matter at the request of both counsel for the purpose of permitting Mr. Horwood to see to the completion of his outstanding obligations prior to the imposition of penalty. Initially, the Committee scheduled the completion of this hearing for January 11, 1989. When it was clear that Mr. Horwood had not by that date completed the outstanding matters, the penalty phase was adjourned again until March 3, 1989.

On March 3, the Law Society informed the Committee that of those outstanding matters referred to in the Agreed Statement of Facts, the following are still unresolved:

1) The Society has not yet had a response from Mr. Horwood to the letter of deficiencies identifying eleven outstanding matters. That letter was sent to Mr. Horwood following the completion of the Law Society's audit of his practice in October of 1987;

2) Mr. Horwood has not yet responded to the satisfaction of the Law Society to questions it has raised with respect to his handling of the Yake Estate referred to in paragraph 6 of the Agreed Statement of Facts. Although Mr. Horwood has provided the accounting records to the Society relating to this estate, the particular questions that they have asked him remain unanswered;

3) The Society has not yet been satisfied with respect to the questions raised concerning Mr. Horwood's dealings with the Hostan and Priestman matters referred to in paragraph 7 of the Agreed Statement of Facts. While Mr. Horwood delivered a letter to the

Law Society on the morning of March 3 before the hearing began, and while that letter deals in some respects with the concerns the Society has expressed about these matters, the Society is not yet satisfied that the responses have been complete and definitive.

4) Mr. Horwood has not yet filed his Forms 2/3 for the years 1985 to 1988 inclusive. The Committee was informed that Mr. Horwood has paid the amounts levied as a penalty for late filing so as to avoid the automatic suspension that follows when the levies reach a certain amount.

RECOMMENDATION AS TO PENALTY

Both counsel for the Law Society and Mr. Horwood, on his own behalf, submitted that this Committee should dispose of this matter in the following way - by recommending to Convocation that:

a) If all outstanding matters have been resolved to the satisfaction of the Law Society by the time Convocation deals with this case, then Mr. Horwood should be reprimanded in Convocation for his misconduct as alleged in this complaint, and

b) If Mr. Horwood has not by the time Convocation considers this matter resolved all outstanding matters to the satisfaction of the Law Society, then Mr. Horwood should be suspended for a period of one month and indefinitely thereafter until he has completed all outstanding matters.

After deliberation, the Committee decided to accept that joint submission and hereby recommends that disposition to Convocation.

REASONS FOR RECOMMENDATION

In making this recommendation, the Committee took into account the following factors:

1) The lengths of time during which these matters have been outstanding. As mentioned above, the letter of deficiencies was provided to Mr. Horwood in the autumn of 1987. Notwithstanding the passage of sixteen months and the issuance of this complaint, Mr. Horwood has not yet responded. Furthermore, the Committee was told that important aspects of Mr. Horwood's responsibilities as Executor and Solicitor for the Yake Estate have been left unattended and he has not, despite the passage of many months, provided answers to specific questions about the estate that the Law Society has raised. Furthermore, the Committee has been given no satisfactory explanation why Mr. Horwood failed to complete all outstanding matters during the period of adjournment that we allowed him after the finding of misconduct on November 15, 1988.

2) Mr. Horwood has a previous record of discipline proceedings. In September of 1986, Mr. Horwood was suspended by Convocation for a period of six months on the recommendation of a discipline committee that had found Mr. Horwood guilty of professional misconduct arising from Complaint D27/86. The particulars of that complaint read as follows:

(Para. 2; Complaint D27/86)

"(a) During the month of December 1983, he borrowed the sum of Fourteen Thousand (\$14,000.00) Dollars, more or less, from his client, Mildred Gamble. In relation to this allegation reference will be made to all of the circumstances, including the following factors:

(i) He obtained his client's consent to remove the funds from

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his trust account on the basis that her funds would be "invested". The terms of the "investment" were not specified although previous discussions had centered on second mortgages for a five year term repayable with interest at the rate of 15 per cent. His client had left the terms of the investment to his discretion, provided there was a good rate of return.

(ii) He did not advise his client that the funds being removed from his trust account were to be used for his personal benefit. Thereafter, he did not respond to his client's requests for information with the utmost candour.

(b) During the month of April 1984, he borrowed the sum of Ten Thousand Five Hundred (\$10,500.00) Dollars, more or less, from his client Cheryl Bain.

