

MINUTES OF SPECIAL CONVOCATION

Thursday, 25th June, 1992
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence), Bastedo, Bellamy, Bragagnolo, Brennan, Copeland, Cullity, Curtis, Elliott, Epstein, Feinstein, Farquharson, Finkelstein, Graham, Lamek, Lax, McKinnon, Manes, Murray, Palmer, Rock, Scott, Strosberg and Thom.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: FRANCIS JAMES ALTIMAS, Orleans

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Stephen Waisberg requested an adjournment on consent to the next Special Convocation.

Convocation granted the adjournment.

Counsel retired.

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Re: DAVID HARRIS, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society and Mr. Morris Manning appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 5th June, 1992, together with an Affidavit of Service sworn 19th June, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 9th June, 1992, marked Exhibit 1. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

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THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

J. James Wardlaw, Q.C., Chair
Brendan O'Brien, Q.C.
Stephen T. Goudge, Q.C.

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

Gavin MacKenzie
for the Society

DAVID HARRIS
of the City
of Toronto
a barrister and solicitor

Morris Manning
for the solicitor

Heard: May 5, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On the 24th day of April, 1991, Complaint D120a/88 was issued against David Harris alleging that he was guilty of professional misconduct.

The hearing was heard in public on May 5, 1992, (with the exception of Exhibit 2, Decision of Discipline Committee dated the 4th day of July, 1991, page 27; Exhibit 3, Decision of Discipline Committee dated the 12th day of June, 1984 and Exhibit 4, Agreed Statement of Facts, Page 30, item 21, which are in camera), before this Committee composed of J. James Wardlaw, Q.C., Chair, Brendan O'Brien, Q.C. and Stephen T. Goudge, Q.C. Mr. Harris attended the hearing and was represented by Morris Manning. Gavin MacKenzie appeared on behalf of the Law Society.

Complaint D120a/88

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

- 2(a) he failed to serve his client, Rowland Armstrong, in a conscientious, diligent and efficient manner, and he failed to provide Mr. Armstrong with a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation, in that:
 - (i) he arranged for Mr. Armstrong to invest \$72,000.00 in a development project known as "the Lombard Street project" when his own financial interests conflicted with those of Mr. Armstrong;

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- (ii) he failed to ensure that Mr. Armstrong had sufficient security for his investment of \$72,000.00, more or less, in the Lombard Street project;
- (iii) he failed to reply to many telephone calls and letters from Mr. Armstrong between July and December, 1982;
- (iv) his reporting letter to Mr. Armstrong gave the erroneous impression that Mr. Armstrong had better security than he actually had;
- (b) he failed to promptly and fully co-operate in the Society's investigation of Mr. Armstrong's complaint to the Society with the result that the Society's investigation was unduly delayed;
- (c) he failed to provide a prompt and full reply to communications from the Law Society regarding complaints which the Society received from the following:

Nicol MacNicol
Lloyd Solish, Q.C.
Robert Lash
Earl Levitt

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D120a/88 and is prepared to proceed with a hearing of this matter of May 5, 1992.

II. IN PUBLIC/IN-CAMERA

2. The parties agree that, with one exception, this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act. The exception is the information about the Solicitor's personal finances in paragraph 21, on page 30. The Solicitor requests that those details be heard in camera, and Counsel for the Society consents to that request.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D120a/88 and admits the particulars contained therein. Complaint D120a/88 is a composite of extracts from, and amendments to, the following three previous complaints:

D120/88
D26/90
D64/90

These three complaints will be referred to from time to time herein when setting out the history of this matter.

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IV. FACTS

A. ARMSTRONG COMPLAINT

(i) Borrowing from Client

4. The Solicitor is a prominent practitioner in wrongful dismissal law. He represented Rowland Armstrong in a wrongful dismissal matter which culminated in Mr. Armstrong receiving a lump sum settlement in November, 1981.

5. Before Mr. Armstrong received the settlement monies in November, 1981, he asked the Solicitor for information regarding investment opportunities. The Solicitor suggested that Mr. Armstrong invest the settlement monies in the short term by making a loan to a combined commercial and residential development project in downtown Toronto with which the Solicitor was familiar ("the Lombard Street project"). The Solicitor told Mr. Armstrong that he would receive an interest rate of at least 5% per annum over prime, and possibly also a bonus of \$25,000.00 contingent upon certain conditions. That rate of interest was all the more attractive because of the sharp rise in the prime rate around the time. The Solicitor told Mr. Armstrong that it was a sound investment because it would be repaid in six to nine months when the long-term primary financing was in place. The Solicitor was optimistic that the long-term primary financing would be in place by that time because the project was about to be qualified as a "MURB", and the Solicitor believed that "MURB" qualification would facilitate long-term primary financing. The Solicitor was not a commercial lawyer, a fact known to Mr. Armstrong.

6. The Solicitor did not disclose to Mr. Armstrong the following factors material to the risk when he persuaded Mr. Armstrong to make the loan:

- (a) that the principal of the Lombard Street project was Ferdinand Wagner, whose most recent development project ("the Jarvis Street project"), which coincidentally was in the same area, had ended in failure leaving Mr. Wagner with judgments and liens totalling approximately \$370,000.00;
- (b) that Mr. Wagner had informed the Solicitor that Mr. Wagner required the proceeds of Mr. Armstrong's loan to pay some of Mr. Wagner's debts on the Jarvis Street project;
- (c) By the time the Solicitor persuaded Mr. Armstrong to make a loan to the Lombard Street project, the Lombard Street property was already mortgaged to \$400,000.00, which was \$10,000.00 more than Mr. Wagner had paid for the property four or five months earlier. One of the two mortgages ahead of Mr. Armstrong's mortgage was a \$60,000.00 second mortgage securing a loan from the Solicitor to the project;
- (d) that the Solicitor had a conflict of interest in that he had the following financial interests in the project:
 - (i) by recommending that Mr. Armstrong invest in the project, the Solicitor enabled the project to immediately repay the Solicitor a short-term loan of \$16,944.52 which the Solicitor had made to the project;
 - (ii) the project needed additional short-term financing to sustain it until long-term financing could be obtained to complete the project so that the Solicitor's \$60,000.00 would ultimately be repaid; and

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- (iii) the Solicitor had another financial stake in the successful completion of the project because he intended to purchase a "MURB" unit as a personal investment. The interest which he forgave on his \$60,000.00 loan to the project was to be treated as a credit towards the purchase of those "MURB" unit.

7. Mr. Armstrong then invested the following amounts in the Lombard Street project through the Solicitor in loans to the project's operating company, 485325 Ontario Limited ("485325"). In each case the funds were given to the Solicitor who in turn gave them to 485325.

October 5, 1981	\$ 2,765.47
December 8, 1991	29,750.00
January 20, 1982	<u>19,500.00</u>
Total:	<u>\$52,015.47</u>

8. The Solicitor then asked Mr. Armstrong if he wished to invest any more money through the Solicitor. At this stage, so many years later, a precise account of what the Solicitor said cannot be formulated. The Solicitor told Mr. Armstrong that he would again receive interest at prime plus 5% per annum.

9. Mr. Armstrong agreed to the loan, and he advanced \$20,000.00 to the Solicitor on March 20, 1982. This increased the amount of Mr. Armstrong's investment to \$72,015.47, calculated as follows:

October 5, 1981	\$ 2,765.47
December 8, 1991	29,750.00
January 20, 1991	19,500.00
March 20, 1982	<u>20,000.00</u>
Total:	<u>\$72,015.47</u>

10. The Solicitor provided Mr. Armstrong with an oral report about his loans on July 8, 1982. However, the Solicitor did not tell Mr. Armstrong that the Solicitor had paid \$16,944.92 of Mr. Armstrong's funds to himself as repayment of bridge financing given by the Solicitor to the Lombard Street project.

11. Mr. Armstrong telephoned the Solicitor repeatedly from July to December, 1982, requesting a written report and documentation evidencing his loan and repayment. The Solicitor returned the calls on only three occasions.

12. All of the loans made by Mr. Armstrong were expected to be repaid by the end of 1982. The Solicitor paid Mr. Armstrong \$10,000.00 out of the Solicitor's personal funds on January 14, 1983, because the Solicitor believed that he had a personal obligation to ensure that Mr. Armstrong was repaid, because he put Mr. Armstrong in the project. It is noted in passing only that around this time or perhaps a little later the Solicitor's personal investment in the project had increased to the point where he and the principals of the project regarded him as a primary source of funds.

13. The Solicitor sent Mr. Armstrong a reporting letter, on February 9, 1983. The letter represented the security received by Mr. Armstrong. It stated:

.... Security for this loan is represented by an interest held by the undersigned in trust in a mortgage valued at approximately \$375,000 on [the Jarvis Street property].

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.... It is the opinion of the undersigned that your funds are properly secured."

14. The statement of the security which Mr. Armstrong had was inaccurate because the Solicitor did not hold an interest registered on title for the \$375,000.00 sum referred to in his reporting letter to Mr. Armstrong. What the Solicitor held was an assignment of Mr. Wagner's claim that one of his companies had a \$375,000.00 equitable interest in a \$1.5 million mortgage in the Jarvis Street project. The Solicitor and Mr. Wagner believed that the "equitable interest" was undisputed and could be realized. However, it is agreed in any event that the Solicitor's opinion that Mr. Armstrong's funds were properly secured was inaccurate for two other reasons:

- (a) subsequent events showed that the Jarvis Street property against which the \$1.5 million mortgage was registered ultimately did not have sufficient value to secure the equitable interest which Mr. Wagner had in the \$1.5 million mortgage. That interest was extinguished under a power of sale eight months after the Solicitor's February 9, 1983 reporting letter to Mr. Armstrong; and
- (b) the Solicitor did not complete the necessary Declaration of Trust showing that Mr. Armstrong was the beneficiary of the assignment of Mr. Wagner's claim to a \$375,000.00 equitable interest in the mortgage. Without such documentation, Mr. Armstrong needed the Solicitor's uniform support to establish that he was the beneficiary of the assignment. The Solicitor was not aware a Declaration of Trust was required and thereby failed to properly secure Armstrong's investment.

15. The Solicitor's February 9, 1983 reporting letter also erroneously stated that Mr. Armstrong's \$72,015.47 was collaterally secured by a second mortgage for \$46,000.00 on the Lombard Street property. The \$46,000.00 mortgage actually ranked third behind the following mortgages:

Previous owner	\$340,000.00
Solicitor	<u>60,000.00</u>
Total	\$400,000.00

16. Other than Mr. Armstrong's interest in the \$46,000.00 third mortgage, the only security which Mr. Armstrong received was a promissory note for each of his four advances. The promissory notes were signed by Mr. Wagner on behalf of himself personally and on behalf of two of his companies.

17. The above concerns about Mr. Armstrong's security notwithstanding, the parties hereto agree that the Solicitor genuinely believed that Mr. Armstrong had reasonable security for the risk he took, considering the yield of prime plus 5%. The Solicitor's belief was founded on the combined collateral to secure Mr. Armstrong's loan, and on the Solicitor's expectation that the project's qualification for "MURB" status would facilitate primary long-term financing from which Mr. Armstrong would be repaid. This project was one of the last developments to obtain MURB status, which reasonably would have increased its inherent value. In fact, a commitment was obtained from Seaway Trust in August, 1982 for long-term financing of \$1,400,000.00. The Solicitor expected that Mr. Armstrong would be repaid from the proceeds of that mortgage in priority to the Solicitor due to the fact that the Solicitor's mortgage was required to postpone and that of Mr. Armstrong was not; however, that commitment eventually fell through when the Government of Ontario took control of Seaway Trust in connection with the "Trust Company Affair".

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18. However, subsequent events showed that Mr. Armstrong did not have sufficient security. The next commitment for primary financing was obtained in December, 1983. Because of that, the Solicitor himself personally repaid Mr. Armstrong in full by making the following payments to him:

April 1, 1983	\$10,000.00
November, 1983	50,000.00
July, 1984	30,000.00
December, 1986	<u>5,000.00</u>
Subtotal:	<u>\$95,000.00</u>

Add January 14, 1983 payment:	<u>10,000.00</u>
Total:	<u>\$105,000.00</u>

19. The above payments to Mr. Armstrong included interest at 5% above the prime rate in effect from time to time. The net interest rate ranged from 16% to 22%, depending on the prime rate, and the interest was compounded monthly. Mr. Armstrong did not receive the \$25,000.00 bonus because he and the Solicitor agreed that the condition for earning it had not been met.

20. The primary financing of \$1.6 million for the Lombard Street project was obtained around July, 1984, after the Solicitor had personally repaid Mr. Armstrong all but \$5,000.00 in interest. However, the primary loan was called approximately a year later, and the project was unable to continue afterwards.

(ii) Failure to Co-operate in Investigation

22. Mr. Armstrong complained to the Law Society by letter dated November 29, 1985 that the Solicitor had not replied to Mr. Armstrong's letters and telephone calls requesting an accounting of approximately \$72,000.00 which Mr. Armstrong had given to the Solicitor to invest for him.

23. Mr. Armstrong told the Society at that time that had received payments on account of principal and interest totalling approximately \$100,000.00, and that he was still owed a bonus of approximately \$25,000.00, together with some interest on his principal investment of \$72,000.00.

24. A representative of the Society informed the Solicitor of Mr. Armstrong's complaint on December 23, 1985, and then examined the Solicitor's file on January 2, 1986.

25. The Solicitor personally paid Mr. Armstrong a further \$5,000.00 in December, 1986, which was the full balance owing at that time exclusive of the contingent bonus which had been discussed when Mr. Armstrong first agreed to the loans. By this time, the Lombard Street project had been sold under Power of Sale by the first Mortgagee, without any recovery of funds for Mr. Wagner, 485325 or the Solicitor.

26. The file which the Solicitor produced on January 2, 1986 was not complete, but it did represent all the files then in the Solicitor's possession. The Society wrote the Solicitor on January 3, 1986 requesting an accounting of Mr. Armstrong's funds together with the Solicitor's comments on the following allegations by Mr. Armstrong:

- (a) the Solicitor had failed to respond to communications from Mr. Armstrong; and
- (b) the partial repayment to Mr. Armstrong had been made from the Solicitor's personal account.

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27. The Solicitor then arranged to meet with Mr. Armstrong on January 8, 1986, and he promised to complete the accounting and pay Mr. Armstrong any funds owed. He and Mr. Armstrong agreed that the condition for entitlement to the bonus had not been met. He asked Mr. Armstrong to write the Society a letter indicating that he was withdrawing his complaint, and Mr. Armstrong did so.

28. The Society wished to continue the investigation, however, to ensure that the Solicitor had provided Mr. Armstrong with a proper accounting and to determine whether the Solicitor had engaged in prohibited borrowing from a client -- that possibility was suggested by the fact that the Solicitor had personally repaid Mr. Armstrong's investment. The Society also wished to determine whether the Solicitor had borrowed from another client in order to repay Mr. Armstrong. The Solicitor was not then advised of the reason for the following enquiries which were made, but has no information to the contrary.

29. Consequently, the Investigating Auditor, Margot Ferguson, informed the Solicitor on January 27, 1986 that she wished to meet with him to discuss Mr. Armstrong's complaint. The Solicitor said he did not then have the files and that he would try to obtain them.

30. Ms. Ferguson telephoned the Solicitor on February 3 and 5, 1986 to request a meeting, but the Solicitor did not return her calls. She then wrote the Solicitor on February 21, 1986 indicating that she would attend at his office on March 14, 1986 to discuss the Armstrong matter.

31. On March 11, 1986, three days before Ms. Ferguson's scheduled visit to the Solicitor's office on March 14, the Solicitor replied to the letter from the Society dated January 3, 1986 (see paragraph 26, page 12 above). He provided the following information:

- (a) Mr. Armstrong's funds were loaned to a corporation controlled by one Ferdinand Wagner. Mr. Wagner's corporation was engaged in the construction of a townhouse development in downtown Toronto ("the Lombard Street project");
- (b) an accounting of Mr. Armstrong's funds; and
- (c) the Solicitor personally repaid Mr. Armstrong's investment because he felt that since he had recommended that Mr. Armstrong invest in the project he had an obligation to ensure that Mr. Armstrong was repaid.

32. On March 14, 1986, the Solicitor produced the same material which Ms. Ferguson had examined on January 2, 1986. He did not produce the other files which he said he would try to obtain when he spoke with Ms. Ferguson on January 2, 1986. The Solicitor was unable to produce that other files to Ms. Ferguson on March 14, 1986 because they were with Mr. Wagner. The Solicitor himself was in Court when Ms. Ferguson attended at his office on March 14, 1986.

