MINUTES OF SPECIAL CONVOCATION

Thursday, 25th January, 1990
9:30 a.m.

PRESENT:

The Treasurer, (Mr. L. K. Ferrier), Mr. Arnup, Ms. Peters, Messrs. Bragagnolo, Cullity, Farquharson, Ferguson, Hickey, Howie, Kemp-Welch, Lamont, Lawrence, Lerner, Lyons, Manes, McKinnon, Rock, Shaffer, Somerville, Thom, Thoman, Topp, Wardlaw and Yachetti.

.....

CONVOCATION COMMENCED AT 9:30 A.M.

DISCIPLINE COMMITTEE

Re: PATRICK CHRISTIAN HENGEN, Richmond Hill

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. Shaun Devlin appeared for the Society and Mr. Frank Marrocco appeared for the solicitor who was also present.

As a preliminary matter Mr. Marrocco sought the permission of Convocation to appear before it as he is a partner of Ms. F. Kiteley. Mr. Marrocco indicated that the matter had commenced prior to his joining the partnership and that he had not had any conversations with Ms. Kiteley about the matter.

It was moved by Mr. Yachetti, seconded by Mr. Lerner that Mr. Marrocco be allowed to appear on the matter.

Carried

Convocation had before it the Report and Recommendation as to Penalty of the Discipline Committee dated 17th October 1989, together with an Affidavit of Service sworn 22nd November 1989 by Louis Katholos that he had effected service on the solicitor by registered mail on 7th November 1989 (marked Exhibit 1). The Acknowledgement, Declaration and Consent completed by the solicitor was filed (marked Exhibit 2). Copies of the Report having been sent 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)
Earl J. Levy, Q.C.
Gordon H.T. Farquharson, Q.C.

In the matter of
The Law Society Act

and in the matter of
PATRICK CHRISTIAN HENGEN
of the Town of
Richmond Hill
a barrister and solicitor

Shaun Devlin
for the Society

Frank Marrocco
for the solicitor

Heard: August 1, 1989

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

THE DISCIPLINE COMMITTEE BEGS LEAVE TO REPORT:

## REPORT

On April 14, 1989, Complaint D24/89 was issued against Patrick Christian Hengen alleging that he was guilty of professional misconduct.

The matter was heard in public on August 1, 1989 before this Committee composed of Dennis R. O'Connor, Q.C. as Chair, Earl J. Levy, Q.C. and Gordon H.T. Farquharson, Q.C.

Mr. Hengen attended the hearing and was represented by Frank Marrocco. Mr. Shaun Devlin appeared on behalf of the Law Society.

## DECISION

The following particulars of professional misconduct were admitted by Mr. Hengen and found to have been established:

(Paragraph 2: Complaint D24/89)

"(a) During the years 1984-1988, more or less, he gave improper advice to fourteen clients, more or less, by advising them of a method he assured them would allow them to operate a motor vehicle during a time of driver license suspension even though such operation to his knowledge would be illegal.

(b) On or about July 3, 1987, he gave improper advice regarding the operation of a motor vehicle during a period of license suspension to an undercover police officer who the Solicitor believed was a prospective client.

(c) On or about May 13, 1987, he attempted to mislead Law Society staff lawyer, John Wissent by denying that he had given improper legal advice to clients regarding a method of avoiding liability for driving while under suspension.

(d) On or about April 11 and April 15, 1988, he attempted to mislead Law Society investigator, Gary Gibson, by making a false statement to Gary Gibson regarding legal advice given to clients regarding driving while under suspension."

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D24/89 and is prepared to proceed with a hearing of this matter on August 1, 1989.

II. IN PUBLIC/IN CAMERA

2. The Society and the Solicitor agree that the hearing will be held in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. BACKGROUND FACTS

4. The Solicitor was called to the Bar in 1969. He presently practises in Richmond Hill as a sole practitioner in association with another solicitor. He practises mainly in the areas of real estate and matrimonial law with driving and impaired offences previously comprising five to ten per cent of his practice. The Solicitor began referring all criminal work to other counsel in 1988.

IV. FACTS

Particulars 2(a) and (b)

5. During the period January 31, 1985 to September 15, 1987, the Solicitor gave improper advice regarding a method that he believed would enable a client to drive during a period of licence suspension. The advice was given to 12 clients during the period, as well as to an under cover police officer who the Solicitor believed was a prospective client.

6. In all of these cases, the Solicitor gave the advice in the course of advising clients regarding charges of impaired driving or driving with an alcohol level in excess of 0.80mg/100 mL of blood, offences under Section 237(a) and (b) of the Criminal Code. Pursuant to Section 26 of the Ontario Highway Traffic Act, a conviction of those Criminal Code offences results in an automatic driver's licence suspension of one year. However, upon the filing of an appeal from such a conviction, an accused may apply for and obtain a temporary licence allowing the accused to drive until the conclusion of the appeal. In the event that the appeal is unsuccessful, Section 34 of the Highway Traffic Act provides for a procedure whereby the Ministry sends notice of the suspension to the individual by registered mail at the latest current address of the person. The section provides, where notice is given in this fashion, notice will be deemed to have been given on the 5th day after the mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control, receive the notice. Section 35 of the Highway Traffic Act makes it an offence to drive during a period of licence suspension. Copies of Section 26, 34 and 35 of the Highway Traffic Act, will be provided to the Committee.