(c) During the period December 21, 1984, to February 20, 1986, he improperly appropriated to his own use trust funds in the amount of Seven Thousand One Hundred and Ten (\$7,110.00) Dollars, more or less, from his client, Catherine Delmotte."

At that hearing, Mr. Horwood admitted the particulars of that Complaint. The Committee, in recommending suspension, found that Mr. Horwood had breached Rule 18 of the Rules of Professional Conduct by borrowing from clients and that he had improperly appropriated money from his clients' mixed trust account. In the course of its reasons for recommendation as to penalty, the committee on that occasion took into account certain marital and other personal difficulties that Mr. Horwood had then experienced.

3) Mr. Horwood is still experiencing difficulties in his personal life. The Committee received a letter from Mr. Horwood during the penalty phase of this hearing providing details of certain tragic events involving members of Mr. Horwood's family and relating to financial difficulties that have beset him in recent months. While these unhappy circumstances do not explain Mr. Horwood's protracted and blameworthy failure to discharge his responsibilities as a member of the Law Society, they do account, at least in part, for his failure to satisfy outstanding matters, at least in the two or three weeks prior to the hearing on March 3, 1989.

Accordingly, we recommend the disposition set forth above because we have concluded that this matter now requires the attention of Convocation. In effect, Mr. Horwood has been given an additional two months to complete outstanding matters, since both parties agreed that our recommendation would be before Convocation at the end of April 1989. Having regard to all the circumstances, we feel that Mr. Horwood should be reprimanded in Convocation if he has, by that time, seen to all outstanding matters to the satisfaction of the Law Society. On the other hand, if any of those matters are still outstanding at the end of April, we feel that the Society will have no choice but to suspend Mr. Horwood indefinitely.

Finally, and having regard to what the Committee learned about Mr. Horwood's practice in the course of this hearing, we recommend that the Professional Standards Committee evaluate Mr. Horwood to determine whether he might be assisted in coming to grips with the difficulties he has had in managing his professional affairs.

Robert Allan Horwood was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 22nd day of March, 1974.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1989

"Allan Rock"
Allan Rock, Q.C.
Chair

No submissions were made with respect to the Report.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Somerville, seconded by Mr. Yachetti, that the Report of the Discipline Committee dated 22nd March, 1989 be adopted.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were advised of Convocation's action.

It was moved by Mr. Somerville, seconded by Mr. Yachetti, that the Recommendation as to Penalty be adopted.

Submissions and a reply by counsel were presented. Mr. Sherriff indicated that matters had not been dealt with at this time; form 2/3's had not been filed but an accountant had been retained, in regard to client matters still outstanding. The solicitor made representations. The solicitor agreed that if an adjournment was granted the present Bench not seized.

The solicitor, counsel, public and the reporter withdrew.

Mr. Somerville withdrew previous motion with respect to the adoption of the Recommendation as to Penalty as presented in the Report of the Discipline Committee dated 22 March, 1989.

It was moved by Mr. Lyons, seconded by Mr. Wardlaw, that the matter be adjourned to the next Discipline Convocation.

Not put

It was moved by Mrs. MacLeod, seconded by Mr. Bastedo, that if Mr. Horwood has not by June 15th resolved all matters to the satisfaction of the Law Society Chair of the Discipline Committee, then he be suspended for a period of one month and indefinitely thereafter until he has completed all outstanding matters and notice of publication be deferred until 15th June, 1989.

Carried

It was moved by Mr. Wardlaw, seconded by Mr. Outerbridge that the matter be re-opened.

Lost

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

Mr. Sherriff raised the issue of Reprimand.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mrs. MacLeod, seconded by Mr. Bastedo that the original motion they made be amended to provide that if all outstanding matters have been resolved that the solicitor be reprimanded in Convocation for his misconduct as alleged in the complaint and that he complies by 22nd June, 1989 rather than 15th June, 1989 and notice of publication be deferred until 22nd of June, 1989 rather than 15th June, 1989.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were advised of Convocation's amendment and action.

The solicitor, counsel and the reporter retired.

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ROBERT ANDREW KOMINAR, Windsor, RESUMED

The reporter was sworn.

The solicitor attended with his counsel, Mr. B. Greenspan. Mr. Shaun Devlin appeared for the Society.