33. Ms. Ferguson next met with the Solicitor on April 18, 1986. The Solicitor was unable to provide all of the information requested by Ms. Ferguson at that meeting, but he promised to do so later. Ms. Ferguson then wrote the Solicitor on April 24, 1986 setting out the information which the Solicitor promised to provide. Her letter requested that the Solicitor provide the information within a month. The Solicitor did not reply to Ms. Ferguson's April 24, 1986 letter.

34. The Society wrote three follow-up letters requesting the Solicitor's response to Ms. Ferguson's April 24, 1986 letter. The follow-up letters were dated July 3, 1986, September 2, 1986, and November 27, 1986. The November 27, 1986 letter stated that the matter would be referred to Discipline if the Solicitor did not reply within fifteen days.

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35. The Solicitor responded by letter dated December 10, 1986. He provided some of the information requested, and said that he had to await the return of Mr. Wagner from out of the country in order to answer the remaining questions.

36. The Society then requested the remaining information as well as other information in letters to the Solicitor dated April 6 and November 4, 1987.

37. The Solicitor provided the Society with some information orally on August 11, 1988. At the conclusion of that meeting, the Solicitor stated that he believed that there was further information he had yet to supply which he did not then have in his possession. He promised to commit himself full-time to resolving the matter and said that he would contact the Society prior to the end of August, 1988, by which time he hoped to have all the answers and material required.

38. The additional information was requested by Ms. Ferguson to enable her to determine whether the Solicitor had made disclosure of his interest in the Lombard Street project to Mr. Armstrong, and whether the Solicitor had persuaded other clients to invest in the project so that he could use their funds to repay Mr. Armstrong.

39. The Solicitor did not, in fact, endeavour to provide the remaining information by the end of August, 1988. He attributes this to finding out subsequent to the August 11 meeting that he had to prepare for an unexpected trial in September, 1988, and to having to take time from work because of his infant child's hospitalization in September, 1988. He did not, however, inform the Society that he would not be able to provide the remaining information by the promised deadline.

40. The information which the Solicitor needed was contained in documents and records which he had turned over to Ferdinand Wagner to enable Mr. Wagner to manage the Lombard Street project. All of the documents which the Solicitor had turned over to Mr. Wagner had been kept in the Solicitor's law office and related to this transaction.

41. The Solicitor pressed Mr. Wagner on at least two occasions during the fall of 1988 to provide the Solicitor with the documents he needed in order to fulfil the commitment he gave the Society on August 11, 1988. The Solicitor sought Mr. Wagner's assistance because the documents and records he needed were stored by Mr. Wagner in a garage in an unorganized fashion. The Solicitor estimated that it might take him hours to search all of Mr. Wagner's records for the material he needed and further he needed Mr. Wagner's co-operation to search for the documents.

42. Some of the information which the Solicitor undertook during the spring of 1988 to provide to the Society was in the files and records of Selenium Funding, which had made loans to the Lombard Street project. The Selenium records and files were in the possession of the company's owner, Bart Lackie. The individual with whom the Solicitor had been in contact at Selenium Funding previously was Mr. John Fabry, who had since died. The Solicitor did not attempt to obtain the required information from Mr. Lackie, as he did not know that he had acquired ownership of the company.

43. The Solicitor did not, however, inform the Society of the difficulties he foresaw in fulfilling the commitment he gave on August 11, 1988, because they were not foreseen. Consequently, the Society wrote the Solicitor on October 6, 1988 indicating that discipline proceedings would be commenced on account of his failure to provide the information promised.

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44. The formal Complaint was authorized and sworn on January 6, 1989 (D120/88). The Solicitor had still not provided any additional information by that time.

45. Complaint D120/88 was scheduled to be heard in March, 1989, but it was adjourned to April 13, 1989 so that Mr. Wagner, Mr. Lackie, and others could be subpoenaed if necessary, to compel them to produce the files and records which the Solicitor needed in order to provide Society with the information which he had promised. Some of the documents were from the Solicitor's law practice and the Solicitor had given them to Mr. Wagner to assist Mr. Wagner in managing the project. Prior to the April 13, 1989 hearing date Messrs. Wagner and Lackie indicated that they would provide whatever documents and assistance were required. The hearing scheduled for April 13, 1989 was then adjourned to September, 1989 to enable the Solicitor to obtain the necessary information and records from Messrs. Wagner and Lackie and for the Society to review them.

46. Following the April 13, 1989 hearing, the Solicitor instructed his personal solicitor and his personal accountant to provide the Society's counsel and Ms. Ferguson with whatever information they had, and they did so. The Solicitor waived privilege to enable his solicitor and accountant to provide complete responses to the Society.

47. The information thus obtained from the Solicitor's personal solicitor and from his personal accountant did not in the opinion of the Society enable the Society to complete its investigation. Accordingly, Counsel for the Society wrote the Solicitor a letter on April 19, 1989 listing the several items which he wished the Solicitor to obtain from the files and records in Mr. Wagner's possession to enable the Society to complete its investigation. Some of the files and records which Mr. Wagner had were from the Solicitor's law office. The letter requested the Solicitor's response within two weeks.

48. The Solicitor did not respond to the April 19, 1989 letter from Counsel for the Society. Accordingly, Ms. Ferguson arranged a meeting with the Solicitor on July 14, 1989 to obtain the information requested in that letter. The meeting lasted between two and three hours, and the Solicitor responded to many inquiries. The Society had further inquiries which were unanswered. The Solicitor stated that responses required the assistance of third parties.

49. Most of the items listed in the April 19, 1989 letter remained outstanding when the Discipline Committee next reconvened on September 15, 1989.

50. The April 19, 1989 letter from Counsel for the Society was filed as an exhibit at the September 15, 1989 session. The Discipline Committee told the Solicitor that he had not made satisfactory efforts since April 13, 1989 to produce all of the information requested by the Society. The Committee adjourned the matter for approximately two weeks, to September 27, 1989, and directed the Solicitor to produce the remaining information to the Society's investigators by that time.

51. The Society's Auditor and its Counsel accompanied the Solicitor on September 18, 1989 to the place where Mr. Wagner had stored the records which the Solicitor needed to provide the remaining information requested by the Society. As indicated above, the records were amongst several boxes of documents which had not been organized or catalogued. As luck had it, however, the necessary records were not as difficult to find as the Solicitor and Mr. Wagner had feared a year earlier -- they were located within an hour. The Solicitor then provided all of the remaining information, except a few items, by letter dated September 25, 1989.

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52. The hearing scheduled for September 27, 1989 was then adjourned on consent, sine die, to enable the Society to complete its investigation. The Solicitor provided the remaining information during a meeting with the Society's Counsel and Ms. Ferguson, on April 3, 1990.

53. The hearing of Complaint D120/88 (failure to cooperate) was then brought back on June 28, 1990. Evidence was heard that day, and the hearing continued on August 2, 1990. At the latter sitting, Counsel for the Society and the Solicitor informed the Committee that they wished to explore the possibility of consolidating the three Complaints pending against the Solicitor with a view to formulating a joint submission as to penalty. The matter was next spoken to on November 30, 1990, at which time the parties, on consent, asked the presiding member of the Discipline Committee, R.J. Carter, Q.C., to direct that the consolidated hearing of the three Complaints be scheduled for February or March, 1991.

54. The parties hereto recognize that determination of a suitable penalty for the Solicitor's failure to cooperate in the Society's investigation of Mr. Armstrong's complaint will depend upon whether the Solicitor deliberately delayed in order to obstruct the Society's investigation. It is the view of Counsel for the Society that the Solicitor's delay stemmed from procrastination -- which was clearly excessive -- rather than from a desire to obstruct the investigation. However, the, Solicitor's procrastination unduly delayed completion of the Society's investigation of the following:

- (a) whether the Solicitor had engaged in prohibited borrowing from a client, namely, Mr. Armstrong. The evidence obtained after June, 1988 tended to verify what the evidence already pointed to as of June, 1988: namely, that while the Solicitor did not contravene the rule on borrowing from clients, he had represented Mr. Armstrong on his loan to the Lombard Street project despite, the evident conflict between Mr. Armstrong's interests and the Solicitor's own interests; and
- (b) whether the Solicitor borrowed from other clients in order to repay Mr. Armstrong. The evidence obtained which the Society obtained from the Solicitor after June, 1988 confirmed that the Solicitor had not done so.

B. FAILURE TO REPLY TO OTHER COMPLAINTS

55. Between December of 1988 and October of 1989, the Society's Complaints Department received complaints from the following about the Solicitor's handling of certain matters and it requested the Solicitor's comments on those complaints:

Lash Mr. Lash was retained by a former client of the Solicitor, Barry Weinstein, to obtain an accounting from the Solicitor of the funds received and disbursed by the Solicitor pursuant to a settlement which the Solicitor negotiated on behalf of Mr. Weinstein. Mr. Lash complained that the Solicitor had not responded to his requests for the accounting.

Levitt Mr. Levitt was a client who complained that the Solicitor had failed to provide him with a copy of the executed settlement agreement evidencing the resolution of his matter, as well as a breakdown of the time which the Solicitor expended. The only item which is now outstanding is confirmation that the Solicitor has repaid Mr. Levitt the agreed upon reduction of his account.

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Solish Mr. Solish was the solicitor for the opposite party in a real estate transaction in which Mr. Harris was personally involved. He complained that Mr. Harris may have breached an escrow condition in relation to the discharge of a mortgage.

MacNicol Mr. MacNicol was a client of the Solicitor who complained that the Solicitor had not responded to his requests for some of the details of the settlement of Mr. MacNicol's claim.

56. The Solicitor responded to some of the above allegations, but not to all of them. Consequently, discipline proceedings were authorized against the Solicitor on December 11, 1989.

57. The Solicitor submitted draft responses to the remaining allegations against him on December 22, 1989, before the Complaint authorized on December 11, 1989 was issued and served. The Solicitor did not, however, explain why his responses were marked "Draft". In fact, the Solicitor had intended that the "DRAFT" notation be removed from his responses before he sent them, but he forgot to instruct his secretary to do so. Accordingly, when nothing further was heard from the Solicitor by February 21, 1990, the Solicitor was served with Complaint D26/90 sent by mail that day.

58. The Solicitor informed the Society on or about April 3, 1990 that his responses were not complete because he did not have time to check his daily journal for notes of any telephone conversations or discussions pertaining to the complaints from the clients referred to above. He also indicated on April 3, 1990 that he sent his responses without checking for such notes because he wanted to send his responses to the Society's Complaints Department before the Christmas break.

59. The Solicitor could have made the necessary search of his daily journal and could have submitted his responses in final form prior to the date discipline proceedings were authorized against him (December 11, 1989) had he exercised reasonable diligence.

60. Eventually, the Solicitor met with the Counsel who was representing the Society on Complaint D120/88 (failure to co-operate on investigation of Armstrong complaint) to discuss the subject matter of Complaint D26/90 (failure to reply to Society's letters on five complaints). The meeting took place on April 3, 1990, and at that time the Solicitor provided Counsel for the Society with copies of the draft replies which he had sent to the Complaints Department on December 22, 1989.

61. Counsel for the Society reviewed the Solicitor's draft responses, and then informed the Solicitor two days later, on April 5, 1990, that the draft responses did not address further matters which Counsel felt should be addressed regarding the allegations raised in the four complaints which the Complaints Department had received. There was further discussion of these matters in meetings with the Solicitor on April 27 and May 14, 1990. On the latter date, it was agreed that the investigating lawyer from the Complaints Department, Susan Carlyle, would prepare a memorandum summarizing the allegations which they felt should be addressed.

62. As indicated above, on August 2, 1990, Counsel for the Society and the Solicitor informed the Committee hearing Complaint D120/88 that the parties to that proceeding wished to consolidate the three discipline matters outstanding against the Solicitor. The Committee concurred, and Counsel for the Society and the Solicitor commenced their efforts at consolidation.

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63. On November 13, 1990, Ms. Carlyle sent the Solicitor a letter detailing further matters which Counsel felt should be addressed regarding the allegations which the Solicitor had failed to address with respect to four of the complaints. The letter requested the Solicitor's full and detailed response within two weeks.

64. Two and a half weeks later, on November 30, 1990, Counsel for the Society in these Discipline Proceedings reminded the Solicitor that his response to Ms. Carlyle's November 13, 1990 letter was overdue.

65. When no response was received from the Solicitor by December 20, 1990, a staff member in the Complaints Department called the Solicitor on that date. The Solicitor was unable to take the call, and accordingly a message was left. The Solicitor returned the call later that day, but then the Complaints Department caller was unavailable. The Complaints Department caller called again and left a message, but the Solicitor did not return that call.

66. When the Solicitor did not respond by January 4, 1991, the Complaints Department wrote the Solicitor that day, sending the letter by registered mail. The letter requested the Solicitor's response within seven days.

67. The Solicitor wrote the Complaints Department ten days later, on January 14, 1991, stating that he would provide a written response during the week of January 21, 1991. However, the Solicitor did not provide his response during that week or within a reasonable period thereafter.

V. PAST DISCIPLINE

68. The Solicitor was reprimanded in Committee on May 29, 1984 for:

"failing to serve his clients in a conscientious, diligent and efficient manner and [failing] to provide to his clients a quality of service at least equal to that which one would generally expect of a competent lawyer, as reflected in 15 complaints received by the Society respecting the Solicitor's performance during the past 18 months."

A copy of the decision of the Discipline Committee at that time will be filed at the hearing. It should be noted that the hearing was held in camera.

VI. JOINT SUBMISSION AS TO PENALTY

69. The parties hereto submit that the appropriate penalty for the misconduct admitted herein is a recommendation that the Solicitor be reprimanded in Convocation and ordered to pay the sum of \$12,000.00 towards the Society's costs. This submission is based on the following:

- (a) the gravity and extent of the misconduct summarized herein;
- (b) the Solicitor's previous discipline record;
- (c) the Solicitor's admissions of misconduct and his joining in the submission as to penalty exhibit remorse, and have saved considerable hearing time and expense;
- (d) the Solicitor personally repaid Mr. Armstrong in full -- approximately \$100,000.00 -- when it became apparent that the Lombard Street project was unable to repay Mr. Armstrong in a timely manner; and

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(e) the Solicitor's service to the legal profession:

- he authored the first text on Canadian wrongful dismissal law and is editor-in chief of the law reports on Canadian Cases on Employment Law;
- his voluntary participation in LSUC, CBA, and CBAO conferences in Ontario and in most of the other provinces. The Solicitor estimates that he has participated in 30 to 35 such conferences since 1979;
- he voluntarily assisted the Ontario Ministry of Labour in 1989 in its consideration of arbitration model amendments to the Employment Standards Act;
- he and his law firm have solicited financial support from other wrongful dismissal practitioners across Canada towards the establishment of a trust fund to make discretionary grants to parties who wish to litigate a novel and important point in wrongful dismissal law.

70. The Solicitor acknowledges having reviewed this agreed statement of facts with his counsel, Morris Manning, Q.C., before signing it.

DATED at Toronto this 5th day of May, 1992."

IN CAMERA EVIDENCE

IN CAMERA Content Has Been Removed

[End of in camera submission]

RECOMMENDATION AS TO PENALTY

The Committee accepts the joint submission of Counsel in that the Solicitor be reprimanded in Convocation and ordered to pay the sum of \$12,500.00 towards the Society's costs.

REASONS FOR RECOMMENDATION

The Committee adopts the reasons submitted to it by counsel for the Solicitor and for the Society set out in paragraphs (a) to (e) inclusive in making its recommendation.

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David Harris was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 21st day of March, 1975.

All of which is respectfully submitted

DATED this 5th day of June, 1992

"J. James Wardlaw, Q.C."
Chair

Mr. MacKenzie pointed out a number of typographical errors:

- Page 6, pp. 7 - "December 8, 1991" should be "December 8, 1981"
- Page 6, pp. 9 - "December 8, 1991" should be "December 8, 1981"
 - "January 20, 1991" should be "January 20, 1982"
- Page 25, pp. 69 - "....pay the sum of \$12,000..." should be "....pay the sum of \$12,500....".

Mr. Manning made brief submissions as to the Report. There were no submissions by Mr. MacKenzie.

The Report was adopted.

It was moved by Allan Rock, seconded by Paul Lamek that the Recommendation as to Penalty contained in the Report, that is, that the solicitor be reprimanded in Convocation and ordered to pay costs, be adopted.

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

Convocation went in camera to discuss with counsel certain evidence in the Report which had been received by the Committee in camera.

Convocation resumed in open session.

There were no further questions put to counsel.

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

It was moved by Carole Curtis, seconded by Paul Copeland that the solicitor be suspended for 3 months and pay the costs of \$12,500.