7. In each of these cases, the Solicitor advised that, should a conviction be registered, the Solicitor would appeal that conviction. It would allow the accused to attend at the offices of the Ministry to obtain a temporary licence allowing him or her to drive until the conclusion of the appeal period. The Solicitor advised that he would then abandon the appeal to avoid the consequences of costs. He told each accused that they could continue to drive under the temporary licence despite the conclusion of the appeal. He advised them that the Ministry would be sending them registered mail notifying them of the suspension. He advised them not to pick up the registered mail and that he knew of no obligation in law requiring them to so pick it up. He advised, that, should they be detained by the police while driving, they should advise that they had no notice by registered mail of the suspension. The Solicitor held out that, in this way, they could successfully avoid the laying of a further charge of driving while suspended. The Solicitor advised that, however, once they were detained once in this fashion, they could not likely avoid a charge should they be detained again during the currency of the suspension.

8. The Solicitor gave the advice to the following clients on the following dates and in the following jurisdictions:

| DATE | NAME | JURISDICTION |
|---|---|---|
| January 31, 1985 | Bill Robertson | Newmarket |
| March 28, 1985 | H. Correia | 80 The East Mall |
| September 26, 1985 | Robert Oakes | Old City Hall, Toronto |
| September 30, 1985 | Babin | Newmarket |
| October 21, 1985 | Pilon | Newmarket |
| June 5, 1986 | Harry Sirelpure | Newmarket |
| November 5, 1986 | Alde Dorocher | Newmarket |
| December 23, 1986 | Vander Wedjde | 1000 Finch |
| January 20, 1987 | Brian McMamara | Newmarket |
| March 25, 1987 | Greg Dabor | Toronto |
| April 14, 1987 | Grace Gordon | Brampton |
| September 15, 1987 | Pasquale Rinaldi | 80 The East Mall |

9. The Solicitor also gave this advice to Constable Anthony Cusimano on July 3, 1987. The conversation with Constable Cusimano was tape recorded and a transcript of that tape recording will be provided to the Committee. In addition to the discussion regarding the Highway Traffic Act suspension, the Solicitor discussed the prohibition under the Criminal Code, mentioning that he was unsure whether that section would prevent a person with a temporary licence from properly driving during the currency of an appeal.

## VI. HISTORY OF THE INVESTIGATION

### Initial Complaint

10. The Society received a telephone call on April 23, 1987 advising that a matter had arisen in court in Newmarket suggesting that Mr. Hengen might have given the above type of advice to a client. Representatives of the Society had further conversations with the investigating officer and with the new lawyer for one of the Solicitor's clients, on May 7 and May 12 respectively.

### Interview with John Wissent, Staff Lawyer with the Society - Particular 2(c)

11. On May 13, 1987, John Wissent, a Staff Lawyer employed by the Law Society, met with Mr. Hengen at the Society's offices. The meeting came about at the request of Mr. Wissent. At the time, Mr. Wissent was aware generally of allegations stemming from the Newmarket court and the investigating officer to the effect that the Solicitor had advised clients that they could drive during a period of licence suspension.

12. When the matter was put to the Solicitor, he denied advising any clients that they could drive during a period of licence suspension. The Solicitor said that he had intended to convey to clients the advice that they could appeal a criminal conviction and get a temporary licence only until such time as the appeal was lost, dropped, or successful. He said that he told them to "drive carefully" but that he meant by that phrase only that they should not drink and drive while under temporary licence or else that could be charged again and possibly get a more severe penalty.

### Further Investigation

13. During the period, June 1987 to April, 1988, the Law Society conducted a further investigation. That investigation paralleled a detailed investigation conducted by the York Regional Police.

14. As part of that investigation, Constable Cusimano, acting as a potential client, contacted the Solicitor and met with him on July 3, 1987, which meeting resulted in the transcript referred to above in this Agreed Statement.

15. The results of the police investigation were compiled and were reviewed by an Assistant Crown Attorney in the Regional Municipality of Peel. On the advice of that individual, no criminal charges were laid by the police.

Interview with Gary Gibson - Particular 2(d)

16. On April 8, 1988, Gary Gibson, a Staff Investigator with the Society, met with Mr. Hengen. At the time, Mr. Gibson had available to him the results of the police investigation. Mr. Gibson advised Mr. Hengen that he had received information to suggest that the Solicitor had counselled clients to drive during a period of licence suspension. The Solicitor gave an explanation as to the content of advice he provided to clients in such matters. The Solicitor told Mr. Gibson the following "at times clients have asked me whether or not they were legally required to pick up the registered mail. I informed these clients that I knew of no law requiring them to pick up registered mail. Usually, registered mail is bad news." This was confirmed by letter from Mr. Gibson to Mr. Hengen dated April 11, 1988, Mr. Hengen wrote to Mr. Gibson on April 15, 1988 saying that he had not told his clients that "usually, registered mail is bad news." This was not an accurate statement. Copies of both letters will be provided to the Committee.