A revised joint submission as to Penalty was circulated with respect to:

- reprimand in Convocation
- free to do duty counsel
- when the solicitor wants to return to full practise of law and Section 35 hearing

There were questions from the Bench.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mrs. Graham, seconded by Mr. Carter, that the solicitor not practise law until such time as he is found fit to do so by a Section 35 Committee which should be convened forthwith and if he fails to give such an undertaking that he be suspended.

The motion was not put and was withdrawn.

It was moved by Mr. Outerbridge, seconded by Mr. Lyons, that the matter be adjourned sine die and that a Section 35 Committee be convened forthwith to determine the solicitor's capacity to practise law on his undertaking not to practise until such time as the Committee has reported and if he fails to give such an undertaking that he be suspended.

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of the motion before Convocation.

Mr. Devlin indicated that he supported the original Committee Recommendation as to Penalty. This was also supported by Mr. Greenspan.

Mr. Devlin suggested that the Section 35 hearing be convened forthwith and until such time as the report comes before Convocation, the solicitor agrees to undertake not to practise law.

The solicitor consented to the second motion and agreed to provide the necessary undertaking.

The solicitor, counsel, public and the reporter withdrew.

The motion put by Mr. Outerbridge and seconded by Mr. Lyons as set out above was carried.

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's decision.

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CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M.

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CONVOCATION RESUMED AT 2:15 P.M.

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PRESENT:

The Treasurer (Mr. Lee K. Ferrier) and Messrs. Arnup, Bastedo, Bragagnolo, Carey, Carter, Epstein, Farquharson, Mrs. Graham, Messrs. Lawrence, Lerner, Mrs. MacLeod, Messrs. McKinnon, Shaffer Somerville, Strosberg, Thom, Topp, Wardlaw and Mrs. Weaver,

.....

"IN PUBLIC"

.....

Re: MICHAEL ELLIOTT CHODOS, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Mr. Gavin MacKenzie. Mr. Shaun Devlin appeared for the Society.

Convocation had before it the Report of the Discipline Committee dated 3rd April, 1989 together with an Affidavit of Service sworn 14th April, 1989 by Louis Kotholos that he had effected service on the solicitor by registered mail on 11th April, 1989 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 21th April, 1989 (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

Marc J. Somerville, Q.C. (Chair)
Frances Kiteley
June Callwood

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

H. Reginald Watson
for the Society

MICHAEL ELLIOTT CHODOS
of the City
of Toronto
a barrister and solicitor

Gavin MacKenzie
for the solicitor

Heard: November 1, 1988

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 22, 1988, Complaint D23/88 was issued against Michael Elliott Chodos alleging that he was guilty of professional misconduct and conduct unbecoming a barrister and solicitor.

The matter was heard in public on November 1, 1988 before a Committee composed of Marc J. Somerville, Q.C. as Chair, Frances Kiteley and June Callwood. Mr. Chodos appeared and was represented by his counsel Gavin MacKenzie. H. Reginald Watson appeared as counsel for the Law Society.

DECISION

The Complaint

The following particulars of professional misconduct were alleged in the Complaint against Michael Elliott Chodos:

Para. 2: (Complaint D23/88)

"(a) he displayed a fundamental lack of integrity during an investigation by the Errors and Omissions and Discipline Sectors of the Law Society into his handling of litigation on behalf of his client, Lawrence Titchell.

In an effort to demonstrate that he had only recently become aware of his own negligence and to further demonstrate that he had not misled his client about the status of a medical malpractice action, he resorted to unethical conduct including the following:

i) he strategically deleted from a copy of a trial record, furnished to the Society during its investigation, the order dismissing the action in question and further altered the solicitor's certificate of trial record;

ii) he purged his file of fourteen separate letters from the McCarthy law firm in order to support his false contention that he had never received the letters;

iii) he made false or misleading statements to the following persons engaged in the investigation:

- a) Allan O'Donnell, Counsel appointed by the Errors and Omissions Department;
- b) Terence Hennessy, Deputy Director, Errors and Omissions;
- c) John Wissent, Staff Lawyer;
- d) Stephen Sherriff, Senior Counsel-Discipline;

(b) he abdicated his professional responsibility to his difficult client, Lawrence Titchell, by knowingly failing to take the appropriate steps to protect the client's interests with the result that three actions were dismissed."