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

Mr. Manning made further submissions in support of the recommended penalty and argued against the imposition of a period of suspension.

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

The Curtis, Copeland motion was lost.

The Rock/Lamek motion that the solicitor be reprimanded was adopted.

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It was moved by Colin McKinnon, seconded by Paul Copeland that the Reasons of Convocation indicate that Convocation noted that the solicitor had suffered a significant personal financial loss in respect of the Lombard Street project.

Lost

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

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

.....

ADMISSIONS COMMITTEE

Re: JOSEPH RIZZOTTO

Mr. Rock placed the Application before Convocation.

The reporter was sworn.

Ms. Bellamy, Ms. Graham, Mr. Thom and Mr. Cullity withdrew from Convocation.

Mr. Gavin MacKenzie appeared for the Society and Mr. Douglas McTavish appeared for the applicant who was present.

Mr. Rock presented the Report of the Admissions Committee which was filed as Exhibit 1.

IN THE MATTER OF an Application
for Admission to the
Law Society of Upper Canada

by

JOSEPH RIZZOTTO

in accordance with

Section 27 of the Law Society Act

Douglas C. McTavish

Counsel for Joseph Rizzotto

Gavin MacKenzie

Counsel for the Law Society

A special committee of the Law Society was appointed to determine whether Joseph Rizzotto should be admitted to the Law Society of Upper Canada pursuant to Section 27 of the Law Society Act. The members of the committee were Denise Bellamy (Chair), Stuart Thom and Netty Graham.

DECISION

The committee has decided that Mr. Rizzotto should not be permitted admission to the Law Society of Upper Canada.

BACKGROUND

The criminal record:

On October 15, 1986, Joseph Rizzotto entered a plea of guilty to a charge of unlawfully damaging election ballots contrary to the Criminal Code. He was sentenced to one year in prison and received a fine of \$15,000. He had no prior criminal record.

The election:

The offence had occurred the previous year, on December 9, 1985. This was the day of municipal elections in the town of Frobisher Bay (now Iqaluit) in the Northwest Territories. The election was for the position of mayor, the town council and the educational council. The expectation of the community was that the incumbent mayor would be defeated. The evidence indicated that the citizens of Frobisher Bay take elections extremely seriously and the turnout rate of votes is usually quite high. Of the ballots cast on that day, one-quarter of them were forged by Mr. Rizzotto.

Joseph Rizzotto's position in Frobisher Bay:

Mr. Rizzotto held the position of Secretary-Manager to Council and was, as he testified, in a "great position of public trust". He was an ambitious 35 year-old university graduate who had been working in this important position for six years, his contract having been renewed on three separate occasions. His advice was sought on various municipal matters and that advice was often followed. He provided counsel to the mayor on a daily basis, and he was commended for his work on a number of occasions by the municipality. Donald Cooper, his lawyer at the criminal trial, indicated that his "tenure as Administrator for the Town of Frobisher Bay had been nothing short of a huge success story. Mr. Rizzotto was widely accredited with having almost single-handedly designed the administration and departmental structures for the Town, and changed a chaotic financial situation into a healthy one."

Education:

His education was impressive: he had been an Ontario Scholar in 1969, and had received an Honours B.A. from McMaster University in 1973, a diploma in Municipal Public Administration from McMaster University in 1981, and an M.A. in Political Science from Carleton University in 1983. At the time of the commission of this offence, he had already been accepted into Harvard University and had advised the mayor that he would be leaving.

The offence:

At the admission hearing, Mr. Rizzotto testified that he had not been feeling well on election day and, indeed, felt so poorly that he debated whether he should go into work or not. The only reason he decided to go to work was because it was election day. Curiously, there appears to be no mention of this at the trial, nor in any of the many letters submitted on his behalf, including two from Donald Cooper, his lawyer in the criminal matter. One would have thought that an illness of this significance might have been referred to by Mr. Cooper as possibly being a mitigating factor in support of the aberrant behaviour of Mr. Rizzotto.

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Notwithstanding his health on that day, Mr. Rizzotto went into his office at 7:00 a.m., half an hour earlier than his normal arrival time. The office opened at 8:30 a.m.

When Mr. Rizzotto arrived at the office, he entered the office of Ms. Charlene MacCormick, the Director of Administrative Services (a position which reported to him), opened the safe to which he had normal access and which he opened regularly, saw the election documents, and there and then, spontaneously decided to make photocopies of the original ballots with a view to altering the election results.

During that election, the number of ballots could be increased simply by photocopying. The system at that time involved having one original ballot and photocopying the required number of ballots, rather than having them printed.

They were then placed in the safe in Ms. MacCormick's office. At the polls, the Deputy Returning Officers (D.R.O.'s) were to initial the back of the marked ballot, fold it, and pass it to the voter. Before the ballot was placed in the ballot box, the D.R.O. was to verify that the ballot contained his or her initials and was a proper ballot. He or she would then see this again when counting ballots.

At a training session, the D.R.O.'s were asked to hand in a sample of the initials they would use on the ballots on election day. That sample list was in the safe with the ballots.

Before anyone else arrived at the office on election morning, Mr. Rizzotto made over 200 additional photocopies of the ballot (the evidence at his trial indicated that there were 217 forged ballots). Over a period of time in the morning, he checked off the name of the incumbent mayor and other councillors' names at random on each of these ballots.

Next, he took a sample sheet of the initials of the D.R.O.'s. He practised doing the initials of the six D.R.O.'s. By mid-afternoon, he attempted to falsify the initials. He folded each ballot in the appropriate manner and then forged the initials of the D.R.O.'s on the 217 ballots. These were then hidden and "probably locked" in his desk.

Around 4:00 p.m. Mr. Rizzotto and Ms. MacCormick went to 4 of the 5 polls - the 6th was an advance poll - and picked up the ballot boxes. New boxes were left there. The full boxes from these polls and the advance poll were then placed in Mr. Rizzotto's office.

Around 5:00 p.m., Mr. Rizzotto told Ms. MacCormick that he wanted a rest. He went into his office, locked the door, and for the next 20 minutes opened the ballot boxes, took out the real ballots and replaced each one with ballots that he had forged. Once that was completed, he advised Ms. MacCormick that he was unable to rest, and left the office with the purloined "real" ballots in a green garbage bag, which was later discovered in his basement by the police.

When the polls closed at 7:00 p.m., Mr. Rizzotto and Ms. MacCormick brought the D.R.O.'s and the ballot boxes to the town office for counting. It was at this point that the forged initials were noticed. Earlier in the day, one of the D.R.O.'s had taken ill unexpectedly. A new D.R.O. had been brought in, but his initials had not been included in the sample initial sheet. Mr. Rizzotto, therefore, had not been able to practice forging these initials. The substitute D.R.O. noted that the initials on the back of certain ballots for his poll were not made by him. Ms. MacCormick advised the police and the fraud was discovered.

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As a result of the fraud, a new election had to be held in Frobisher Bay. As an aside, despite Mr. Rizzotto's fraudulent efforts, the incumbent mayor was so soundly defeated that no re-election was required for his position.

Mr. Rizzotto was charged, evidence was heard at a preliminary inquiry and he subsequently pleaded guilty on the trial date.

REASONS FOR THE DECISION

Mandate:

The committee's mandate under subsection 27(2) is to determine whether the applicant is currently of good character. Joseph Rizzotto is not to be punished again for past behaviour.

The criminal activity and its impact on the community:

The offence itself is quite different from those which the Society has seen in the past. It is an offence that is highly relevant to the practice of law. It involves a clear breach of trust. It involves dishonesty. Furthermore, as Mr. Rizzotto repeatedly stated during his evidence, it is anti-democratic. He maintained that he was a "seasoned administrator, trained in aspects that dealt with democracy and history" and that his intent had been to "subvert the democratic process" and to impose his views over the community's.

His actions had an enormous impact on his community apart from the cost and inconvenience of holding re-elections. Mr. Dennis Patterson, when he heard that Mr. Rizzotto was applying to become a lawyer, wrote to the Law Society in September, 1991. Mr. Patterson, at the time he wrote, was the Government Leader of the Northwest Territories and a lawyer admitted to the bar in Nova Scotia, British Columbia and the Northwest Territories. He wrote partly as follows:

I cannot overstate the anger, revulsion and shock felt by our citizenry when it was discovered that a person in a position of great public trust, Mr. Rizzotto, had tampered with the election....Until convicted, Mr. Rizzotto displayed arrogance and no remorse. All of our townspeople felt betrayed by this serious breach of the public trust. The whole community could have been victimized with this tampering with the democratic process.

I cannot emphasize enough the injury and sense of outrage felt by citizens of our community about this crime against democracy. I am writing to offer you the benefit of my personal opinion that it would be against the public interest and a particular affront to the citizens of Iqaluit if this man were to be approved by the Law Society of Upper Canada to hold the public trust in the practise of law in Ontario or anywhere else in Canada.

The letter speaks for itself. The committee strongly believes the public has a right to expect that articling students and lawyers will not be subverting the democratic process. Indeed, arguably they have a special duty not to do so.

Reason(s) for the offence:

Mr. Rizzotto was unable to provide any explanation for his behaviour on that day. He said he found all the explanations "wanting". Significantly, he does not appear to have made any effort to try, either on his own or through counselling with a professional, to glean some insight into his own behaviour on that day, to try to understand what would compel a well-educated person in such a significant position of authority to intentionally subvert the very democratic process in which he so believes.

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Instead the reasons given for the behaviour essentially amount to job stress and a desire to maintain the status quo. He stated that the job he held was a very stressful one and that he was a hard worker "almost to a fault".

When he opened the safe, he decided on the spur of the moment that he did not need "this additional stress". A new mayor would bring changes to the workplace and, as the presentence report indicates, he "didn't feel inclined to deal with" those changes. In any case, he testified at the hearing that he felt he "knew better" than the electorate.

In a letter of support dated June 27, 1988, Donald Cooper stated:

Mr. Rizzotto virtually ran the Town of Frobisher Bay by himself and the Mayor heretofore had been a figurehead for all intents and purposes....it became apparent to Mr. Rizzotto that there was a liklihood (sic) the encumbent (sic) Mayor would be defeated by a challenger who had publicly indicated that he intended to make a lot of changes....I am sure he wrestled with the problem at hand and finally decided that he, as 'protector', had to do something to save the people from themselves.

Impact of these "reasons" on his ability to practice law:

Lawyers deal with public trust on a daily basis. They are under pressure on a daily basis. There is a considerable amount of stress in the legal practice, both as a student-at-law and as a lawyer.

The committee is not satisfied that this apparently aberrant behaviour could be prevented in the future if the applicant again finds himself in a position of high stress. As well, stress, combined with a desire to maintain the status quo and the arrogance of assuming one's personal views are better than the community's, is an exceedingly dangerous blend. Mr. Rizzotto has demonstrated that as recently as six years ago, he was incapable of making the right choice. How can one ensure that he does not suffer another such "aberration"? It is the committee's view that the risk of his again abusing the public's trust is too high.

Mr. Rizzotto's character at the time:

Joseph Rizzotto was a 35 year-old university graduate who had been involved in the working world in progressively more senior positions for a number of years when he decided to affect the election results in Frobisher Bay. His behaviour cannot be categorized as a foolish indiscretion of youth or a result of a lack of maturity. There is no suggestion that he had a drug or alcohol problem. There was no evidence of any psychiatric or psychological problems.

Mr. Rizzotto went to great lengths to stress the spontaneous nature of the crime. While the actual realization that the democratic process could be subverted might have been spontaneous, the feat of actually completing the thought was calculated and took place over a 12 hour period. For the first ten hours of that day, Mr. Rizzotto could easily have changed his mind and no one would have been the wiser. Indeed, he testified that he wrestled with it until the last minute. Instead, he embarked on a systematic and calculated enterprise of photocopying over 200 copies, practising forging initials, checking off ballots, folding ballots appropriately, forging initials, picking up ballot boxes, replacing the legitimate ballots with his fake/forged ones, etc., etc.

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Application to law school:

In September, 1987, eleven months after he pleaded guilty and three months after his release date from prison, Mr. Rizzotto wrote to the Law Society of Upper Canada asking whether his criminal conviction would be a bar to becoming a lawyer in Ontario. He was of the view that by the time he applied for membership in the Law Society "in 1993 or 1994 I will have applied to have my criminal record expunged and be pardoned by the Government of Canada". His presumptuousness in assuming that the granting of a pardon for a serious indictable offence is akin to automatic is somewhat surprising, possibly arrogant, and certainly naive. Furthermore, his attitude seemed to be that a pardon would essentially "wipe clean" his criminal background. The absence of any expression of remorse or apology for his behaviour in that two-page letter to George Thomson, former Director of Education, is quite telling with respect to his moral character.

At the hearing, Mr. Rizzotto testified that he has begun the process of applying for a pardon, but would not in any event be eligible until the fall of 1992. As of this date, therefore, he has not been pardoned.

It is clear that Mr. Rizzotto undertook legal studies with no assurance that he would ever be able to practice law. Indeed, on September 30, 1988, Mr. Richard Tinsley, Secretary to the Law Society, wrote to the applicant to advise him that the Admissions Committee had considered material that he had placed before it and had concluded that a hearing before the Admissions Committee would be necessary. He was further advised that "[t]he Committee emphasizes that it is of the opinion that the offence for which you were charged may, prima facie, prevent your being called to the Bar."

Regardless, Mr. Rizzotto continued in his quest to become a lawyer. In December, 1987 he applied to the University of Windsor Law School. He was accepted and ultimately graduated with an LL.B. in 1991.

Professor Neil Gold, who had been the Dean of Windsor Law School at the time, testified that a criminal record would not have been a bar to admission to the law school and, in any case, it was up to the Law Society to determine eligibility to practice law.

Professor Gold advised that Windsor Law School, unlike the other law schools, looks not only at the student's academic record and Law School Aptitude Test results, but equally at other qualities such as community spiritedness, concern for the relationship of law to society, and contribution by the student to his or her own community. The orientation is on public interest. The student is asked to complete a personal profile and there is an expectation that the student will be candid and forthright, and will be honest about whatever is expressed in the profile.

This aspect of the University of Windsor's application is important. After reviewing Mr. Rizzotto's application, Professor Gold saw nothing false in the application. While there was no mention of the criminal record, students are not asked about that.

In fact, the Committee believes there were three false elements to the application which, if one knew Mr. Rizzotto's history, would have become apparent. These are as follows:

1. Mr. Rizzotto said he had worked from "May 1986 to September 1987" (emphasis added)
2. He listed his occupation as private consultant

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3. He said his services were "used by various individuals and organizations (Iqaluit/Frobisher Bay, N.W.T.)"

With respect to the first element, Professor Gold had not noticed - nor would there have been anything to alert him - that Mr. Rizzotto noted that he had worked as a private consultant from "May 1986 to September 1987". Mr. Rizzotto, during cross-examination, conceded that Professor Gold had read it "the wrong way".

The committee is of the view that Professor Gold read it in exactly the way it had been intended to be read - that is, that the work had been continuous. The truth is that Mr. Rizzotto was in prison on a full-time basis for at least four of those months, and was on day parole until June 16, 1987. As a result, it was impossible for him to be employed on a full-time basis.

For the purpose of his application to the Law Society, he amended his most recent curriculum vitae. This amended version makes it clear that most of the work was done in two separate months: May, 1986 and August, 1987. Mr. Rizzotto, during cross-examination of this point, was evasive and did not leave the impression that he was being truthful.

With respect to the second element, the description of his consulting services is misleading. While some of the work was clearly related to work that he had done, some of it was not. For example, he said he once helped someone update a curriculum vitae. Some would argue that this does not fall into the category of "private consultant". Presumably this is the "personnel matter" referred to under "job activity".

Insofar as the third element is concerned, the inference was that Mr. Rizzotto was living in Frobisher Bay when in fact he was in prison several thousand miles away in Hay River, Alberta.

Mr. Rizzotto, in his application to the Windsor Law School, carefully considered every word in his application. He said that he knew they were looking for people who would make a contribution to the community and that he, therefore, tried to put forth his best picture. That is quite clear from even a cursory reading of the application. Appropriate words are underlined and stressed. It is written in a way that is designed to impress. There is nothing wrong with that. Most students would do the same. What is wrong, however, is the clear attempt to mislead the reader of the application into thinking that for a fixed period of time he was gainfully employed in Frobisher Bay on a full-time basis.

Mr. Rizzotto testified that he did not disclose his criminal record in the application form, but if asked, he would have acknowledged it. However, at the same time, he said that he thought mentioning the criminal record might be adverse to his application and he wanted to be accepted.