Subsequent Events

17. The Solicitor was re-interviewed by Mr. Gibson on June 9, 1988 and supplied with a copy of the transcript of the conversation with Constable Cusimano. After reading the transcript, the Solicitor advised Mr. Gibson that there appeared to be a "contradiction of statements" between the April 8th statement and the transcript. The Solicitor requested further time to examine the transcript and ask for a meeting with Discipline Counsel.

18. Subsequently, the Solicitor retained counsel and a meeting was conducted with Steven Sherriff, Senior Counsel - Discipline: Mr. Sherriff asked the Solicitor's counsel to forward a list of all clients who might be driving while their licences were in fact suspended.

19. On September 13, 1988, the Solicitor provided a list of 12 clients to whom such advice had been given, which list appears above in the agreed statement. The Solicitor advised of five other clients, Onderka, Medland, Bickerstaff, Riley and Forbes to whom this type of advice had not been given. The Solicitor advised that Bikerstaff and Riley did not seek temporary licences and Forbes picked up his registered mail notifying him of the suspension. Onderka and Medland were second-time offenders whom the Solicitor also advised not to drive while suspended.

21. The Solicitor advised that he had tried to be as complete as possible in compiling the list. He has also told the Society that he has now sent letters to each of the clients to whom he gave the improper advice and advised them not to drive during the currency of any suspension.

DATED at Toronto this 1st day of August, 1989"

On the basis of the Agreed Statement of Facts, the Committee made a finding of professional misconduct on each of the complaints.

## RECOMMENDATION AS TO PENALTY

---

We recommend the appropriate penalty to be a reprimand in Convocation. Were it not for the substantial evidence of good character and the cooperation the member eventually showed, we feel that this would be an appropriate case for a short suspension.

REASONS FOR RECOMMENDATION

The gravamen of the offences set out in the Complaint is that the Solicitor improperly counselled clients to avoid the operation of the law with respect to suspension of motor vehicle licences. There was nothing improper in advising clients to file a notice of appeal against a conviction for an offence that resulted in a suspension of a motor vehicle licence with a view to obtaining a temporary licence pending disposition of the appeal. Further, there was nothing improper in subsequently abandoning the appeal. However, Mr. Hengen's conduct went beyond that and involved improper counselling of his clients to avoid the reinstatement of the suspension upon abandonment of the appeal.

While it is not clear that he appreciated at the outset that the advice that he was giving was improper, that clearly was no longer the case at the time of his interview on May 13, 1987, with John Wissent, a staff lawyer employed by the Law Society.

Counsel for the Solicitor submitted that the appropriate disposition be a reprimand in Committee. We do not agree. The most important element of the penalty in this case is general deterrence. A reprimand in Committee is insufficient.

We take into consideration the fact that the member has been practising for 19 years and enjoys an exemplary reputation among those in the profession with whom he has dealt. We are impressed by the many letters of good character and the fact that four character witnesses, including a judge before whom the Solicitor had appeared from time to time, attended at the hearing prepared to give evidence on his behalf.

We also take into consideration the fact that eventually the Solicitor cooperated fully with the Law Society investigation and made known to the investigator the names of all of the clients to whom the improper advice had been given.

We note it was good fortune that the clients of the Solicitor who were driving illegally as a result of the advice were not involved in any accidents which would undoubtedly have raised problems with insurance coverage.

Patrick Christian Hengen was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 21st day of March, 1969.

ALL OF WHICH is respectfully submitted

DATED this 17th day of October, 1989

"Dennis R. O'Connor"
Chair

There were no submissions by either counsel in regard to the Report.

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

Carried

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

There were submissions as to Penalty by both counsel who then withdrew.

The Recommendation as to Penalty moved by Mr. Somerville and seconded by Mr. Lerner was adopted.

The solicitor and counsel were recalled and informed of the adoption of the Recommendation as to Penalty.

The solicitor signed a waiver of appeal and after counsel and the public withdrew the Treasurer administered a reprimand in Convocation.

.....

Re: MEYER FELDMAN, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. Robert Conway appeared for the Society and Mr. Charles Mark appeared for the solicitor who was not present.

Mr. Mark indicated that he was seeking an adjournment to enable him to make written submissions and to call witnesses as to the solicitor's good character. Mr. Mark further indicated that he did not agree to the solicitor giving an undertaking not to practice during the adjournment.

Mr. Conway for the Society indicated that he felt that it should be a condition of the adjournment that the solicitor undertake not to engage in the practice of law. Mr. Conway indicated that in light of the seriousness of the recommended penalty of an 18 month suspension that the solicitor should not be permitted to practice.

Counsel, the reporter and members of the public withdrew.

It was moved by Mr. Howie, seconded by Mr. Lerner that the adjournment be granted on an undertaking not to practice with such time to be considered in regard to penalty if the suspension was ultimately adopted.

Not Put

It was moved by Mr. Shaffer, seconded by Mr. Rock that the condition that the solicitor not engage in the practice of law not be adopted.

Withdrawn

It was moved by Mr. McKinnon, seconded by Mr. Spence that the adjournment be granted on condition that the solicitor have co-signing controls on his trust account by a person approved by the Law Society.