At the commencement of the hearing, counsel for the Law Society withdrew paragraphs 2(a)(i) and 2(b).

Evidence

The Committee received in evidence the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D23/88 and is prepared to proceed with a hearing of this matter before the Discipline Committee on November 1, 1988.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Society hereby withdraws particulars 2(a)(i) and 2(b). The Solicitor has reviewed Complaint D23/88 with his counsel, Gavin MacKenzie, and admits particulars 2(a)(ii) and (iii) and admits that they constitute professional misconduct.

IV. BACKGROUND FACTS

4. The Solicitor was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on March 22, 1974.

5. The Solicitor is at present 41 years old. He was educated in Montreal, Quebec, where he obtained an Honours Bachelor of Arts (B.A.) degree in economics and political science in 1968. The Solicitor attended McGill University Law School from 1968 to 1972, and was awarded a Bachelor of Civil Law (B.C.L.) degree in 1971, and a Bachelor of Laws (LL.B.) degree in 1972.

6. The Solicitor articulated with Sherman, Midanik, Starkman & Ross in Toronto during the 1972-1973 articling year. After his call to the Bar in 1974 the Solicitor was employed by Sherman, Midanik & Starkman and the successor firm of Midanik, Starkman & Ross for three years. He was a founding partner of the firm Duco, Geist & Chodos, which was formed as of June 1, 1977, and he remained a partner in that firm until August, 1988, when the firm was dissolved. Since August, 1988, he has been a sole practitioner. He restricts his practice to litigation and, at present, the majority of his practice consists of commercial litigation, including banking and construction litigation.

7. The Solicitor is married and has two children, a daughter who is 13 years old and a son who is 8 years old. From 1984 to 1988 he was a member of the executive committee of the Toronto Jewish Congress and the Canadian Jewish Congress. From 1982 to 1986 he was a member of the board of directors of Leo Baeck Day School (a private school attended by his son), and he has served as a chairman of that board's financial assistance committee. Since 1982 he has been a member of the Yorkminstrels, a theatre group that performs at Earl Haig Secondary School in North York. He served that organization as its treasurer and as a director from 1983 to 1985, and has performed in nine plays for the Yorkminstrels. Since 1980 he has served as the vice president of the Willowbrook Community Association. The Solicitor coaches a hockey team in the Thornhill Community Hockey League. Since June, 1988, the Solicitor has served as a director of the North York Arts Council.

8. The Solicitor was retained by Mr. Lawrence Titchell in 1979 on a matter unrelated to the litigation that has given rise to the present complaint.

9. Mr. Titchell underwent surgery in 1981. The surgeon, Dr. Kay, made notes regarding some apparent osteoporosis but did not inform Mr. Titchell. In 1984 the Solicitor commenced an action on Mr. Titchell's behalf after Mr. Titchell discovered that Dr. Kay had not informed him of the osteoporosis and that his condition was by then more acute. Mr. Titchell joined both Dr. Kay and the North York General Hospital, who were represented by McCarthy & McCarthy and Sawers, Liswood respectively.

10. On January 17, 1986, Mr. Titchell was examined for discovery. During the examination 22 undertakings were given by or on behalf of Mr. Titchell. A list of the undertakings is found at tab 1 of the document brief. However, partly as a result of difficulties encountered in obtaining necessary documents from Mr. Titchell and others, the undertakings were not discharged.

11. By letters dated February 18, April 3, May 15, June 13 and June 19, 1986, the McCarthy firm requested that the Solicitor discharge the undertakings given on Mr. Titchell's examination for discovery.

12. The Solicitor did not reply to any of the correspondence. As a result, the McCarthy firm brought a motion returnable on July 30, 1986, for an order striking out the Statement of Claim as against Dr. Kay.

13. The motion returnable on July 30, 1986, was adjourned on consent to August 13, 1986, based on an agreement between the McCarthy firm and the Solicitor that if the undertakings were not discharged by then the McCarthy firm could move ex parte to have the action dismissed. The McCarthy firm wrote to the Solicitor on July 30, 1986, confirming the terms of the adjournment and requesting that the Solicitor discharge the undertakings.