While it is not the vital factor in the committee's decision, it is the committee's view that Mr. Rizzotto should have made reference to his criminal record in the personal profile. This is especially important at Windsor Law School because they consider the profile and self appraisal very seriously. His behaviour shows that he was still prepared to deceive, if that would assist him.

Mr. Rizzotto testified that he had learned humility in prison and had been instrumental in assisting other inmates. Indeed, they elected him as President of the Inmate Advisory Committee. He said that he believed he had made a difference while he was in prison. This is all positive information that could have been included in the self appraisal. The omission is misleading and, in the committee's view, especially having had the opportunity to notice Mr. Rizzotto's demeanour while he gave evidence on this respect, was calculated to mislead.

Rehabilitation and Joseph Rizzotto's character now:

It is reasonable to expect that a person's character would have been formed by the time the individual is 35 years old. The question the committee finds itself asking is whether Mr. Rizzotto, who is now 41 years old, has reformed in the intervening six years so that he is now of "good character". This is indeed the question that must be addressed.

While certainly Mr. Rizzotto has likely changed in the last six years, and letters of support tendered in evidence suggest this, his demeanour on the stand displayed a certain caginess, bordering on arrogance. During a firm but unaggressive cross-examination he was, at times, evasive argumentative and combative. In many aspects, his answers missed the aura of truth that one seeks in cases such as this. The committee simply is unable to believe important components of Mr. Rizzotto's testimony.

The committee has carefully scrutinized all the written and oral evidence. The committee very carefully examined the way in which Mr. Rizzotto gave evidence. Having done this, the committee is not satisfied that Joseph Rizzotto has reformed, and has no hesitation in saying that he is not of the "good character" required under subsection 27(2) of the Law Society Act.

"Denise Bellamy"
Chair

It was moved by Mr. Rock, seconded by Mr. Lamek that the Report be adopted.

Mr. McTavish put before Convocation an Exhibit book and a letter from Mr. John W. Whiteside dated January 31, 1992 which were before the Committee. The Exhibit book was filed as Exhibit 2 and the letter Exhibit 3.

Submissions were made by Mr. McTavish.

Counsel, the applicant, the reporter and the public withdrew while Convocation considered procedure.

Counsel, the applicant, the reporter and the public were recalled and informed that Convocation would hear submissions.

Mr. McTavish continued with his submissions.

Questions were taken from the Bench.

Mr. MacKenzie made submissions and put before Convocation an extract from the application of Mr. Michael John Spicer.

Questions were taken from the Bench.

No reply was made by Counsel for the applicant.

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

Convocation adjourned for a short recess.

Convocation resumed in camera.

It was moved by Thomas Bastedo, seconded by Colin McKinnon that Mr. Rizzotto be admitted as a student-at-law on the conditions set out at page 117 of Exhibit 1.

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It was moved by Susan Elliott that number 2 of the conditions be amended by deleting the word "associate". Mr. Bastedo accepted the amendment.

The Bastedo/McKinnon motion as amended was adopted.

The motion to adopt the Report was not put.

Counsel, the applicant, the reporter and the public were recalled and informed of Convocation's decision and that written Reasons would follow.

Counsel and applicant retired.

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Re: TIMOTHY JAMES HILBORN, Cambridge

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Christina Budweth requested an adjournment on consent to the next Special Convocation.

The adjournment was granted.

Counsel retired.

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CONVOCATION ADJOURNED FOR LUNCHEON AT 12:40 P.M.

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CONVOCATION RECONVENED AT 1:50 P.M.

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PRESENT:

The Treasurer, Bastedo, Bellamy, Bragagnolo, Campbell, Copeland, Cullity, Curtis, Elliott, Feinstein, Finkelstein, Goudge, Graham, Kiteley, McKinnon, Palmer, Rock, Scott, Strosberg, Thom, Topp, Wardlaw and Weaver.

.....

Re: KENNETH FRANKLIN DYER, Mississauga

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Kiteley did not participate.

Mr. Gavin MacKenzie appeared for the Society. No one appeared for the solicitor who was not present.

25th June, 1992

Convocation had before it the Report of the Discipline Committee dated 29th May, 1992, together with an Affidavit of Service sworn 19th June, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and courier on 9th June, 1992, marked Exhibit 1. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Michael G. Hickey, Q.C., Chair
J. James Wardlaw, Q.C.
Frances Kiteley

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

Gavin MacKenzie
for the Society

KENNETH FRANKLIN DYER
of the City
of Mississauga
a barrister and solicitor

Mark Sandler
for the solicitor

Heard: March 11, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 2, 1991, Complaint D191/91 was issued against Kenneth Franklin Dyer alleging that he was guilty of professional misconduct.

The matter was heard in public on March 11, 1992, before this Committee composed of Michael G. Hickey, Q.C., Chair, J. James Wardlaw, Q.C. and Frances Kiteley. Mr. Dyer did not attend the hearing but was represented by Mark Sandler. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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

Complaint D191/91

- 2(a) On or about May 15, 1990, he falsely represented to his client, Scotia Mortgage Corporation, that he had registered a valid first mortgage in the amount of \$220,000 on property municipally known as 65 Rollscourt Drive, North York, when in fact the mortgage was a second mortgage;

- (b) On or about May 23, 1990, he falsely represented to his client, Confederation Trust Company, that he had registered a valid first mortgage in the amount of \$250,000 on property municipally known as 65 Rollscourt Drive, North York, when in fact the mortgage was a third mortgage;
- (c) On or about June 18, 1990, he falsely represented to his client, Bayshore Trust Company, that he had registered a valid first mortgage in the amount of \$750,000 on nine townhouses in Mississauga, when in fact the mortgage priority varied with respect to the various properties, but none were in fact first mortgages;
- (d) On or about July 10, 1990, he falsely represented to his client, Scotia Mortgage Corporation, that he had registered a valid first mortgage in the amount of \$640,000 on ten townhouses in Mississauga, when in fact the mortgage priority varied with respect to the various properties, but none were in fact first mortgages;
- (e) On or about July 27, 1990, he falsely represented to his client, Cabot Trust, that he had registered a valid first mortgage in the amount of \$712,500 on eight townhouses in Mississauga, when in fact the mortgage priority varied with respect to the various properties, but none were in fact first mortgages;
- (f) On or about August 15, 1990, he falsely represented to his client, Central Guaranty Trust Company, that he had registered a valid first mortgage in the amount of \$880,000 on several townhouses in Mississauga, when in fact the mortgage priority varied with respect to the various properties, but none were in fact first mortgages;
- (g) On or about August 17, 1990, he falsely represented to his client, Cabot Trust, that he had registered a valid first mortgage in the amount of \$703,000 on nine townhouses in Mississauga, when in fact the mortgage priority varied with respect to the various properties, but none were in fact first mortgages;
- (h) On or about August 28, 1990, he falsely represented to his client, Midland Mortgage Corporation, that he had registered a valid first mortgage in the amount of \$1,625,000 on property municipally known as 50 Woodbine Downs Boulevard, Etobicoke, when in fact the mortgage was a second mortgage;
- (i) On or about October 1, 1990, he falsely represented to his client, Central Guaranty Trust Company, that he had registered a valid first mortgage in the amount of \$1,250,000 on property municipally known as 50 Woodbine Downs Boulevard, Etobicoke, when in fact the mortgage was a third mortgage;
- (j) On or about November 6, 1990, he falsely represented to his client, AGF Trust Company, that he had registered a valid first mortgage in the amount of \$250,000 on property municipally known as 2035 Lakeshore Road East, Oakville, when in fact the mortgage was a second mortgage;
- (k) On or about December 17, 1990, he falsely represented to his client, Central Guaranty Trust Company, that he had registered a valid first mortgage in the amount of \$1,500,000 on property municipally known as 6205 Kestrel Road, Mississauga, when in fact the mortgage was a fourth mortgage;

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- (l) On or about March 1, 1991, he falsely represented to his client, Central Guaranty Trust Company, that he had registered a valid second mortgage in the amount of \$500,000 on property municipally known as 6205 Kestrel Road, Mississauga, when in fact the mortgage was a fifth mortgage;
- (m) On or about March 5, 1991, he falsely represented to his client, Scotia Mortgage Corporation, that he had registered a valid first mortgage in the amount of \$1,250,000 on property municipally known as 50 Woodbine Downs Boulevard, Etobicoke, when in fact the mortgage was a fourth mortgage;
- (n) On or about June 19, 1991, he falsely represented to his client, Cabot Trust Company, that he had registered a valid first mortgage in the amount of \$250,000 on property municipally known as 2035 Lakeshore Road East, Oakville, when in fact the mortgage was a third mortgage;
- (o) In relation to the transactions referred to in paragraphs (a) through (n), above, he improperly disbursed the funds advanced by the financial institutions whom he represented to himself, a company which he controlled, or others who were not entitled to the funds, and thereby misappropriated or misapplied the sum of \$10,560,500, more or less;
- (p) On or about June 19, 1991 he breached an Undertaking he had given on June 14, 1991 to the Law Society of Upper Canada, that he would in future deposit all trust money coming into his possession or control forthwith into his trust account at the HongKong Bank of Canada, by depositing \$250,000 received by him in trust from his client, Cabot Trust Company, into a personal bank account at Cabot Trust Company; and
- (q) He swore a false Affidavit on January 31, 1991 when, doing his annual filings, he did not disclose any borrowing from clients despite having borrowed the approximate sum of 1,438,000 Australian dollars from his client, Barry Black, in 1990.

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D191/91 and is prepared to proceed with a hearing of this matter on March 11, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed the Complaint D191/91 with his counsel, Mark Sandler, admits the particulars contained therein, and admits that the particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor is a sole practitioner in Mississauga. He works mainly as a real estate developer and practises law only on a part-time basis in the areas of real estate, wills and some commercial law. He is 44 years of age and was called to the bar in 1973.

5. On June 13, 1991, Mr. Frank Newbould of the law firm of Messrs. Borden & Elliot, informed the Law Society that the Solicitor had formerly acted for his firm's client, The Bank of Nova Scotia (the "Bank"), in the years 1990 and 1991, with respect to three mortgage transactions in which the mortgage loans were in the total amount of approximately two million dollars. Mr. Newbould informed the Society that the Solicitor had been instructed by the Bank to hold the monies in his trust account, pending the proper registration of first mortgages against certain properties. The Bank later discovered that the mortgages registered by the Solicitor on its behalf were, in fact, not first mortgages.

6. As a result, the Law Society conducted an examination of the Solicitor's books and records pursuant to Section 18 of Regulation 573 under the Law Society Act. In this regard the Solicitor was co-operative and disclosed his involvement in the subject transactions to the Law Society.

7. During the investigation, the Solicitor admitted to the Society that the mortgages listed in Appendix "A" were all improper, in that financial institutions listed in Appendix "A" had all instructed the Solicitor that the monies were to be paid out of his trust account only upon registration of first mortgages against the respective properties. The mortgage loans listed in Appendix "A" are in the total amount of \$10,280,500. In none of these cases was the registered mortgage in fact a first mortgage. The actual priority of the mortgage in each case is set forth in Appendix "A".

8. The Solicitor, through various corporations, was involved in numerous real estate developments in Ontario. Barry Black, a permanent resident of Australia, had at the material times a financial interest in the companies.

9. In 1990, the Solicitor was experiencing financial problems on a number of real estate development projects. He had personally guaranteed a construction loan in the amount of \$7,533,250 for a development which was secured by a mortgage from Confederation Trust Company. The Solicitor, for the purpose of alleviating these financial problems, borrowed substantial mortgage funds from several financial institutions (as listed in Appendix "A") and misrepresented to them that their loans were secured by the registration of first mortgages on the properties. In addition to enabling the Solicitor to obtain mortgage funds which would not otherwise have been available to him, this scheme also had the effect of lowering the rates of interest of the loans.

10. The Solicitor directed the majority of the mortgage funds which had been paid into his trust account to companies whose bank accounts were controlled by the Solicitor without the various financial institutions' knowledge or consent. Substantial funds were also paid directly to the Solicitor. The Solicitor contends that funds from this source were used to reduce indebtedness on other transactions.

11. The following transactions are examples of the Solicitor's misconduct.

(a) Mississauga Townhouses

12. Mr. Black purchased 18 townhouses in Mississauga in 1985 and 1986. In June, 1990, the townhouses were valued at approximately \$150,000 each. Four financial institutions agreed to lend money on the security of a first mortgage to be registered against title to between seven and ten townhouses.

25th June, 1992

13. All of the townhouses had pre-existing first mortgages and most had pre-existing second and third mortgages when the mortgages to the four financial institutions were registered.

14. The Solicitor knowingly misrepresented to each of the following financial institutions that they had a first mortgage loan secured by multiple townhouse properties:

<u>Date</u>	<u>Financial Institution</u>	<u>Mortgage Amount</u>
June 18/90	Bayshore Trust Company	\$ 750,000
July 10/90	Scotia Mortgage Corporation	640,000
July 27/90	Cabot Trust Company	712,500
August 15/90	Central Guaranty Trust Company	880,000
August 17/90	Cabot Trust Company	703,000
		<hr/>
		<u>\$3,685,500</u>

15. The main recipients of these funds were 891528 Ontario Limited, 738978 Ontario Limited, and Che Sara Investments Limited. The Solicitor owned and controlled the latter company. The Solicitor says that Mr. Black owned and controlled the two numbered companies, although the Solicitor had signing privileges over their bank accounts.

(b) 50 Woodbine Downs Boulevard, Etobicoke

16. Kensett Corporation, a company owned and controlled by the Solicitor, purchased an industrial property located at 50 Woodbine Downs, Etobicoke, in March, 1987. On August 28, 1990, the property was transferred to 738978 Ontario Limited, which assumed a first mortgage in the amount of \$2,100,000.

17. The Solicitor knowingly misrepresented to each of the following financial institutions that they had a first mortgage loan secured by the property:

<u>Date</u>	<u>Financial Institution</u>	<u>Mortgage Amount</u>
August 28/90	Midland Mortgage Corporation	\$1,625,000
October 1/90	Central Guaranty Trust Company	1,250,000
March 5/91	Scotia Mortgage Corporation	<u>\$1,250,000</u>
		<hr/>
		<u>\$4,125,000</u>

18. The recipients of these funds included 738978 Ontario Limited (\$1,202,100), the Solicitor personally (\$779,702), Che Sara Investments Limited (\$737,609), 891528 Ontario Limited (\$402,000), Kensett Corporation and related companies (\$138,400), and Mr. Black personally (\$151,000). The Solicitor contends that funds which he personally received were used by him to reduce indebtedness on other transactions.

19. On June 14, 1991, the Solicitor signed an undertaking to the Law Society that in the future he would deposit all trust money coming into his possession or control forthwith into a trust account with the Hong Kong Bank of Canada. On June 19, 1991, he breached that undertaking when he deposited \$250,000 received by him in trust from his client, Cabot Trust Company, into a personal bank account at the Cabot Trust Company. This money was used to pay off The Bank of Nova Scotia mortgage on 65 Rollscourt Drive.

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20. In his annual filing for the year ended October 31, 1990, sworn on January 31, 1991, the Solicitor falsely swore that he was not indebted to clients.

Prior or Current Discipline History

21. The Solicitor has no disciplinary record.

V. PENALTY

22. Counsel for the Society and the Solicitor jointly submit that the appropriate penalty for the Solicitor's misconduct is an order that the Solicitor be disbarred.

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

RECOMMENDATION AS TO PENALTY

The Committee recommends that Kenneth Franklin Dyer be disbarred.

REASONS FOR RECOMMENDATION

On his own admission the Solicitor made false representations on fourteen separate occasions to his clients resulting in the misappropriation or misapplication of clients' funds of approximately \$10,560,500.00. In addition, the Solicitor breached an Undertaking to the Law Society to deposit trust money coming into his possession or control forthwith into his trust account at the Hong Kong Bank of Canada by depositing \$250,000.00 into his own personal bank account. The Solicitor also swore a false affidavit in his annual filings by not disclosing the borrowing of approximately \$1,438,000.00 (Australian funds) from his client.

There was a joint submission from counsel for the Society and the Solicitor that the appropriate penalty for the Solicitor's misconduct is an order that the Solicitor be disbarred. In the absence of any evidence of extenuating circumstances the Committee was unanimously of the view that the only appropriate penalty is disbarment.

Kenneth Franklin Dyer 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 29th day of May, 1992

"Michael G. Hickey, Q.C."
Chair

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

There were no submissions.

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The Report was adopted.

Mr. Rock read a letter from the solicitor's counsel Mr. Sandler indicating that the solicitor would not be present at Convocation and had no objection to Convocation proceeding in his absence.