Carried

Counsel and the reporter were recalled and Mr. Mark was asked whether his client would consent to such an arrangement. Mr. Mark replied that his client would consent.

The matter was adjourned to the April Discipline Convocation.

Counsel retired.

.....

Re: MARTIN SHELDON PILZMAKER, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. Robert Conway appeared for the Society and Mr. Brian Casey appeared for the solicitor who was not present.

Convocation had before it the Report and Recommendation as to Penalty of the Discipline Committee dated 20th October 1989 together with an Affidavit of Service sworn 23rd January 1990 by Louis Katholos that he had effected service on the solicitor by registered mail on 7th November 1989 (marked Exhibit 1). The Acknowledgement, Declaration and Consent completed by the solicitor was filed (marked Exhibit 2). Copies of the Report having been sent 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 D. Yachetti, Q.C. (Chair)
Patricia J. Peters, Q.C.
Daniel J. Murphy, Q.C.

In the matter of
The Law Society Act

and in the matter of
MARTIN SHELDON PILZMAKER
of the City
of Toronto
a barrister and solicitor

J. Robert Conway
for the Society

Brian Casey
for the solicitor

Heard: October 12, 1989

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

THE DISCIPLINE COMMITTEE BEGS LEAVE TO REPORT:

REPORT

---

On May 1, 1989, Complaint D36/89 was issued against Martin Sheldon Pilzmaker, alleging that he was guilty of professional misconduct.

The matter was heard in public on October 12, 1989 before this Committee composed of Roger D. Yachetti, Q.C. as Chair, Patricia J. Peters, Q.C., and Daniel J. Murphy, Q.C.

Mr. Pilzmaker was not in attendance. Mr. Brian Casey represented Mr. Pilzmaker. Mr. Robert Conway appeared on behalf of the Law Society.

DECISION

---

The following particulars of professional misconduct were admitted by Mr. Pilzmaker and found to have been established:

(Paragraph 2: Complaint D36/89)

"(a) He has refused to co-operate in certain serious investigations of his professional conduct thereby demonstrating that he is ungovernable by the Law Society."

Evidence

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

"AGREED STATEMENT OF FACTS

1. In addition to an outstanding discipline complaint, the Law Society has advised the Solicitor that it is investigating other matters of alleged professional misconduct. The Law Society has required the Solicitor's co-operation in these investigations.

2. The Solicitor understands the subject matters which the Law Society seeks to investigate. He understands that the Society is asserting that it is lawfully entitled to conduct the investigations in question and to require his co-operation. After due consideration he has decided to refuse to co-operate.

3. The Solicitor understands that the Discipline Committee and Convocation may find they cannot govern a member who takes these positions and may conclude that he is ungovernable and is not fit to remain a member. The Solicitor appreciates that disbarment is the penalty which may be imposed and he does not contest the imposition of such a penalty under the circumstances."

The Committee accepted the Agreed Statement of Facts and made a finding of professional misconduct as particularized in paragraph 2 of Complaint D36/89.

RECOMMENDATION AS TO PENALTY

This Committee recommends that Martin Pilzmaker be disbarred.

REASONS FOR RECOMMENDATION

The Agreed Statement of Facts relating to the Solicitor's refusal to co-operate with the Law Society in an investigation of alleged professional misconduct is an acknowledgement by the Solicitor that he is no longer governable by his governing body. We regard such conduct or attitude as serious professional misconduct. By his own admission, Mr. Pilzmaker no longer qualifies for the practice of law in the Province of Ontario.

In the absence of any explanation or evidence in mitigation of penalty, we have no hesitation in recommending that Martin Pilzmaker be disbarred.

Martin Pilzmaker was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 29th day of March, 1987.

ALL OF WHICH is respectfully submitted

DATED this 20th day of October, 1989

"Roger D. Yachetti"
Chair

Mr. Casey indicated that Mr. Pilzmaker was not consenting to the Report and Recommendation as to Penalty but at the same time was not opposing it. Mr. Casey wished to make it clear that the finding of professional misconduct related to the fact that Mr. Pilzmaker had refused to co-operate with the Society and was not a finding of professional misconduct based on his immigration practice. Mr. Casey indicated that Mr. Pilzmaker had considered the matter and felt it was in his best interests and the interests of his clients not to co-operate with the Law Society.

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

Carried

Counsel and the reporter withdrew.

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

Carried

Counsel were recalled and informed of the decision.

Mr. Arnup did not take part in the discussion concerning the Pilzmaker matter nor did he vote.

.....

Re: KEVIN JOHN MAHAN, Hamilton

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. Reg Watson appeared for the Society and the solicitor appeared on his own behalf.

The solicitor requested an adjournment in order to allow him time to retain counsel. He indicated that his counsel at the hearing Mr. Charles Mark had notified him on Tuesday afternoon that because of an outstanding account he would not be appearing before Convocation on behalf of the solicitor.

Mr. Watson on behalf of the Society opposed the adjournment. He indicated that the offences set out in the Discipline Report were the second such set of charges and indicated that the solicitor was ungovernable and therefore the matter should be dealt with right away.