14. On August 13, 1986, Dr. Kay's solicitors brought on the motion before Master Sedgewick who ordered that the Statement of Claim against the Defendant, Dr. Kay, be struck out, with costs of the motion to Dr. Kay in any event of the cause. By letter dated September 18, 1986, the McCarthy firm served the Solicitor with an order of Master Sedgewick and requested that the Solicitor reply respecting arrangements for the payment of costs.

15. By letter dated October 21, 1986, the McCarthy firm asked the Solicitor whether he could agree on the costs to be paid to Dr. Kay. The Solicitor did not reply to the correspondence.

16. On December 3, 1986, the Solicitor served the McCarthy firm with a notice of readiness and trial record. The trial record included Master Sedgewick's order and in the solicitor's certificate of trial record the Solicitor stated that the action against Dr. Kay had been dismissed.

17. By letter dated January 5, 1987, the McCarthy firm wrote to the solicitor requesting that the Solicitor provide a consent to have the action formally dismissed against Dr. Kay.

18. By letter dated January 23, 1987, the McCarthy firm wrote to the Solicitor advising that if he did not provide the consent, the McCarthy firm would bring a motion to have the action formally dismissed and would be requesting costs personally against the Solicitor. The Solicitor did not reply to this correspondence.

19. On March 16, 1987, the McCarthy firm brought a motion returnable on April 8, 1987, to obtain an order dismissing action against Dr. Kay. The notice of motion and a supporting affidavit were served on the Solicitor by mail on March 16, 1987.

20. The Solicitor sent the McCarthy firm a notice of listing for trial under cover of a brief covering letter dated March 17, 1987.

21. On April 8, 1987, the motion was heard and Master Peppiatt ordered that the action against Dr. Kay be dismissed and that the costs of the motion be payable forthwith on a solicitor and client basis by the Solicitor. The Solicitor did not attend the motion.

22. By letter dated April 16, 1987, the McCarthy firm wrote to the Solicitor enclosing a copy of the order of Master Peppiatt and advised that they would be taking out an appointment to assess costs.

23. By letter dated September 28, 1987, the McCarthy firm wrote to the Solicitor enclosing a bill of costs and an appointment for taxation.

24. Mr. Titchell was unaware of the correspondence mentioned above and first learned that the action against Dr. Kay had been dismissed when he received a letter from the McCarthy firm dated September 29, 1987, enclosing the bill of costs and appointment for taxation. He arranged a meeting with the Solicitor at his office on October 4, 1987. At this time the Solicitor informed Mr. Titchell that the action had been

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dismissed. It was also at this time that the Solicitor notified the Society's Errors and Omissions Department of a potential claim.

V. FACTS RELATING TO PARTICULARS 2(a)(ii) and (iii)

25. As a result of the Solicitor contacting the Errors and Omissions Department respecting a potential claim, the Errors and Omissions Department conducted an investigation through Mr. Allan O'Donnell who was appointed counsel. Mr. O'Donnell reviewed the Dr. Kay matter and requested that the Solicitor produce his file. The Solicitor provided Mr. O'Donnell with his file. None of the aforementioned correspondence and documentation respecting the dismissal of the action against Dr. Kay was provided to Mr. O'Donnell. Mr. O'Donnell then phoned the McCarthy firm and was informed of the various correspondence and motions respecting the dismissal of the action. The McCarthy firm provided Mr. O'Donnell with all of the documentation. Mr. O'Donnell then spoke to the Solicitor, by telephone, and was informed that the Solicitor had been unaware of the dismissal of the action until October 2, 1987, just before his meeting with Mr. Titchell.

26. Mr. O'Donnell again spoke to the Solicitor on October 21, 1987. The Solicitor stated that he did not realize that the action against Dr. Kay had been dismissed until October 1, 1987, when he was informed by Mr. Titchell. He further stated that at no point had he seen the correspondence, the order dismissing the action or any other order. He indicated that he was aware of the motion returnable July 30, 1986, which he had discussed by telephone with the McCarthy firm. It was agreed that the motion would be adjourned to August 13, 1986, to afford the Solicitor an opportunity to discharge the undertakings, failing which the McCarthy firm could move ex parte to have the action dismissed. He informed Mr. O'Donnell that he had instructed his receptionist to photocopy documents which were needed for the undertakings to be discharged and that he had no notice of the motion to dismiss the action.