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

There were no submissions by counsel and the Recommendation as to Penalty was adopted.

The solicitor was disbarred.

Counsel retired.

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Re: LUCIEN OCTAVE BRISBOIS, Orleans

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Bellamy and Messrs. Scott and Brennan withdrew and did not participate.

Mr. Gavin MacKenzie appeared for the Society and Mr. Harold McNeely appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 8th May, 1992, together with an Affidavit of Service sworn 19th June, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th May, 1992, marked Exhibit 1. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Denise Bellamy, Chair
David W. Scott, Q.C.
Lloyd Brennan, Q.C.

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

LUCIEN OCTAVE BRISBOIS
of the City
of Orleans
a barrister and solicitor

Gavin MacKenzie
for the Society

Harold McNeely
for the solicitor

Heard: April 28, 1992

25th June, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 19, 1991, Complaint D103/91 was issued against Lucien Octave Brisebois alleging that he was guilty of professional misconduct. This complaint was withdrawn and replaced with Complaint D103a/92.

The hearing was heard in public on April 28, 1992, before this Committee composed of Denise Bellamy, Chair, David W. Scott, Q.C. and Lloyd Brennan, Q.C. Mr. Brisebois attended the hearing and was represented by Harold McNeely. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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

Complaint D103a/92

- 2(a) He acted for both the lender, Patricia Wright, and the borrower, Ron Morris Construction Limited, in a loan transaction in which:
 - (i) he failed to inform the lender of the borrower's financial situation and that the proceeds of her loan would be used by the borrower to make a payment of another lender who was taking foreclosure proceedings against it; and
 - (ii) he failed to arrange adequate security to the lender for her loan.
- (b) He acted for both the lender, Josephine Lacroix, and the borrower, Ron Morris Construction Limited, in a loan transaction in which:
 - (i) he failed to inform the lender of the borrower's financial situation and that the proceeds of her loan would be used by the borrower in part to make a payment to another lender who was taking foreclosure proceedings against it;
 - (ii) he failed to arrange adequate security to the lender for her loan; and
 - (iii) he arranged for the discharge of a mortgage which represented the lender's only security without arranging for replacement security or the payment of the loan.
- (c) He breached Rule 2 of the Rules of Professional Conduct by failing to send complete and final reporting letters to his clients Josephine Lacroix, Jacques Bedard Excavating Limited, and Patricia Wright.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D103a/91 and is prepared to proceed with a hearing of this matter on March 3, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed amended Complaint D103a/91 and admits the particulars set out therein.

IV. BACKGROUND FACTS

4. The Solicitor was called to the bar in 1971. He carries on a general practice in association with John Webster in Orleans, Ontario.

V. FACTS RELEVANT TO COMPLAINT

Particular 2(a) - Patricia Wright

5. Patricia Wright loaned \$60,000 to Ron Morris Construction Limited ("Morris") in July, 1985, a local developer and house builder. Both Mrs. Wright and Morris were clients of the Solicitor, and he both arranged the loan and acted for both the borrower and lender.

6. In December of 1984, Mrs. Wright had sold a property and received from the Solicitor the full proceeds at the time of completion of the transaction. She invested these funds initially at Caisse Populaire Vanier, for a period of six months and subsequently with a mortgage broker, Coulter Investments. Mrs. Wright is a former business woman and a former member of the Municipal Council of the Corporation of the Township of Cumberland. In the spring of 1985, Mrs. Wright advised the Solicitor that the proceeds of the sale of her home were not yielding a sufficient return at the financial institution and inquired from the Solicitor as to the possibility of obtaining a higher return on these funds. The Solicitor advised Mrs. Wright of the Morris investment, and told her she could earn a rate of return of sixteen per cent.

7. In 1984, Morris had purchased lands from Alp Holdings with a view of developing a subdivision. The purchase price was \$550,000. Morris paid \$150,000 cash at the time of purchase and the balance of \$400,000 was financed by way of a mortgage back to Alp Holdings. This mortgage back was to come due twelve months after sale. The planning process and planning approvals required for the property extended beyond the maturity date of the Alp Holdings mortgage. With the exception of one regular payment in March 1985, Morris made all payments due to Alp Holdings during the term of the mortgage. At the maturity date, Alp Holdings refused to extend the mortgage for a further term and immediately commenced foreclosure proceedings. The date of redemption was set for July 16, 1985. Caisse Populaire Orleans, Morris' banker, agreed to advance funds to Morris to refinance the project on conditions which included the following:

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- (a) Morris would infuse a further \$100,000 into the project;
- (b) Caisse Populaire Orleans would advance the balance of approximately \$320,000 and take an assignment of the Alp Holdings mortgage as security.

8. Morris did infuse the approximate sum of \$100,000 as aforesaid by borrowing \$60,000 from Mrs. Wright and further funds from Josephine Lacroix. Caisse Populaire Orleans did take an assignment of the Alp Holdings mortgage. The approval by Caisse Populaire Orleans and the steps required in the implementation by Morris took place in less than one week.

9. The Solicitor admits that in a letter dated July 16, 1985, he advised Mrs. Wright that once her loan was repaid, she would be required to discharge her mortgage. Mrs. Wright had not requested a mortgage and in fact she received no mortgage security. The Solicitor says that he prepared a promissory note for a six month term, but Mrs. Wright does not recall a note and no copy of it has been located. The Solicitor did not open a file in relation to the loan. The loan was renewed on three occasions, namely December, 1985, June, 1986, and January, 1987 because Morris did not have the funds to repay the loan. Renewal documents for the loan signed by Mrs. Wright and by Morris were provided to the Society's investigator during the course of the investigation.

10. In 1987, Mrs. Wright engaged another solicitor, Gerald Dust, to collect on the loan. He prepared a mortgage on behalf of Mrs. Wright on the Morris lands, submitted it to the Solicitor for the signature of Morris and subsequently registered this mortgage. If Mrs. Wright had received a mortgage in July 1985, she would have ranked third with \$421,250 of mortgages ahead of her; the mortgage security arranged by Mr. Dust ranked seventh behind more than \$1,000,000 in mortgages.

11. In 1986, Morris proceeded with the registration of Phase I of the plan of subdivision containing 14 lots, and work was commenced on Phase II of the plan of subdivision containing 19 lots. The formal approval of Phase II was delayed as a result of the Ministry of Environment concerns over the sufficiency and quality of water and the requirement for further tests and analysis of the water.

12. Caisse Populaire Orleans commenced foreclosure proceedings under the Alp Holdings mortgage in 1987 and assigned its mortgage and judgment to Ernest Lacroix and Marguerite Lacroix who have now developed the property. As a result of the proceedings taken by Caisse Populaire Orleans and the subsequent transfer of the property to Ernest Lacroix and Marguerite Lacroix, all subsequent encumbrancers were foreclosed of their interest. Had Mrs. Wright received a mortgage in July, 1985, as suggested in paragraph 10 hereof, her mortgage would have in all probability been foreclosed in these proceedings.

13. Mrs. Wright received interest payments until November, 1989. She has commenced a civil action against the Solicitor and has also asserted a claim against the compensation fund.

Particular 2(b) - Josephine Lacroix

14. In February, 1985, Josephine Lacroix, an acquaintance and former customer of Morris and a client of the Solicitor asked the Solicitor for advice as to how she would invest the proceeds of an insurance policy on her late husband's life. One of the possible investments mentioned by the Solicitor was Morris. Morris had previously sold a house to Lacroix and her late husband.

15. Mrs. Lacroix loaned \$35,000 to Morris in February, 1985. The Solicitor acted for both the borrower and the lender.

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16. Mrs. Lacroix received as security a second mortgage on 15 vacant lots which Morris was developing into residences in another subdivision in Orleans, Ontario. Between March and July, 1985, she received mortgage payments which reduced the principal balance to about \$30,000.

17. On July 16, 1985, Mrs. Lacroix increased the amount of her loan by \$20,000. The amount of her mortgage security was not increased and she received no additional mortgage security. The Solicitor applied the \$20,000 loan proceeds to the \$100,000 payment due by Morris as a result of the settlement referred to in paragraphs 7 and 8 above. Mrs. Lacroix does not recall having been informed of the foreclosure or missed mortgage payment. The Solicitor recalls discussing the project with Mrs. Lacroix generally, but has no specific recollection of discussing the foreclosure or the missed mortgage payment.

18. In August, 1985, the Solicitor arranged for Mrs. Lacroix's \$35,000 mortgage to be discharged, as Morris had begun selling the completed houses. Mrs. Lacroix's loan was not repaid at that time. It was repaid over a period of approximately the next five years, with the last payment of \$8,000 being made by the Solicitor personally in May, 1990.

Particular 2(c)

19. The Solicitor approached Jacques Bedard Excavating Limited ("Bedard") in 1986 after registration of Phase I of the Morris subdivision. Mr. Bedard, an acquaintance of Morris and an excavation contractor in the Orleans area, was desirous of having road work in the future phases of the Morris subdivision and agreed to lend \$200,000 to Morris on the security of a mortgage against the Morris subdivision. The Solicitor acted for both the borrower and the lender. Bedard knew the funds would be used by Morris for the development of Phase II of the Morris subdivision. Bedard knew that Caisse Populaire Orleans had prior mortgages registered against the Morris lands and that Immeubles Prestige had also registered a prior mortgage in the amount of \$100,000.

20. The Solicitor failed to send reporting letters to Mrs. Wright, Mrs. Lacroix and Bedard.

Prior Discipline Record

21. The Solicitor was reprimanded in committee on February 7, 1991, at the conclusion of a hearing which took place on several days spread out over a period of excess of a year. The Solicitor was found guilty of professional misconduct, particularized as follows:

- (a) "On or about October 31, 1986, he caused a shortage in his client in his client's mixed trust account by arranging for a certified cheque in the amount of \$60,750 to be paid to his client, Beatrice Woodstock, when not all the funds required to make such a payment were on deposit".

The complaint giving rise to this reprimand was related to the Morris subdivision and a loan transaction to Morris.

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VI. SOLICITOR'S PERSONAL CIRCUMSTANCES

22. On August 26, 1990, at a time of severe stress in the Solicitor's life, the Solicitor suffered a heart attack brought about by stress and other factors. The Solicitor has not realized any personal gain as a result of the circumstances outlined above. The Solicitor has incurred a personal loss in excess of \$200,000 as a result of his personal involvement in the Morris subdivision in that he personally advanced funds to keep the project alive after he acted for Mrs. Wright and Mrs. Lacroix, and also due to other related matters arising from the facts outlined above. The Solicitor is exposed to further potential losses arising from the two civil actions brought against him by Wright and Bedard.

DATED at Toronto this 3rd day of March, 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the Solicitor be reprimanded in Convocation and be required to pay the Law Society's costs of \$2,500.

REASONS FOR RECOMMENDATION

Counsel for the Law Society and for the Solicitor jointly submitted that the Solicitor should be reprimanded in Convocation and should be ordered to pay the Law Society's costs in the amount of \$2,500. The Committee has no difficulty in accepting that recommendation.

The Solicitor is 46 years old. He was called to the Bar in 1971. He was born and raised in Orleans and his law practice is also there. He is a general practitioner who has an emphasis on real estate.

When the complaint to the Law Society was made by Patricia Wright, the Solicitor co-operated fully with the Society's investigators. He at no time attempted to mislead the Society and has been forthright throughout.

The Solicitor himself has paid a very heavy price. He suffered a personal loss of \$200,000 as a result of the transactions. He has paid Mrs. Wright, and her complaint is totally resolved. Mrs. Lacroix' claim has also been resolved. As well, from a more personal perspective, while the proceedings were before the Law Society, the Solicitor had a heart attack and the consensus is that these proceedings played a large part in exacerbating that medical condition.

Mr. Brisebois' prior discipline record related to the same subdivision transaction. This Committee sees no reason not to accept the joint submission of both counsel.

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Lucien Octave Brisebois was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 26th day of March, 1971.

ALL OF WHICH is respectfully submitted

DATED this 8th day of May, 1992

"Denise Bellamy"
Chair

There were no submissions and the Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Strosberg that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded and required to pay costs of \$2,500, be adopted.

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

The Recommendation as to Penalty was adopted.

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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Re: DENIS RUSSELL MAKEPEACE, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Kiteley did not participate.

Ms. Christina Budweth appeared for the Society and Mr. D. Humphrey appeared for the student who was present.

Convocation had before it the Report of the Discipline Committee dated 10th April, 1992, together with an Affidavit of Service sworn 22nd May, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 8th May, 1992, marked Exhibit 1. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Dennis R. O'Connor, Q.C., Chair
Laura L. Legge, Q.C.
Joan L. Lax

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

Christina Budweth
for the Society

DENIS RUSSELL MAKEPEACE
of the City
of Toronto
a barrister and solicitor

D. Humphrey
for the solicitor

Heard: March 25, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 6, 1992, Complaint D20/92 was issued against Denis Russell Makepeace, alleging that he was guilty of conduct unbecoming a student member.

The matter was heard in public on March 25, before this Committee composed of Dennis R. O'Connor, Q.C., Chair, Laura L. Legge, Q.C. and Joan L. Lax. Mr. Humphrey attended the hearing and was represented by D. Humphrey. Christina Budweth appeared on behalf of the Law Society.

DECISION

The following particulars of conduct unbecoming a student member were admitted and found to have been established:

- 2(b) or in the alternative to particular (a) he did not take adequate steps to correct the erroneous impression held by Mr. Sriskandakumar and Ms. McNeil that he was a solicitor;
- (c) he undertook to render legal services directly to a client, Mr. Sriskandakumar, without adequate supervision or guidance from his articling principal;
- (d) he established a fixed fee for the services to be rendered to Mr. Sriskandakumar and his family, again, without consulting with his articling principal;

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- (e) he solicited and accepted two retainer cheques in the amount of \$500 in respect of the services being offered to Mr. Sriskandakumar payable directly to himself, subsequently cashed the first of those cheques and used the funds for certain expenses allegedly incurred in rendering services to Mr. Sriskandakumar, without depositing those cheques into a trust account and without rendering an account for disbursements alleged incurred to the client thereby breaching the provisions of s.14 Regulation 573; and
- (f) he rendered legal services to Mr. Sriskandakumar, and his family whom he knew were already represented by a solicitor, Malcolm Kirsch, without taking steps to notify Mr. Kirsch of his involvement in the file or of the actions he proposed to take on behalf of the client.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D20/92 and is prepared to proceed with a hearing of this matter on March 25, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D20/92 with his counsel, David Humphrey, and admits particulars (b), (c) as amended, (d), (e) and (f). The Solicitor further admits that particulars (b), (c) as amended, (d), (e) and (f) of the complaint supported by the facts as hereinafter stated constitute conduct unbecoming a student member.

IV. FACTS

4. Mr. Makepeace is a student-at-law originally scheduled to be called to the Bar on February 7, 1992. As a result of the herein complaint against him, he did not receive his call to the Bar.

5. Mr. Makepeace was admitted as a barrister and solicitor of the court of the Queen's Bench of Alberta on July 7, 1988.

6. Mr. Makepeace subsequently articulated in Ontario for a reduced articling term of four months pursuant to a special dispensation. He then enrolled in a one month teaching term (Phase I) of the Bar Admission course. Upon successful completion of Phase I, Mr. Makepeace moved directly into the three month teaching term (Phase III) which began September 16, 1991.

7. Mr. Makepeace's articling principal in Ontario was Gerrard Mitchell. Mr. Mitchell was called to the bar March 31, 1989.

25th June, 1992

8. The formal complaint of conduct unbecoming arose out of Mr. Makepeace's involvement in a refugee claim asserted by Mr. and Mrs. Sriskandakumar and their two children. Mr. Sriskandakumar was a practising lawyer in Sri Lanka.

9. On October 14, 1991 the Sriskandakumar's arrived at the Detroit tunnel and made an application to claim refugee status as a basis for entry into Canada. They were advised to return on October 29 at which time a hearing regarding their status would be held.

10. On or about October 16, 1991, Malcolm Kirsch, a solicitor, was retained as designated counsel by the Windsor office of the Legal Aid Plan to represent the Sriskandakumar's at their refugee credible basis inquiry scheduled for October 29, 1991. The Sriskandakumar's were unaware of the process of Mr. Kirsch's retainer and did not participate in any way in the selection of this solicitor.