Mr. Mahan indicated that he would continue his undertaking not to engage in the practice of law.

The solicitor, counsel and the reporter withdrew.

Mr. Arnup indicated that he felt that if the adjournment was to be granted the solicitor should be advised that some members of Convocation might move that the solicitor be disbarred.

It was moved by Mr. Howie, seconded by Mr. Ferguson that the adjournment be granted peremptory to the solicitor to the February Discipline Convocation and that the solicitor be advised that there would likely be a motion for disbarment. A further term of the adjournment to be that the solicitor not engage in the practice of law.

Carried

It was moved by Mr. Bragagnolo, seconded by Mr. Yachetti that Convocation proceed to hear the matter.

Not Put

It was moved by Mr. Ferguson, seconded by Mr. McKinnon that the matter be held down and that either Mr. Mark or his junior be instructed to appear before Convocation to explain their non-appearance.

Not Put

The solicitor, counsel and the reporter were recalled and informed that a motion granting the adjournment on terms had been granted. The solicitor was informed of the terms of the adjournment including the fact that it was likely that a motion for disbarment would be made and that he should come prepared to deal with that possibility.

The solicitor and counsel retired.

.....

Re: WILLIAM GEOFFREY MILNE, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. Shaun Devlin appeared for the Society and Mr. Brian Bellmore appeared for the solicitor who was also present.

Mr. Bellmore made an application for a two month adjournment with the consent of the Society.

Both counsel requested that the matter be dealt with in camera because of the fact that it might become necessary to refer to new information relating to the criminal charges in dealing with the request for the adjournment.

The members of the public withdrew.

It was moved by Mr. Topp, seconded by Mr. Yachetti that the matter proceed in camera.

Carried

The solicitor, counsel and the reporter withdrew.

It was moved by Mr. Topp, seconded by Mr. Yachetti that the adjournment to the April Discipline Convocation be granted.

Carried

Counsel and the solicitor were recalled and informed that the adjournment had been granted.

The solicitor and counsel retired.

.....

Re: WILLIAM DONALD GRAY, Toronto

Mr. Somerville placed the matter before Convocation.

The reporter was sworn.

Mr. Reg Watson appeared for the Society and Mr. Alan Davidson appeared for the solicitor who was present.

Convocation had before it the Report and Recommendation as to Penalty of the Discipline Committee dated 2nd November 1989 together with an Affidavit of Service sworn 22nd November 1989 by Louis Katholos that he had effected service on the solicitor by registered mail on 9th November 1989 (marked Exhibit 1). The Acknowledgement, Declaration and Consent completed by the solicitor was filed (marked Exhibit 2). Copies of the Report having been sent 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)
Mrs. Netty Graham
Kenneth E. Howie, Q.C.

In the matter of
The Law Society Act

and in the matter of
WILLIAM DONALD GRAY
of the City of
Toronto
a barrister and solicitor

H. Reginald Watson
for the Society

Not represented
for the solicitor

Heard: February 28, 1989
August 14, 1989

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

THE DISCIPLINE COMMITTEE BEGS LEAVE TO REPORT:

REPORT

---

On June 20, 1988, Complaint D56/88 was issued against William Donald Gray and on July 5, 1988 Complaint D60/88 was issued against the same Solicitor.

The matter was heard in public on February 28, 1989 and August 14, 1989 before this Committee composed of Harvey T. Strosberg, Q.C. as Chair, Mrs. Netty Graham and Kenneth E. Howie, Q.C.

Mr. Gray attended the hearing and was not represented by Counsel. Mr. Reg Watson appeared on behalf of the Law Society.

DECISION

---

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

(Para 2: Complaint D56/88)

"(a) He failed to reply to correspondence from the Law Society dated February 15th, March 30th, and May 12th, 1988 regarding a complaint made against him by Ricki Harris, Barrister and Solicitor."

(Para 2: Complaint D60/88)

"(a) He breached his written undertaking to the Law Society dated February 18th, 1987, in that after co-signing controls were placed on his trust account, he failed to deposit all trust monies into the trust account subject to the controls and starting in or about April of 1987, he maintained another trust account in a different financial institution unknown to the Society.

(b) He breached his written undertaking to Messrs. Cengarle & Counter, Barristers and Solicitors, dated October 1st, 1986, in that he failed to hold in trust the sum of $1,000.00 respecting the Vojnovic sale to MacKenzie and Swynar.

(c) He failed to honour an agreement to protect the account of his fellow solicitor, Merrick R. Siegel, which agreement was made to allow the transfer of the files of client, Vincent John, from Mr. Siegel to the Solicitor.

(d) He failed to properly maintain the books, records and accounts of his practice of law as required by the Regulation made pursuant to the Law Society Act."

FINDINGS OF THE DISCIPLINE COMMITTEE

There are five counts of professional misconduct alleged against Mr. Gray. The solicitor agreed that the hearing should proceed in public. The hearings were held on February 28, 1989 and on August 14, 1989.

Mr. Gray was called to the Bar on April 16, 1969. At all material times to these complaints, he carried on what might be termed a "general practice".