27. After Mr. O'Donnell's conversation with the Solicitor, he arranged for a meeting with the Solicitor and Mr. Terence Hennessy, Deputy Director of the Society's Errors and Omissions Department on October 28, 1987. Mr. O'Donnell then put all of the material from the McCarthy firm to the Solicitor. He told the Solicitor that there were some 14 pieces of correspondence that the McCarthy firm would swear were sent to the Solicitor. They then went through each piece of correspondence and the Solicitor stated that he had not seen any of the material. He further stated that his office practice was such that every piece of mail came across his desk immediately after it was delivered.

28. On November 10, 1987, the Solicitor met with Mr. John Wissent, a staff lawyer in the Discipline Department. Mr. Wissent reviewed the 14 missing documents with the Solicitor. Again the Solicitor stated that he had not received the correspondence and that he had no explanation as to why the documents were not in his file.

29. In June, 1987, Mr. Titchell telephoned Stephen Sherriff, Senior Counsel-Discipline of the Society, about a concern that Mr. Titchell had with respect to the Solicitor's management of the litigation. Although the problem mentioned by Mr. Titchell did not concern Mr. Sherriff from the point of view of professional discipline, Mr. Sherriff was concerned about the fact that Mr. Titchell threatened to speak to the media unless certain steps were taken. Mr. Sherriff was cognizant of the vast adverse publicity that the Solicitor had previously received (see paragraphs 34 - 35, below), and he telephoned the Solicitor to suggest that he meet with Mr. Sherriff in an effort to avoid any detrimental publicity. The Solicitor readily agreed to meet with Mr. Sherriff.

30. When they met in June, 1987, the Solicitor assured Mr. Sherriff that Mr. Titchell's matter was receiving appropriate attention and made no mention of any unfulfilled undertakings or any other problem that would prevent the action from proceeding to trial.

31. By letter dated December 30, 1987, Mr. Sherriff wrote to the Solicitor respecting the missing material and his failure to fulfill the undertakings. The Solicitor replied by letter dated February 16, 1988, in which he maintained that he had no reason to "bury his head" concerning this matter. He further maintained that he was not aware of any default until the beginning of October of 1987. Copies of both letters are at tab 3 of the document brief.

32. The Solicitor was in fact aware of the correspondence and documentation respecting this dismissal of the action against Dr. Kay. He received the letters referred to above from the McCarthy firm and was apprised of the status of the action at all times. When the Errors and Omissions Department asked for his file, he purged his file of all correspondence and documentation respecting the dismissal of the action in order to support his false contention that he had not received the letters. Thereafter, he stated falsely to Messrs. O'Donnell, Hennessy, Wissent, and Sherriff that he had not received the letters and documents.

33. The Society's Errors and Omissions Department has paid out substantial sums respecting successful claims against the Solicitor which have increased his deductible. In respect of the potential claim of Mr. Titchell the Errors and Omissions Department has retained counsel who is bringing a motion for an order setting aside the orders striking out the Statement of Claim and dismissing the action against Dr. Kay.

VI. PREVIOUS DISCIPLINE RECORD

34. The Solicitor was Reprimanded in Convocation on November 27, 1986, as a result of a finding of a discipline committee that he was guilty of conduct unbecoming a barrister and solicitor. The Complaint contained a single particular, which was admitted by the Solicitor:

"(a) On or about April 24th, 1986, in a civil judgment pronounced by His Lordship Mr. Justice Callaghan, A.C.J.H.C. which judgment was made public, his conduct was found to be dishonourable."

35. The report of the committee is reproduced under tab 4 of the document brief. The judgment of Associate Chief Justice Callaghan is currently under appeal."

The Committee accepted the Agreed Statement of Facts and made a finding of professional misconduct as particularized in paragraphs 2(a)(ii) and 2(a)(iii) of Complaint D23/88.

RECOMMENDATION AS TO PENALTY

This Committee recommends that Michael Elliott Chodos be disbarred.

REASONS FOR RECOMMENDATION

In the opinion of your Committee, the facts as agreed to by the Solicitor display a fundamental lack of integrity.

The first Rule of Professional Conduct is as follows:

"Rule 1

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

The first commentary under the first Rule reads as follows:

"COMMENTARY

1. Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If the client is in any doubt as to the lawyer's trustworthiness the essential element in the true lawyer-client relationship will be missing. If personal integrity is lacking the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be."