11. On or about October 17, 1991, Mr. Kirsch and Mr. Sriskandakumar spoke by telephone. During that conversation or one that followed shortly after, Mr. Sriskandakumar expressed to Mr. Kirsch his concern that his children be permitted to enter Canada on an expedited basis. Mr. Sriskandakumar's concern was based on the fact that his children's vegetarian dietary needs could not be accommodated in Detroit and also on the fact that the expense of the entire family living in a motel in Detroit was becoming overwhelming to him. Mr. Kirsch advised Mr. Sriskandakumar that this was not possible and that he, Mr. Kirsch, would meet with the Sriskandakumar family on the morning of October 29, 1991. Mr. Kirsch asked that they complete Personal Information Forms in draft to assist in the preparation of the matter. Mr. Kirsch also advised them that it was likely that he would require an adjournment of the hearing on October 29 but that it was possible that the family would be allowed to enter the country at that time.

12. Mr. Sriskandakumar did not accept Mr. Kirsch's advice regarding his inability to assist the early entry of his children into Canada. Accordingly, Mr. Sriskandakumar spoke to his brother-in-law Mr. Balakumaran of his concerns. Mr. Balakumaran spoke to a Toronto lawyer by the name of David Yerzy, with whom Mr. Balakumaran was acquainted. Mr. Yerzy was not in a position to act on the matter but referred Mr. Balakumaran to Mr. Makepeace. Mr. Balakumaran spoke to Mr. Makepeace on October 18, 1991. Mr. Makepeace had received referrals from Mr. Yerzy on previous occasions. It was always Mr. Makepeace's understanding, and it would be his evidence respecting this particular client, that he understood Mr. Yerzy told prospective clients that he, Mr. Makepeace, was a lawyer in Alberta and presently a student in Ontario attempting to qualify for admission to the bar.

13. They discussed the matter and the fact that he, Mr. Makepeace, had dealt with similar cases in the past in the Buffalo/Niagara Falls area. He described his experience as being that a case presenting officer could concede that the claimants had a credible basis for entry and then they could receive entry into Canada on an expedited basis. Mr. Makepeace did concede that he had never done any cases in Windsor but stated that he was prepared to give it a try.

14. During the same conversation Mr. Makepeace and Mr. Balakumaran established the fee in the matter to be \$1,000. Mr. Makepeace admits that he set this fee without consulting his articling principal, Mr. Mitchell.

15. The following morning, Mr. Makepeace and Mr. Sriskandakumar spoke on the telephone. Mr. Sriskandakumar told Mr. Makepeace that Mr. Kirsch would be acting for him in the immigration matter and that Mr. Makepeace was being retained only to facilitate the access of the two children into Canada. Mr. Makepeace indicated that he understood this.

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16. After Mr. Makepeace provided Mr. Sriskandakumar with his explanation for how he intended to gain entry for the children, Mr. Sriskandakumar asked Mr. Makepeace how it was that Mr. Kirsch had advised him it was unable to proceed on this basis. At that time Mr. Makepeace said to Mr. Sriskandakumar "there are smart lawyers".

17. Throughout this conversation Mr. Makepeace never once identified himself as a student-at-law and at all times acted in such a manner as to lead Mr. Sriskandakumar, an experienced solicitor, to believe that he himself, Mr. Makepeace, was a fully qualified lawyer. Reference should be made to paragraph 12 in this regard.

18. On October 18, 1991, Mr. Makepeace met with Mr. Balakumaran and received from him a personal cheque in the amount of \$500 payable directly to himself. Mr. Makepeace prepared a receipt in his own name. Thereafter, he cashed the cheque and proceeded to Detroit to meet with Mr. Sriskandakumar and his family. Mr. Makepeace arrived in Detroit late Friday night and met with the Sriskandakumars for approximately one hour. Mr. Makepeace returned to Windsor that night and stayed in a hotel. He met with the Sriskandakumars again at approximately 9:00 a.m. on Saturday morning.

19. At the outset of the Saturday morning meeting, Mr. Makepeace told Mr. Sriskandakumar that when he arrived at the border he had some difficulty in crossing because immigration officials were concerned that a Toronto lawyer could not practice in the United States. Mr. Makepeace provided a lengthy explanation to Mr. Sriskandakumar about his efforts to explain the Canada/U.S. Trade Agreement to these officials and how it provided him with authority to practice immigration law in the United States. Mr. Sriskandakumar's brother-in-law, Mr. Thirukumaran was present during the meeting between Mr. Makepeace and the Sriskandakumars.

20. Mr. Makepeace provided the Sriskandakumars with Personal Information Forms to be completed. After they were completed he stated that he would go to Windsor and get the forms typed and speak to an officer at the border and advise the Sriskandakumars of the results of his efforts. Mr. Thirukumaran accompanied Mr. Makepeace on the journey to Windsor.

21. Mr. Makepeace telephoned from Windsor that afternoon to advise that the officer was not there. He told Mr. Sriskandakumar that he would return to Toronto and that on Sunday he would fax the documents to the Windsor border and let him know the results of his efforts. Mr. Makepeace returned to Toronto, completed and typed the Personal Information Forms and at that time gave them to Mr. Mitchell for review.

22. Mr. Thirukumaran was privy to a conversation in which Mr. Makepeace introduced himself to officers of Employment and Immigration Canada as counsel from Toronto.

23. On Sunday night Mr. Makepeace spoke with Mr. Sriskandakumar and advised him that he had not been able to obtain the early entry. He stated that he would try again on Monday and ask that Mr. Sriskandakumar call him on Tuesday. During this conversation Mr. Makepeace and Mr. Sriskandakumar discussed the final version of the typed narrative portion of the Personal Information Form.

24. On Tuesday, October 22, 1991, Mr. Makepeace advised Mr. Sriskandakumar that he had been unable to obtain the early entry but that in view of the fact that he had already prepared the Personal Information Forms he would forward them to Mr. Kirsch to assist him in the preparation of the case for October 29, 1991.

25. The balance of \$500 was paid by Mr. Balakumaran to Mr. Makepeace on October 23, 1991. Again, Mr. Makepeace provided a receipt for these funds and negotiated the cheque.

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26. On October 24, 1991, Mr. Sriskandakumar spoke to Mr. Kirsch. Mr. Sriskandakumar advised Mr. Kirsch that he had consulted another lawyer about early entry into Canada for his family and that his efforts had been unsuccessful. Mr. Sriskandakumar advised Mr. Kirsch that this lawyer had assisted in filling out the requisite Personal Information Forms and that they would be sent to Mr. Kirsch by courier.

27. On October 25, 1991, Mr. Kirsch received a message on his telephone answering machine from an individual identifying himself as Russ Makepeace "a lawyer in Toronto". Mr. Makepeace advised that he had determined the identity of the Sriskandakumars' case presenting officer as being Donna McNeil. He advised Mr. Kirsch that he had faxed the Personal Information Forms directly to her, copies of the forms as completed by Mr. Makepeace are attached as Exhibit 1 to this agreed statement of facts. Mr. Makepeace also offered his opinion that on the basis of the forms Mr. Kirsch should be able to have the matter conceded and that the credible basis inquiry could likely be concluded on October 29, 1991.

28. Upon receipt of this message, Mr. Kirsch telephoned Mr. Makepeace. During this conversation Mr. Makepeace disclosed he was a student-at-law and not a lawyer; however, Mr. Makepeace advised Mr. Kirsch that he was a lawyer called to the Bar in the province of Alberta.

29. On October 31, 1991, Mr. Kirsch spoke to Mr. Mitchell. Mr. Mitchell advised Mr. Kirsch that he had reviewed the Personal Information Forms prior to their facsimile transmission to the case presenting officer.

30. Mr. Kirsch has advised the Society that the Personal Information Forms (PIF) prepared by Mr. Makepeace and submitted directly to the case presenting officer, Donna McNeil, by him were deficient in the following respects: Item 18 date of issue and expiry date of passport was omitted on the children's PIF; Item 21, there is no reference to the passports used by the family to travel from Sri Lanka to Canada; Item 23, the wrong date shown as the arrival date in Canada; Item 24, the wrong day is shown for the initial intention to make a claim and, on the children's PIF only there is an admission of the fact that such intention was stated to an immigration officer; Item 32, the answer as to any relatives previously claiming refugee status in Canada was no and should have been yes, included as well should have been details of the relatives, only the mother's personal information showed the correct information in this respect. Additionally, the husband's PIF did not show his full name or his other name which is important. Also, Item 14, the wife was shown to be residing in Detroit, USA when she was in fact in Canada with the husband; Item 14, did not show full names of some family members and incorrectly showed the husband and wife residing in Sri Lanka, it also failed to note the city of residence for some of the other named relatives. In addition, the narrative portion of the PIF is not as detailed as it should have been.

31. Donna MacNeil had at least three telephone conversations with Mr. Makepeace regarding the Sriskandakumar families desire for early entry into Canada. During Mr. Makepeace's first conversation with Ms. MacNeil he identified his law firm and himself as counsel representing the family with regard to the refugee claim. He requested local procedural information as well as the identity of the case presenting officer responsible for the file. Ms. MacNeil advised him that she was the officer assigned and informed him of the Windsor procedure. She also cautioned him that the family had requested duty counsel and that Malcolm Kirsch had been appointed. She suggested that Mr. Makepeace contact Legal Aid or Mr. Kirsch to determine who would be representing the family as she could only disclose information to the lawyer representing them. Ms. MacNeil and Mr. Makepeace had two further telephone conversations at the conclusion of the last of which Mr. Makepeace sent the Sriskandakumar's completed Personal Information Forms to her.

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32. In a letter to the Law Society, a copy of which is attached as Exhibit 2 to this agreed statement of facts, Ms. McNeil stated:

"Having been a Case Presenting Officer for two years at that time, I had been in constant communication with a large number of lawyers; was familiar with their methods of introduction and interdiction and must advise that at no time did Mr. Makepeace give the impression of being anything but a lawyer."

33. Subsequently Mr. Makepeace and Mr. Sriskandakumar had a telephone conversation in which Mr. Makepeace offered to refund \$500 of the \$1,000 paid funds to Mr. Sriskandakumar, sometime thereafter Mr. Balakumaran attended at the offices of Rosenblatt, Mitchell and picked up a cheque in the amount of \$500 which was subsequently negotiated.

V. PENALTY

34. The Solicitor will submit that in the circumstances of this case the appropriate disposition is a delay in his call to the bar until the regular Convocation of June 26, 1992. The Society will join in this position.

DATED at Toronto this 25th day of March, 1992."

RECOMMENDATION AS TO PENALTY

The Committee accepts the joint recommendation that Denis Russell Makepeace's call to the Bar be delayed until June 1992, a period of four months.

REASONS FOR RECOMMENDATION

There was a joint submission that Mr. Makepeace's call to the bar be delayed until June 1992, a period of four months.

It is significant that the Law Society does not allege that Mr. Makepeace acted dishonestly but rather that he failed to take adequate steps to correct an erroneous impression.

The Committee was impressed with the reference letters filed in support of Mr. Makepeace and his obvious sincerity in trying to help individuals with immigration problems. The case was not a situation that resulted from an attempt to make an easy dollar.

In effect the penalty recommended amounts to a four month suspension from practice and in the circumstances the Committee's view was that this was appropriate.

ALL OF WHICH is respectfully submitted

DATED this 10th day of April, 1992

"Dennis R. O'Connor, Q.C."
Chair

25th June, 1992

There were no submissions on the Report.

Counsel took questions from the Bench.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Strosberg that the Recommendation as to Penalty contained in the Report that is, that the student's call to the Bar be delayed until June 1992, be adopted.

Both counsel made submissions in support of the Recommendation.

The Recommendation as to Penalty was adopted.

Counsel retired.

.....

Re: THOMAS HOLYOAKE BOX, Markham

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Kiteley and Messrs. Strosberg and Campbell withdrew and did not participate.

Ms. Christina Budweth appeared for the Society. No one appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 22nd May, 1992, together with an Affidavit of Service sworn 19th June, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail on 10th June, 1992, marked Exhibit 1. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Harvey T. Strosberg, Q.C., Chair
Michael G. Hickey, Q.C.
Patricia J. Peters, Q.C.

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

THOMAS HOLYOAKE BOX
of the Town
of Markham
a barrister and solicitor

Christina Budweth
for the Society

Not Represented
for the solicitor

Heard: May 8, 1991
March 25, 1992

25th June, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Thomas Holyoake Box,
of the Town of Markham, a Barrister and
Solicitor

DISCIPLINE COMMITTEE'S DECISION

1. Thomas Holyoake Box practices law in Markham, Ontario. His professional conduct is the subject of two complaints presently before the Law Society. In complaint D219/90, it has been alleged that:

- (a) he breached his Undertaking to the Law Society dated March 9, 1989 as follows:
 - (i) he failed to make the filings as required by Section 16 of Regulation 573 made under the Law Society Act within the time period prescribed by that section, in particular, failing to file the prescribed forms for the fiscal year ended August 31, 1989;
 - (ii) he failed to submit monthly trust bank reconciliations for his trust account to the Law Society for the months ended April 30, 1989 to January 31, 1990, inclusive;
 - (iii) he failed to reply to letters from the Law Society dated October 16, 1989, December 22, 1989 and February 9, 1990.

2. In complaint D47/91, five additional allegations have been made against Mr. Box, namely, that:

- (a) he failed to file with the Society within six months of the termination of his fiscal year ending August 31, 1990, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation made pursuant to the Law Society Act;
- (b) he failed to respond to a Law Society examiner who attended at his offices on March 8 and 19, 1991;
- (c) his rights and privileges as a member of the Society having been suspended from May 26, 1989 to October 6, 1989, from February 23, 1990 to March 22, 1990, from September 28, 1990 to October 16, 1990, and from November 23, 1990 to February 20, 1991, [he] engaged in the practise of law;
- (d) he has failed to reply to the Society regarding a complaint by Jacqueline Kozak, Verbatim Reporter, despite letters dated October 5, 1990 and January 11, 1991, and telephone requests on November 23, 1990, December 13, 1990 and December 18, 1990; and

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- (e) he...failed to meet a financial obligation in relation to his practice to Jacqueline Kozak, certified Verbatim Reporter.

3. Mr. Box appeared before this Committee for the first time on May 8, 1991, and on that occasion he and counsel for the Law Society filed an Agreed Statement of Facts, which provides, in part, as follows:

...

3. The Solicitor has reviewed Complaints D219/90 and D47/91 and admits the particulars contained therein...

COMPLAINT D219/90 - BREACH OF UNDERTAKING

5. On March 8, 1989, the Solicitor gave to the Law Society an undertaking to, among other things:

2. Make the filings as required by Section 16 of Regulations 573 made under the Law Society Act within the time period prescribed by that section.
3. Submit monthly trust bank reconciliations for his trust account to the Law Society for one year starting with the reconciliation for the month of February, 1989. He will file each monthly reconciliation with the Society not later than three weeks after the end of each particular month.
4. Reply within a period of ten days from the date of receipt of all correspondence from the Law Society.

Particular 2a)i) - Annual Filings

6. The Solicitor's year end is August 31. The last filing which the Law Society received from the Solicitor was for the fiscal year ended August 31, 1988. The Solicitor is required to file annually with the Society within six months of the termination of his fiscal year. The Solicitor has defaulted in filing his Forms 2 and 3 for the fiscal year ended August 31, 1989 which were due February 28, 1990.

Particular 2a)ii) - Monthly Trust Reconciliations

7. The Solicitor undertook to submit monthly trust reconciliations for one year starting with the reconciliation for the month of February, 1989. The Solicitor filed for the months ended February 28, 1989 and March 31, 1989. No further trust comparisons were received by the Law Society. In order to fulfil the undertaking, reconciliations were required for the months ended April 30, 1989 to January 31, 1990, inclusive.

Particular 2a)iii) - Correspondence from the Law Society

8. By letter dated October 16, 1989, a member of the Society's audit department wrote to the Solicitor pointing out that trust comparisons for the months ended April 30, 1989 to November 30, 1989, inclusive, had not been received by the Law Society. No reply was received by the Law Society.

9. A follow-up letter dated December 22, 1989 was sent to the Solicitor referring to the outstanding trust comparisons and pointing out that trust comparisons were then due for the months ended April 30, 1989 to November 30, 1989, inclusive. The Solicitor did not reply to this letter.

10. A third letter dated February 9, 1990 was sent to the Solicitor by the Law Society requesting an answer to the two previous letters. The Solicitor did not reply to that letter.

COMPLAINT D47/90

Particular 2a) - Annual Filings

11. As noted above, the Solicitor's year end is August 31st and the Solicitor's last filing was for the fiscal year ended August 31, 1988. The Solicitor's Forms 2 and 3 for the fiscal year ended August 31, 1990 were due February 28, 1991. The Solicitor has defaulted in making his annual filings for the fiscal year ended August 31, 1990.