COMPLAINT D60/88 SUB-PARAGRAPH (a) ALLEGES THAT MR. GRAY WAS GUILTY OF PROFESSIONAL MISCONDUCT IN THAT:

HE BREACHED HIS WRITTEN UNDERTAKING TO THE LAW SOCIETY DATED FEBRUARY 18, 1987, IN THAT AFTER CO-SIGNING CONTROLS WERE PLACE ON HIS TRUST ACCOUNT, HE FAILED TO DEPOSIT ALL TRUST MONIES INTO THE TRUST ACCOUNT SUBJECT TO THE CONTROLS, AND STARTING IN OR ABOUT APRIL OF 1987, HE MAINTAINED ANOTHER TRUST ACCOUNT IN A DIFFERENT FINANCIAL INSTITUTION UNKNOWN TO THE SOCIETY.

In February, 1987 Mr. Gray operated an active trust account at the Royal Bank. He also held open a trust account at the Bank of Montreal which was inactive. In clear and unequivocal terms, by letter dated February 18, 1987, Mr. Gray made an undertaking to the Law Society of Upper Canada ("Society") in the following terms:

> I hereby undertake in future to deposit all trust money coming into my possession or control forthwith into the trust account in my name at the Royal Bank of Canada, 168 Dundas Street West, Toronto, Ontario, M5G 1C6.
>
> I have read subsection 3 of section 14 of the Regulations and understand the trust money includes unearned fees and money received as advanced for costs and expenses.

As a result of this undertaking and co-signing controls implemented, Mr. Gray could only draw trust cheques on the Royal Bank trust account if they be co-signed either by Mr. Henderson or some other designated person employed by the Society or co-signed by his designated Chartered Accountant.

Mr. Gray's offices are located on Chestnut Street, near the Society's premises. The offices of Mr. Gray's accountant are at Sheppard Avenue. As a matter of logistics, it was simpler for Mr. Gray to have cheques co-signed by a member of the Society's staff than by his own accountant.

For about six weeks, Mr. Gray had all trust cheques properly co-signed by Mr. Henderson. In the period from about April 1987 to in or about March of 1988, Mr. Gray never deposited trust monies into the Royal Bank trust account. Instead, he operated his trust account at the Bank of Montreal. The Bank of Montreal was unaware of the undertaking and this trust account was not subject to co-signing controls.

When asked why he breached the undertaking, Mr. Gray explained that on one occasion when he attended at the Law Society to present cheques for signature by Mr. Henderson, Mr. Henderson absolutely, unequivocally and without justification refused to sign any trust cheques and announced that he did not in the future intend to co-sign any cheques, nor would any other Society employee.

Mr. Henderson categorically denied ever making any such refusal. He would only refuse to sign trust cheques when the appropriate substantiating documents were not presented to him. He acknowledged urging Mr. Gray to put his financial records in order, saying that he was tired of co-signing cheques and that he would prefer if Mr. Gray would attend upon his Chartered Accountant for a co-signature, but he absolutely denied making a blank refusal to co-sign cheques.

The Committee prefers the evidence of Mr. Henderson to that of Mr. Gray. Mr. Gray made no memorandum, nor wrote any letter of complaint to the Society. He never confirmed Mr. Henderson's statements nor called upon him in writing to deal with cheques presented in a fair and reasonable fashion. There was never an occasion on which cheques presented to Mr. Henderson were not ultimately signed. Mr. Gray, and his secretary, Miss Bullen, both testified that if Mr. Henderson initially refused to sign a cheque, he always did so after being presented with further information.

When called upon by Miss O'Connor, an employee of the Society, to give an explanation for breaching this undertaking, Mr. Gray called Mr. Henderson an "asshole", implying that this categorization in some fashion justified his breach.

Mr. Gray intentionally, flagrantly and without justification breached his written undertaking to the Law Society. Why did he do this? Probably as a matter of pique in the first instance. Yet, his breach continued in a willful manner for a period of eleven months.

The Committee finds this complaint to be established.

COMPLAINT D60/88, SUB-PARAGRAPH (b) ALLEGES THAT MR. GRAY WAS GUILTY OF PROFESSIONAL MISCONDUCT IN THAT: HE WAS BREACHED HIS WRITTEN UNDERTAKING TO MESSRS. CENGARLE AND COUNTER, BARRISTERS AND SOLICITORS, DATED OCTOBER 1, 1986, IN THAT HE FAILED TO HOLD IN TRUST THE SUM OF $1,000.00 RESPECTING THE VOJNOVIC SALE TO MACKENZIE AND SWYNAR.

By agreement of purchase and sale dated on or about August 17, 1986, Milan Vojnovic ("vendor") agreed to sell Roxanne MacKenzie and Swynar ("purchaser") the property known at 350 Indian Grove Court in the City of Toronto. Appendix A to the Agreement of Purchase and Sale required the vendor, prior to closing, to complete certain particularized repairs "in a reasonable workmanlike fashion".

Mr. Gray acted as Solicitor for the vendor. Mr. Licio Cengarle acted as Solicitor for the purchaser. The transaction closed on October 1, 1986, but as the fates would have it, the particularized repairs were not completed by the date of closing. An undertaking was therefore requested and given in writing by Mr. Gray, dated October 1, 1986. In part, it was in the following terms:

> . . . and to hold back the sum of $1,000.00 in trust pending completion of the items described in Appendix A of the Agreement of Purchase and Sale; failing which, after one month such funds will be utilized to complete such items.