The facts in this case disclose that the conduct of Mr. Chodos was not simply a casual or isolated instance of deception. On the contrary, his conduct displayed a deliberate and consistent pattern of dishonesty. Your Committee notes in particular the premeditation required for the Solicitor to consciously purge the client's file of the 14 letters and documents which were evidence of the Solicitor's state of knowledge. This was in aid of the continued deception not only of his own client, but of the Errors and Omissions Department of the Law Society and Discipline Department of the Law Society.

Your Committee notes that the most culpable events in this pyramid of deception occurred subsequent to the disposition of Complaint D94/86. (This case was heard October 28, 1986.) As a result of that Complaint, Mr. Chodos was found guilty of conduct unbecoming a barrister and solicitor in relation to activities which Callaghan, A.C.J.H.C. had described as "dishonourable".

It is quite obvious that Mr. Chodos is not a person who learns from his previous errors.

Your Committee notes that at the previous hearing in October 1986, with reference to Complaint D94/86, Mr. Chodos's conduct was described as "out of character" and "an isolated event". We also note that there was substantial evidence of good character called at that time and this is in stark contrast to the complete absence of any character evidence called in the present proceeding.

Mr. MacKenzie has suggested the appropriate penalty for his client would be:

1. A fine in the sum of \$7,500.00;
2. A reprimand in Convocation; and,
3. An order for community service which he suggested should be a period of service in a legal aid clinic without compensation.

Your Committee rejects these submissions as representing a completely inadequate penalty and particularly notes the inappropriateness of having Mr. Chodos provide legal services for the Society.

On behalf of the Society, Mr. Watson submitted that the Solicitor should be given permission to resign. Mr. MacKenzie responded that permission to resign and disbarment are in his words "identical for all practical purposes". It is true that the effect is the same in that the solicitor is obviously no longer permitted to carry on the practice of law. It is the opinion of this Committee that permission to resign should be reserved for those cases in which there are mitigating circumstances. We do not there are any mitigating circumstances in the present case and accordingly recommend that Michael Elliott Chodos be disbarred.

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

ALL OF WHICH is respectfully submitted

DATED this 3rd day of April, 1989

"Marc J. Somerville"
Marc J. Somerville, Q.C.
Chair

No submissions were made as to the Report.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Strosberg, seconded by Mr. Lerner, that the Report of the Discipline Committee dated 3rd April, 1989 be adopted.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

Convocation was advised that the Recommendation as to Penalty was that the solicitor be disbarred.

There were submissions by both counsel.

The solicitor addressed Convocation.

The solicitor, counsel, the public and the reporter withdrew.

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CONVOCATION ADJOURNED FOR 5 MINUTES

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CONVOCATION RESUMED

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PRESENT:

The Treasurer (Mr. Lee K. Ferrier) and Messrs. Arnup, Bastedo, Bragagnolo, Carey, Carter, Epstein, Farquharson, Mrs. Graham, Messrs. Lawrence, Lerner, Mrs. MacLeod, Messrs. McKinnon, Shaffer Somerville, Strosberg, Thom, Topp, Wardlaw and Mrs. Weaver,

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"IN PUBLIC"

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It was moved by Mr. Strosberg, seconded by Mrs. Weaver, that the solicitor be disbarred.

Lost

It was moved by Mr. Lerner, seconded by Mr. Carey, that the solicitor be reprimanded in Convocation.

Carried

It was moved by Mr. McKinnon, seconded by Mr. Topp, that the solicitor be suspended for six months.

Lost

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The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were advised of Convocation's decision.

The solicitor waived his right to appeal and requested that the penalty be carried out forthwith.

Counsel, public and the reporter retired.

The solicitor was reprimanded by the Treasurer.

The solicitor retired.

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Re: JAMES WILLIAM ORME, Hamilton

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

The solicitor appeared on his own behalf. Mr. Shaun Devlin appeared for the Society.

Due to the lateness of the hour and the time estimate given by both counsel as to how long they required for their arguments, the matter, on consent, was adjourned to the next Discipline Convocation in June. It is scheduled to be the first on the list of matters for that day.

The solicitor, counsel, public and the reporter retired.

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CONVOCATION ROSE AT 4:45 P.M.

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Confirmed in Convocation this day of , 1990

Treasurer