Particular 2b) - Law Society Examiner

12. On March 8, 1991, a Law Society examiner attended at the Solicitor's office. A receptionist advised the examiner that the Solicitor was in court. The examiner left her business card with the receptionist and requested that the Solicitor contact the examiner. The receptionist advised that she would provide the message to the Solicitor and that he received all his messages.

13. Not having heard from the Solicitor, on March 19, 1991 the examiner again attended at the Solicitor's office. A receptionist advised the examiner that the Solicitor was in court. The examiner again left her card with the receptionist and asked that the Solicitor contact her immediately. The receptionist advised that she would deliver the message together with the card to Mr. Box.

14. The examiner has received no response nor communication from the Solicitor.

Particular 2c) - Practising While Under Suspension

15. The Solicitor has been suspended by Convocation pursuant to Section 36 of the Law Society Act for failing to pay certain fees and levies within four months of the day payment was required. The suspension dates, reinstatement dates and reasons for suspension are as follows:

<u>Date Suspended</u>	<u>Date Reinstated</u>	<u>Reason</u>
May 26, 1989	October 6, 1989	Errors and Omissions levy
February 23, 1990	March 22, 1990	Annual Fee
September 28, 1990	October 16, 1990	Late Filing Penalty
November 23, 1990	February 20, 1991	Errors and Omissions levy

16. The Solicitor frequently appeared as duty counsel in the Region of York. According to the records of the Ontario Legal Aid Plan, the Solicitor acted as duty counsel during all four of the above noted suspension periods. While acting as duty counsel the Solicitor duly prepared, executed and delivered to the Ontario Legal Aid Plan Forms 12 and 13 (for criminal and civil duty counsel activities respectively), for each occasion that he served as duty counsel. He also billed the Ontario Legal Aid Plan and was paid for his services. During the suspension he also practised law in a non-duty counsel capacity, in terms of representing clients before the criminal courts, being retained either by the client directly or as agent by other counsel.

Particulars 2d) and 2e) - Failure to reply to the Society and Failure to meet a Financial Obligation

17. The complainant, Jacqueline Kozak, a certified verbatim reporter, wrote to the Society by letter dated September 4, 1990. The complainant advised that the Solicitor had incurred a financial obligation to her in relation to transcripts ordered in April 1990 in relation to a client of the Solicitor. The complainant advised that the transcripts were required on an urgent basis and that the transcripts were hand delivered to the Solicitor at his offices on April 28,

25th June, 1992

1990. The complainant advised that she was assured by the Solicitor that a cheque would be forthcoming by return mail. She further advised that, despite efforts to collect the outstanding account, which amounted to \$118.96, the account remained outstanding.

18. By letter dated October 5, 1990 the Law Society wrote to the Solicitor and enclosed the correspondence received from the complainant. The Solicitor was asked to reply in writing within a period of two weeks.

19. Telephone messages were left at the Solicitor's office on November 23, 1990, December 13, 1990 and December 18, 1990. The messages were not returned.

20. A registered letter dated January 11, 1991 was sent to the Solicitor. A written response was requested within seven days. The Solicitor's attention was drawn to the Rule of the Professional Conduct obliging lawyers to respond promptly to communications from the Law Society and that failure to do so could lead to disciplinary action.

21. The letters and telephone calls noted above all failed to elicit a response.

22. The financial obligation to the complainant incurred by the Solicitor in relation to his practice is outstanding.

4. Based on this Agreed Statement of Facts and Mr. Box's oral admission of professional misconduct, the Committee found Mr. Box guilty of the professional misconduct alleged in the complaints.

RECOMMENDATION AS TO PENALTY

5. Counsel for the Law Society and Mr. Box made a joint submission that the appropriate penalty was to have Mr. Box suspended for two months and thereafter on a monthly basis until the outstanding matters were completed.

6. Mr. Box's professional misconduct was multiple and continuous. He failed to respond to letters from the Law Society dated October 16, 1989, December 22, 1989, February 9, 1990, October 5, 1990 and January 11, 1991. Likewise, he failed to respond to telephone requests from the Law Society made on November 23, 1990, December 13, 1990 and December 18, 1990.

7. On May 7, 1991, the day before the hearing, Mr. Box finally answered the letters and oral requests in a manner satisfactory to the Law Society's counsel.

8. Mr. Box failed to meet his financial obligations relating to his practice. It was not until May 7, 1991, the day before the hearing began, that he gave the Law Society counsel a cheque to pay Ms. Kozak's account.

9. Mr. Box breached a written undertaking to the Law Society dated March 8, 1989, in which he agreed to maintain the books and records of his practice on a current basis and to make his filings, both as required by Regulation 583.

10. Mr. Box also continued to practice while suspended.

11. Mr. Box has a history of professional misconduct. He was reprimanded in Committee on March 8, 1989 for failing to respond promptly to Law Society correspondence and for failing to maintain his books and records during the period June, 1987 to September, 1988.

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12. The Committee recognizes the value and importance of joint submissions as to penalty and accepts that much weight must be given to them. But the Committee is not bound by a joint submission, and in this case the Committee is not satisfied that the recommendation of a two-month suspension is appropriate in the circumstances. The Committee takes this view for the following reasons:

- (a) Mr. Box could not give any reasonable explanation for his misconduct;
- (b) his records were not yet in order;
- (c) he had a history of professional misconduct; and
- (d) the Committee considered the joint submission to be wrong in principle.

13. Having decided that it could not accept the joint submission as to penalty, the Committee agreed to adjourn the hearing on May 8, 1991 to give Mr. Box an opportunity to put his books and records in order and to make further submissions.

14. Mr. Box made further submissions to the Committee by a letter dated May 22, 1991. The letter reads as follows:

I make the following additional submissions in connection with the discipline hearing, and the matter of penalty.

I have engaged an accountant. His letter is appended hereto. I was only able to see him this morning, because he was away on vacation until today. I chose this particular accountant because he is has a long-standing working relationship with my bookkeeper, and is accordingly able to work through her material more quickly than someone less familiar might be.

My books are current, although it took longer to bring them up to date than I had anticipated because my bookkeeper had other professional commitments. Yesterday, I contacted Ms. Janet Merkely of the Audit Department, and have asked her to attend for an audit. I am hopeful that she will be able to report by today, so that I may deliver an addendum to these submissions, but the spot audit will nevertheless take [sic] place forthwith.

I have also spoken to Ms. Margot Ferguson of the Audit Department regarding voluntary co-signing controls on my professional accounts. My feeling is that if I am required to seek counter-signatures from the Law Society, I will be less likely to let my obligations to the Law Society slide.

I have sought professional assistance in coming to grips with my apparent reluctance to deal with administrative obligations. A letter from Dr. Raymond Morris is attached. I am currently scheduled to see him successive Tuesdays for five weeks. It may be that I require further assistance, but the LINK programme in which the Law Society participates requires that I be referred elsewhere if longer term assistance is deemed [sic] appropriate.

There is of course no excuse for my misconduct. At its root, the misconduct relates to an inability, or reluctance to attend to administrative tasks. The misconduct of practise while suspended, which is, I think the most serious individual delict, derives from suspensions imposed by my failure to deliver material to the Law Society as required, and subsequent tardiness in redressing the failures, and is therefore essentially an extension of my shortcomings as an administrator [sic].

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However, in my dealings vis a vis my clients, and in pursuit of their various interests, I manifest none of the procrastination which bedevils my administrative responsibilities. I am a good advocate, and do not let my obligations in that regard slide.

While I take full responsibility for my misconduct, I have to say that to some degree I exhibit the behavior which has lead to the current situation in spite of myself. I do not want to incur the sanction of the Law Society. Even more importantly, I do not want my family to be penalized for my failings. As I indicated to you May 8, 1991, I am the sole income earner, and a lengthy suspension will be economically devastating. I do not look on the suspension proposed in the joint submission as an opportunity to "take the summer off": I will be humiliated [sic] by it. I am most anxious that my family not pay the price for my tardiness in recognizing the need for assistance in dealing responsibly with my administrative [sic] obligations.

15. The Committee reconvened on March 25, 1992 to receive further evidence and to hear further submissions from Mr. Box and counsel for the Law Society.

16. Further evidence established that Mr. Box's submission in his letter of May 22, 1991 were materially false in the following respects:

- (a) Mr. Box did not contact Ms. Merkely, but left a message for her. Ms. Merkely attempted on eight separate occasions to reach Mr. Box to set up a meeting to review the state of his books and records, but he did not return any of her messages;
- (b) Mr. Box did not speak to Ms. Ferguson about co-signing controls. He left one message for her on May 21, 1991 at 4:00 p.m.. Ms. Ferguson returned this call on May 23, 1991, but Mr. Box did not respond and never attempted to contact Ms. Ferguson thereafter;
- (c) with the submission of May 22, 1991, Mr. Box attached a letter dated May 21, 1991 stating that he had enclosed trust reconciliations. This letter purports to be delivered by courier. No material delivered to the Law Society was received by the Law Society until May 31, 1991. The material did not include trust reconciliations. Only trust listings were delivered to the Law Society.

17. Mr. Box did contact the LINK programme and opted for a short term crisis-oriented counselling. This arrangement was confirmed by a letter dated May 21, 1991 from Dr. Morris. No medical, psychological or psychiatric information was made available to the Committee to explain Mr. Box's conduct.

18. Mr. Box retained an accountant. He delivered the necessary filings to the Law Society on July 19, 1991. By letter dated June 13, 1991, he delivered the necessary trust reconciliation to the Law Society.

19. Mr. Box exhibited a flagrant disregard of his obligations as a member of the Society. His failure to make the necessary filings and to respond to letters from the Society were not only breaches of his obligations under the Regulations, but also were in breach of his written undertaking to the Law Society made on March 8, 1989, in the following terms:

I, THOMAS HOLYOAKE BOX, hereby undertake to the Law Society of Upper Canada to:

- (1) Maintain on a current basis the books and records for my practice as required by Section 15 of Regulation 573 made under the Law Society Act.

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- (2) Make the filings as required by Section 16 of Regulation 573 made under the Law Society Act within the time period prescribed by that section.
- (3) Submit monthly trust bank reconciliations for my trust account to the Law Society for one year starting with the reconciliation for the month of February, 1989. I will file each monthly reconciliation with the Society no later than three weeks after the end of each particular month.
- (4) Reply within a period of ten days from the date of my receipt of all correspondence from the Law Society.
- (5) Retain the services of a bookkeeper to maintain the books and records as required by this undertaking.
- (6) Reply to communications from clients in a prompt manner and in particular, reply to telephone calls from clients by the end of the second working day that I am in the office and reply to written communications from my clients within one week of my receipt of those communications.
- (7) Restrict my practice to litigation matters only.

This undertaking will remain in force until such time as it is expressly waived or amended in writing by Senior Counsel, Discipline or Convocation.

I understand and agree that this undertaking may be tendered in evidence in any future disciplinary proceeding.

20. Mr. Box practised while suspended from May 26, 1989 to October 6, 1989, from February 23, 1990 to March 22, 1990, from September 28, 1990 to October 16, 1990 and from November 23, 1990 to February 20, 1991. He therefore practised while suspended for about 267 days (8.7 months). He knew that he was suspended. But for Mr. Box it was business as usual. When asked by Ms. Peters for an explanation, as shown by the following exchange, he could not give one:

Mr. Box: The explanation is, as soon as I get a moment to get my money and my certified cheque together and send it to the Law Society, I will do it.

Ms. Peters: You are already suspended though.

Mr. Box: I'm sorry, I don't understand.

21. Mr. Box's conduct exhibited the characteristics of a person defiant and ungovernable: he repeatedly breached his March 8, 1989 undertaking; he practised while suspended; he made materially false representations to this Committee. In short, he paid no heed to fundamental and essential precepts of professional legal conduct.

2. The Committee has thus concluded that a two-month suspension would only have the effect of rewarding Mr. Box for his misconduct, for a two-month suspension would amount to a substantially less severe penalty than the 8.7 months of intermittent suspensions which Mr. Box has already flaunted or ignored.

23. The length of Mr. Box's suspension must be sufficient to bring home to him the profession's abhorrence of his flagrant disregard of the Society's rules and regulations.

25th June, 1992

24. The Committee believes that a suspension of six months is the appropriate penalty and so recommends to Convocation.

25. A Supplementary Agreed Statement of Facts was filed with the Committee on March 25, 1992. It evidences the following:

- (a) Mr. Box was suspended effective September 27, 1991 for failure to pay late filing fees of \$880.00 as a result of his late filing for the year ending May 31, 1991;
- (b) Mr. Box's right to practice was also suspended because of his failure to pay the errors and omissions levy in the sum of \$909.08 for the year of 1991;
- (c) on March 25, 1992, Mr. Box delivered to the Society a cheque in satisfaction of both of these amounts; and
- (d) Mr. Box's books and records were in arrears of one month as of July, 1991.

26. The Committee has not considered these additional facts in arriving at its recommendation of a six-month penalty.

27. The Solicitor was called to the bar on April 10, 1984.

ALL OF WHICH is respectfully submitted to Convocation by this Discipline Committee comprised of Patricia Peters, Q.C., Michael Hickey, Q.C. and Harvey T. Strosberg, Q.C..

Dated: May 22, 1992

"Harvey T. Strosberg"
Harvey T. Strosberg, Q.C.

There were no submissions.

The Report was adopted.

It was moved by Mr. Rock, seconded by Ms. Graham that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for 6 months, be adopted.

Ms. Budweth made submissions in support of the Recommendation and the solicitor sought a 2 month suspension to commence August 1, 1992 to allow him to meet his moral obligations.

There was a brief reply from Ms. Budweth.

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

The recommended penalty to suspend the solicitor for 6 months was lost.

It was moved by Mr. McKinnon, seconded by Mr. Bragagnolo that the solicitor be suspended for a period of 3 months commencing August 1, 1992 and to consult with Practice Advisory.

Carried

25th June, 1992

It was moved by Ms. Bellamy, seconded by Ms. Palmer that the solicitor be suspended for 2 months commencing August 1, 1992.

Not Put

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

Counsel and the solicitor retired.

.....

Re: GREGORY PETER LINTON VANULAR, Pickering

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

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

Convocation had before it the Report of the Discipline Committee dated 29th May, 1992, together with an Affidavit of Service sworn 19th June, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 8th June, 1992, marked Exhibit 1. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Roger Yachetti, Q.C., Chair

Paul S.A. Lamek, Q.C.

Nora Richardson

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

Christina Budweth
for the Society

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

Not Represented
for the solicitor

Heard: April 15, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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

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

DECISION

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

Complaint D114/91

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

- (i) completing work on behalf of clients;
- (ii) meeting financial obligations incurred in connection with his practice;
- (iii) fulfilling undertakings to fellow solicitors and/or their clients;
- (iv) replying to correspondence from the Law Society concerning complaints about him.

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

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

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

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D114/91 and this agreed statement of facts and admits the particulars of the allegations of professional misconduct specifically admitted throughout.

IV. FACTS

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

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

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

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

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

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

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

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

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

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

25th June, 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

25th June, 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25th June, 1992

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

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

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

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

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

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

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

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

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

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

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

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

25th June, 1992

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

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

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

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

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

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

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

and asked to be reimbursed for same.

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

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

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

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

25th June, 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25th June, 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

25th June, 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25th June, 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25th June, 1992

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

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

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

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

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

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

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

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

130. By letter dated October 1, 1990, the Law Society advised the Solicitor that his response as to the delay in responding to the complainant, with respect to the outstanding hydro account was insufficient. The Solicitor was also requested to advise of the steps he had taken to follow-up on the undertaking. The Solicitor was requested to reply within three weeks. No reply was received within the time frame required.

131. By letter dated November 5, 1990 the Solicitor advised the Society that his secretary had been constantly following up with the vendors solicitor regarding the hydro undertaking.

132. By letter dated April 24, 1991, the complainant advised the Law Society that she had not received a cheque from the Solicitor. She further stated that a lien had been placed against her property due to hydro arrears.

133. By letter dated June 19, 1991, Howard Kirshenbaum, a lawyer who had been retained by the complainant wrote to the Solicitor and requested his comments to the aforementioned concerns of the complainant.

25th June, 1992

134. By letter dated July 10, 1991, the complainants new counsel forwarded to the Law Society a copy of the Solicitor's letter dated June 26, 1991. In that correspondence, the Solicitor enclosed a bank draft in the amount of \$438. He further indicated that he had been under the impression that his previous secretary had dealt with the matter and apologized to the complainant for the inconvenience. The complainant was satisfied.

135. The Solicitor admits that the above-stated facts constitute an unreasonable delay in completing work on behalf of clients as alleged in particular 2(a)(i) and unreasonable delay in replying to Society as alleged in particular 2(a)(iv).