These words were added to the undertaking signed by Mr. Gray, by a member of his staff who had the actual authority to do so.

The undertaking is inelegant in its phraseology, but its purpose is clear; Mr. Gray was to hold $1,000.00 in his trust account until the repairs were completed and, after one month, the money was to be used to effect the repairs.

Mr. Gray did not hold the $1,000.00 in trust. He transferred $1,000.00 from his trust account to his general account on October 3, 1986, two days after closing. He testified that before signing the cheque transferring the $1,000.00 to his general account, this undertaking was brought to his attention by his secretary. He knew that he had an obligation to hold this $1,000.00 in trust but, he preferred to transfer to his general account the $1,000.00 plus the amount to pay his fees and disbursements rather than transferring only the amount to pay his fees and disbursements.

Mr. Cengarle's office wrote Mr. Gray on October 28, 1986 confirming that the $1,000.00 was to be held in trust and requesting reimbursement of $200.00 spent for cabinets. Mr. Gray paid the $200.00 from his general account by cheque on or about December 17, 1986.

Mr. Gray further breached his undertaking by paying the $800.00 balance of the $1,000.00, to the vendors by cheque dated January 27, 1987.

It was only in or about July, 1987 that Mr. Cengarle's office learned from Mr. Gray's office that the $800.00 had been released.

Mr. Gray, in his evidence, admitted that he ought not to have transferred the $1,000.00 to his general account. By way of explanation, he stated that he had on deposit $30,000.00 or some other substantial sum of money in his general account. In opening to the Committee, Mr. Gray termed this a "technical breach" of the Rules of Professional Conduct.

Mr. Gray also argues that the purchaser had no valid claim to the balance of the $800.00 because there was no obligation on the vendor's part to repair the roof for which deficiencies the money was called upon.

The simple response to these assertions is that they are irrelevant. The purchaser and his solicitor properly expected Mr. Gray to hold the $1,000.00 in trust indefinitely, or until it was expended for repairs after one month. If there was any dispute as to disposition of all or part of the $1,000.00, Mr. Gray ought to have interpleaded or taken some other action.

Mr. Gray's transfer of the $1,000.00 to his general account on October 3, 1986 was completed before Mr. Gray had any knowledge of whether the repairs were completed by the vendor and without any authorization from either the vendor or from the purchaser. Mr. Gray was in breach of his undertaking. This complaint has been established.

COMPLAINT D60/88, SUB-PARAGRAPH (c) ALLEGES THAT:

HE FAILED TO HONOUR AN AGREEMENT TO PROTECT THE ACCOUNT OF HIS FELLOW SOLICITOR, MERRICK R. SIEGEL, WHICH AGREEMENT WAS MADE TO ALLOW THE TRANSFER OF THE FILES OF CLIENT, VINCENT JOHN, FROM MR. SIEGEL TO THE SOLICITOR.

Mr. Vincent John was involved in a rash of litigation He retained Merrick R. Siegel to act on his behalf. The retainer included the prosecution of an action for damages against one McKnight. On May 29, 1986, Mr. John agreed in writing to pay Mr. Siegel $2,263.84 plus interest at the prime rate until payment in settlement of some of the accounts. Mr. Siegel continued to do legal work for Mr. John; but, eventually, Mr. John apparently became dissatisfied with Mr. Siegel's performance. In or about December of 1986, he consulted Mr. Gray.

The agreement made between Mr. Gray and Mr. Siegel, which was allegedly breached, was formed by the following documents:

(a) A letter dated December 13, 1986 from Mr. Gray to Mr. Siegel, which letter was also signed by Mr. John;

(b) A letter dated March 14, 1987 from Mr. Gray to Mr. Siegel, which letter was also signed by Mr. John and,

(c) A memorandum dated March 20, 1987 signed by Mr. John.

The importance of these documents require that they be set out in full.

The letter of December 13, 1986 from Mr. Gray to Mr. Siegel reads as follows:

RE: Transfer of Files from Your Offices
Client: Vincent John

We are in receipt of your letter to us dated the 10th day of December, 1986, together with a copy of settlement agreement of same date, executed by Mr. John.

From any monies received in the course of settlement by the writer, up to the sum of $3,311.74, will be sent to your offices. In the event that Mr. John decides to change to another solicitor, then the files will be returned to you, in tact.

We look forward to receiving your entire files, and then when we have completed matters, the files will be returned to your offices, subject to your wanting them.

Mr. John has signed at the bottom of this letter to show that he is in agreement with the writer's terms for taking the files from your offices. Kindly release the files for Mr. John as soon as possible so that we can get to work on these matters.

Yours very truly,
(signed)
William D. Gray

WDG/bg

I agree with the terms as set out above.

(signed)
Vincent John

The letter of March 14, 1987 from Mr. Gray to Mr. Siegel reads as follows:

Dear Sirs:

Re: Possible Transfer of Car Accident File
to the Writer's Offices

Our client attended at our offices today about the above-mentioned matter.