V. PRIOR DISCIPLINE

136. On May 24, 1988 the Solicitor was found guilty of professional misconduct supported by the particulars that he participated in financing for his personal residence that had been structured to disguise the fact that he was a borrower and to make it appear that the price paid for the property was higher than it actually was; that he borrowed money from clients without insuring that their interests were protected; and, that during the period 1984 to mid-1987 there were frequent unreasonable delays in the completion of his work on behalf of clients. By Order of Convocation dated June 23, 1988, the Solicitor's right to practice was suspended for six months effective July 11, 1988 and he was ordered to pay a fine of \$5,000. The Solicitor resumed practise on January 11, 1989. Convocation also ordered that at the completion of the suspension the Solicitor was to practice with an experienced solicitor for an indefinite period until relieved by Convocation. Copies of the complaints D135/87 and the Report and Decision of the Discipline Committee respecting the aforesaid are attached collectively as Exhibit 27 to this agreed statement of facts.

137. The Solicitor was found guilty of professional misconduct on February 26, 1991 for failing to reply to the Society. On that occasion the Solicitor was reprimanded in committee. A copy of complaint D213/90 is attached as Exhibit 28 to this agreed statement of facts.

138. On May 8, 1991, the Solicitor was found guilty of professional misconduct in respect of complaint D26a/89 for failing to meet a financial obligation arising out of his practice, including: a \$33,000 judgement in favour of a client; and, remission of an Errors & Omissions deductible. On that occasion the Solicitor was reprimanded in committee. A copy of discipline complaint D26a/89 is attached as Exhibit 29 to this agreed statement of facts.

139. The Solicitor has been suspended on four separate occasions between November 1989 and March 1990 as follows:

<u>Suspended</u>	<u>Reinstated</u>	<u>Reason</u>
November 24, 1989	December 15, 1989	Non payment of E&O levy
May 25, 1990	June 27, 1990	Non payment of E&O levy
November 23, 1990	December 27, 1990	Non payment of E&O levy
February 23, 1990	March 7, 1990	Non payment of annual fees.

DATED at Toronto this 14th day of April, 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Gregory Peter Linton Vanular be Reprimanded in Convocation and that he be required to comply with the following conditions:

- 1) that he immediately re-enlist in the Practice Review programme of the Professional Standards Committee;
- 2) that he comply with all of the recommendations resulting therefrom within a reasonable time after they are made; and
- 3) that he pay the costs of the Practice Review up to the sum of two thousand dollars (\$2,000.00).

REASONS FOR RECOMMENDATION

Were it not for the timing of the events listed in paragraphs 6 to 135 of the Agreed Statement of Facts in relation to the Solicitor's prior discipline record as set out in paragraphs 136, 137 and 138 of that Agreement, we would have recommended to Convocation the imposition of a more serious penalty. However, it would appear that all of the particulars of professional misconduct as set out in the complaint were known to the Society as of the dates of the proceedings set out in paragraphs 137 and 138; namely, February 26th, 1991 and May 8th, 1991. It is acknowledged that the Solicitor was not represented by counsel on those dates. Had he been represented, it may very well have transpired that all items of the complaint would have been dealt with on one or the other of those dates.

An appropriate penalty for all matters could have been imposed at either of those times.

In these proceedings, the Solicitor made submissions on his own behalf to the following effect:

- 1) that when he returned from his period of suspension on or about January 11th, 1989, he found his practice in a state of disarray as a result of the neglect and mismanagement of his associate, Mr. Stanleigh;
- 2) at the same time, he found that he was indebted for various expenses including a substantial amount for legal fees incurred as a result of the previous disciplinary proceedings and related civil consequences;
- 3) that by July of 1989, he had paid most of those debts from monies received from the sale of a property which he had owned;
- 4) that from the date of his return to practice after his suspension to the present time, he had engaged in the process of transforming his practice from one essentially devoted to real estate matters to one essentially devoted to the practice of criminal law to which he felt he was better suited;
- 5) that on or about March of 1990, he had submitted to the Practice Review Programme of the Professional Standards Committee and implemented most of the recommendations which had flowed therefrom (entered as Exhibit #7 and attached to this Report as Schedule "A");
- 6) that he was prepared to return to the Practice Review Programme with a view to having a further review performed in light of the changes which he has made;

25th June, 1992

- 7) that generally, he now had his practice under control and was committed to maintaining that control.

The Committee accepted these submissions and Counsel for the Law Society recommended to the Committee that it recommend to Convocation that the Solicitor be Reprimanded in Convocation without conditions. The Solicitor concurred in that recommendation. However, the Committee feels strongly that the Solicitor requires further rehabilitation. The Committee is therefore prepared to concur with the joint submission with the addition of the conditions previously set out.

The Committee feels strongly that the Solicitor can be rehabilitated and every effort should be made in that regard. The Committee considered recommending a suspension but felt that such a disposition would perhaps cause the Solicitor to suffer an unfortunate setback.

For these reasons, we make the recommendation of a Reprimand in Convocation on the conditions set out above.

Gregory Peter Linton Vanular was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th day of April, 1981.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"Roger Yachetti"
Chair

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

There were no submissions.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Bastedo that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded with conditions, be adopted.

Counsel and the solicitor made submissions in support of the recommended penalty.

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

It was moved by Mr. Copeland, seconded by Ms. Weaver that the solicitor be suspended for a period of 2 months.

It was moved by Mr. McKinnon but failed for want of a seconder that the solicitor be suspended for 30 days.

Counsel, the solicitor, the reporter and the public were recalled and informed of the motion for an increased penalty.

The solicitor requested an adjournment in order to prepare submissions and waived Convocation being seised of the matter.

25th June, 1992

Convocation granted the adjournment to the next Special Convocation.

Counsel and the solicitor retired.

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Re: EDWARD GEORGE SPONG, Whitby

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

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

Mr. Bastedo advised Convocation that the Recommendation as to Penalty be amended by deleting the words "indefinitely" and "and thereafter until such time as they are brought up to date" so that the sentence would then read: "If the Books and Records are not brought up to date the Solicitor is to be suspended until such time as they are brought up to date."

Mr. Bastedo withdrew from Convocation.

Convocation had before it the Report of the Discipline Committee dated 17th May, 1992, together with an Affidavit of Service sworn 19th June, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail on 27th May, 1992, marked Exhibit 1. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas G. Bastedo, Chair
Paul S.A. Lamek, Q.C.
Philip M. Epstein, Q.C.

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

Christina Budweth
for the Society

EDWARD GEORGE SPONG
of the Town
of Whitby
a barrister and solicitor

Not Represented
for the solicitor

Heard: February 18, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 4, 1991, Complaint D205/91 was issued against Edward George Spong, alleging that he was guilty of professional misconduct.

The hearing was heard in public on February 18, 1992 before this Committee composed of Thomas G. Bastedo, Chair, Paul S.A. Lamek, Q.C. and Philip M. Epstein, Q.C. Mr. Spong attended the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

- 2(a) He failed to reply to the Law Society's Audit Department despite letters dated April 5, 1991, May 10, 1991, June 11, 1991, July 11, 1991 and August 12, 1991.

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D205/91 and is prepared to proceed with a hearing of this matter on February 18, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D205/91 and admits the particulars contained therein. The Solicitor also admits that the particulars in the complaint together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on April 9, 1976 and practices as a sole practitioner in association with Frances Dixon, carrying on business under the name and style, Dixon, Spong.

5. By letter dated October 11, 1990, the Law Society confirmed with the Solicitor that his filing for the fiscal period ended January 31, 1990, had been received but was deficient in a number of reports. The Solicitor was advised that:

- a) his accountant had not attached to the report a copy of the listing of trust obligations pursuant to trust account #01150396101, required in item 6 on page 3 of the report. The Solicitor was requested to have his accountant forward a copy of the listing directly to the Law Society;

25th June, 1992

- b) his accountant had not attached to the report a copy of the reconciliation of the trust bank account, in account #01150396101, required in item 6 on page 3 of the report. The Solicitor was requested to have his accountant forward directly to the Law Society, a copy of the reconciliation, including cheque numbers; amounts of outstanding cheques; and the amounts, dates record and dates credited by the bank of any outstanding deposits;
- c) the reconciliation of the trust bank account showed a bank error of \$16.73. The Solicitor was requested to have his accountant provide the Law Society with the full particulars of the causes including dates incurred and corrected. No reply was received.

A copy of the Law Society's letter dated October 11, 1990, is attached to this Agreed Statement of Facts and marked as Exhibit "A".

6. By letter dated November 12, 1990 the Law Society forwarded to the Solicitor a copy of its letter dated October 11, 1990. The Solicitor was requested to give this matter his early attention.

7. By letter dated November 13, 1990, the Law Society confirmed with the Solicitor receipt of his annual filing reports for the fiscal periods ended January 31, 1988 and January 31, 1989. With respect to the Solicitor's 1989 report the Solicitor was advised:

- his accountant had not attached to the report a copy of the trust bank statement(s) required in item 6 on page 3 of the report. The Solicitor was requested to have his accountant forward a copy of the bank statement directly to the Law Society.
- the reconciliation of the trust bank account showed bank errors in the amount of \$290.92. The Solicitor was requested to have his accountant provide the Law Society with the full particulars of the causes including the dates incurred and corrected.
- his accountant's report disclosed overdrawn trust ledger accounts which were permitted to exist uncorrected over a period in excess of one month. The Solicitor was advised of the Law Society's expectations regarding overdrawn trust ledger accounts. The Solicitor was requested to confirm with the Law Society within one month of the date of this letter, that he had taken the necessary action to ensure that any overdrawn accounts that occur are corrected no later than the month following their occurrence.

The Solicitor was further advised that items (a) and (b) as stated in paragraph five of this Agreed Statement of Facts, were still outstanding. No reply was received.

8. By letter dated December 11, 1990, the Law Society forwarded to the Solicitor, a copy of its letter dated November 13, 1990. The Solicitor was requested to give this matter his early attention. No reply was received.

9. By letter dated January 11, 1991, the Law Society advised the Solicitor that a reply to their previous correspondence had not been received. The Solicitor was requested to reply, as soon as possible, so that the matter could be resolved without involving the Discipline Committee.

10. The Solicitor advised the Law Society, by telephone on January 24, 1991, that he would reply within one week.

25th June, 1992

11. By letter dated March 11, 1991, the Law Society advised the Solicitor that a satisfactory reply had not been received to their previous correspondence. The Solicitor was advised that should a reply not be received within fifteen days, the matter would be referred to the Discipline Committee.

12. A representative from the Solicitor's office, advised the Law Society, by telephone, on March 26, 1991, that the Solicitor would reply on or before tomorrow.

13. By letter dated April 5, 1991, the Law Society confirmed with the Solicitor receipt of his correspondence dated March 27, 1991 and a telephone conversation on April 5, 1991. The Law Society also forwarded to the Solicitor copies of trust listings, bank reconciliations and bank statements for the standard chartered trust accounts which were photocopies during his 1988 audit. The Law Society further listed the information required to close his file. A copy of the Law Society's letter to the Solicitor is attached hereto and marked as Exhibit "B" to this Agreed Statement of Facts. No reply was received.

14. By letter dated May 10, 1991, the Law Society forwarded to the Solicitor, a copy of its previous correspondence. The Solicitor was requested to give this matter his early attention. No reply was received.

15. By letter dated June 11, 1991, the Law Society advised the Solicitor that a reply to their previous correspondence had not been received. The Solicitor was requested to reply as soon as possible so that this matter could be resolved without involving the Discipline Committee. No reply was received.

16. By letter dated July 11, 1991, the Law Society advised the Solicitor that should a reply not be received to the Law Society's previous correspondence within fifteen days, the matter would be referred to the Discipline Committee.

17. The Law Society spoke to the Solicitor or his representative on August 1, 1991. As a result of that conversation, the matter was placed on hold for one week.

18. By registered mail, dated August 12, 1991, the Law Society advised the Solicitor that a satisfactory response had not been received to their previous correspondence, copies of which were enclosed. The Solicitor was advised, should a reply not be received within two weeks, the matter would be referred to the Discipline Committee.

19. The Solicitor or his representative, advised the Law Society by telephone on August 26, 1991, that the Solicitor should have the information required by the end of this week. No reply was received.

20. By letter dated December 16, 1991, John R. Bailey, the Solicitor's chartered accountant, acknowledged to the Solicitor some responsibility for the failure to provide the Law Society with the required information was due to his inadvertence. A copy of Mr. Bailey's letter to the Solicitor, dated December 16, 1991, is attached to his Agreed Statement of Facts and marked as Exhibit "C".

21. The Solicitor's accountant's reply to the Law Society's correspondence detailed above, dated January 29, 1992, is attached as Exhibit "D" to this Agreed Statement of Facts. The January 29, 1992 letter is not responsive to the Law Society's communications.

25th June, 1992

V. DISCIPLINE HISTORY

22. The Solicitor received a reprimand in committee on November 13, 1990 with respect to his failure to file his Forms 2/3 for the fiscal years ended January 31, 1988 and January 31, 1989.

DATED at Toronto this 18th day of February, 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Edward George Spong be Reprimanded in Convocation if his Books and Records are brought up to date prior to March 26, 1992 to the satisfaction of the Law Society. If the Books and Records are not brought up to date the Solicitor is to be suspended indefinitely and thereafter until such time as they are brought up to date.

REASONS FOR RECOMMENDATION

Edward George Spong failed to reply to five consecutive letters from the Law Society Audit Department. All of these letters were of a routine nature simply requesting further information so as to complete the requirements which the Solicitor was obligated to fulfill in accordance with filing his usual Forms required by the Law Society. Finally, the Solicitor advised the Law Society in August of 1991 that the information would be furnished by "the end of this week". No reply was received. Subsequently, in December of 1991, the Solicitor's accountant wrote to the Solicitor and indicated, that in part, the failure to provide the Law Society with the required information was due to his own inadvertence.

Notwithstanding the many attempts to obtain information by the officers and officials of the Law Society, the Solicitor either directly or indirectly through his accountant had not yet furnished the information sought on the day of the hearing before this Committee. (February 18, 1992).

It is to be noted that the Solicitor was reprimanded in Committee on November 13, 1990 because he failed to file his Forms 2/3 for the fiscal years ended January 31, 1988 and January 31, 1989.

With some hesitation, the Committee recommendation is that in the event that the Solicitors books and records were brought up to date prior to March 26, 1992, then the Solicitor would receive a Reprimand in Convocation. On the other hand, if the Solicitor did not bring his books and records up to date in a timely fashion to the satisfaction of the Law Society, then it is the Committee's recommendation that the Solicitor be suspended indefinitely until such time as his books and records are in fact brought up to date.

25th June, 1992

Edward George Spong was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 4th day of September, 1976.

ALL OF WHICH is respectfully submitted

DATED this 17th day of May, 1992

"Thomas G. Bastedo"
Chair

It was moved by Mr. Rock, seconded by Mr. Strosberg that the Report be adopted.

There were no submissions.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Strosberg that the Recommendation as to Penalty as amended that is, that the solicitor be reprimanded or suspended if his Books and Records were not brought up to date, be adopted.

Ms. Budweth advised that the solicitor had met the requirements as to his Books and Records and supported the Recommendation that he be reprimanded.

The solicitor concurred with the Recommendation of a reprimand.

The Recommendation as to Penalty was adopted.

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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Convocation adjourned for a brief recess.

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Convocation resumed in camera.

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IN CAMERA Content Has Been Removed

25th June, 1992

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PUBLIC

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Mr. Rock presented the Interim Report on Paralegals to Convocation.

(see Interim Report on Paralegals in Convocation file)

It was moved by Mr. Rock, seconded by Ms. Graham that the Report be adopted.

Carried

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ROBERT ARTHUR DONALDSON - Preliminary Matters

Messrs. Finkelstein and Copeland and Ms. Kiteley withdrew.

Mr. Gavin MacKenzie appeared for the Society and Mr. Thomas Lockwood appeared for the solicitor.

The Secretary read the list of Benchers firms from which letters of support had been received.

There were submissions by both counsel.

It was moved by Mr. Manes, seconded by Ms. Curtis that those benchers whose partners had written letters on behalf of Mr. Donaldson be excluded.

It was moved by Mr. Strosberg, seconded by Mr. Manes that the matter be adjourned to Friday, June 26th.

There was a further motion that the matter be adjourned to the next Special Convocation.

The quorum of Convocation was lost.

CONVOCATION ADJOURNED AT 4:40 P.M.

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Confirmed in Convocation this *24th* day of *September*, 1992

Treasurer