We advised him that we are prepared to take over carriage of the file in question on the following basis:

(a) Sharing of Costs on a 50/50 basis until the writer's account is paid in full;

(b) Paying to you the remaining monies owed on your account herein;

(c) Paying to you and the client, jointly remaining settlement funds.

For example, if the writer's account in this matter is $500.00 and if your outstanding account is $1,000.00: then the first $1,000.00 of recovery is paid $500.00 to your offices; the next $500.00 is paid to cover your balance of fees. Remaining monies are then paid to the client and yourself (in trust), for you and the client to have further discussions over.

In the event that the client desires to change solicitors at some future time, then the file is returned to your offices intact.

Yours very truly,
(signed)
William D. Gray

WDG/bg

I have read over the above and I agree with it.

(signed)
Vincent John

The memorandum dated March 20, 1987 reads as follows:

TO: Gray, Offer & David

AND TO: Fair & Siegel

The following sums are owing to Fair & Siegel, my former solicitors:

1. $2,263.84 with interest from May 19, 1986.
2. $3,311.74 with interest from December 10, 1986.
3. $235.00 with interest from March 20, 1987.

I agree to compute the interest from the dates involved at 8.75% (prime rate Bank of Canada and Toronto Dominion Bank).

As of March 20, 1987 this amounts to: $191.48 with respect to 1 above; $67.62 with respect to 2 above, total: $259.10.

Balance owing as of March 20, 1987: $6,002.06 together with per diem interest from today of $1.46.

The account for $3,311.74 is protected under the letter from Gray, Offer & David dated December 13, 1986.

This letter does not mention the interest as set out above but I now understand that this also is protected under the terms set out in that letter.

As I wish Mr. Gray to handle the John vs. Marr matter as well, this file will be transferred to him under the following terms:

(a) Sharing of costs on a 50/50 basis as set out in the letter of Gray, Offer & David, copy attached.

(b) Paying to Fair & Siegel the accounts of $2,263.84 and $235.00 plus interest of $259.10 to March 20, 1987 and $1.46 per diem thereafter.

(c) Paying to Fair and Siegel the remaining settlement funds to $3,311.74.

I will pay Fair & Siegel $20.00 each week, commencing Monday, March 23, 1987 to be credited first to the interest owing and then to principle.

Should I be in arrears more than two payments, Fair & Siegel at their discretion may require the return of the files.

This agreement is in addition to that set out in the letter from Gray, Offer & David dated December 13, 1986.

I hereby irrevocably authorize and direct Gray, Offer & David to give full effect to all of the above.

I understand that I have the right to discuss this agreement with an independent solicitor. I do not wish to do so.

Dated at Toronto March 20, 1987

(signed)

_____

Vincent John

The Committee finds that the letters and memorandum establish an agreement whereby Mr. Gray agreed to pay Mr. Siegel 50% of all costs received and all settlement monies until Mr. Siegel's accounts were paid in full. If implemented, Mr. Siegel would be paid in full before Mr. John received any money. In his evidence Mr. Gray said that these letters and memorandum do not constitute an undertaking and, so he reasoned, he was not obligated to pay the settlement monies to Mr. Siegel before any payment to Mr. John. Mr. Gray categorized his interpretation as "sharp practice"; but, he maintained that his "sharp practice" relieved him of any obligation to pay Mr. Siegel. The Committee rejects this explanation. It is no defence to the international breach of the agreement made between Mr. Siegel and Mr. Gray.

Mr. Gray did not abide this agreement because before he paid any money to Mr. Siegel, he paid $1,050.00 to Mr. John from the settlement of Mr. John's claim against McKnight. This breach is exacerbated by the fact that Mr. Gray paid himself $200.00 for costs notwithstanding the agreement to divide costs on a "50/50" basis with Mr. Siegel.

That Mr. Gray knew that the disbursing of monies to Mr. John was in breach of his agreement is demonstrated by his letter to his client, Mr. John, dated September 12, 1987, wherein he stated, in part, as follows:

> We are pleased to enclose our cheque payable to your order for this amount and confirm your instructions not to inform your former solicitors of this recovery, unless absolutely necessary for the writer to do so.

There was some suggestion in the evidence that the payment to Mr. John was done as a matter of compassion because of Mr. John's difficult financial plight. The Committee does accept this as justification for breaching the agreement. If Mr. Gray was moved by compassion, his obligation was to persuade Mr. Siegel to release him from his agreement.

The Committee therefore concludes that this complaint is established.

COMPLAINT D60/80 SUB-PARAGRAPH (d) ALLEGES THAT MR. GRAY WAS GUILTY OF PROFESSIONAL MISCONDUCT IN THAT:

. . . HE FAILED TO PROPERLY MAINTAIN THE BOOKS, RECORDS AND ACCOUNTS OF HIS PRACTICE OF LAW AS REQUIRED BY THE REGULATION MADE PURSUANT TO THE LAW SOCIETY ACT.

This complaint is two-pronged: First, Mr. Gray failed to produce the books and records for his practice for the year 1986; second, his remaining books and records were deficient in the following particulars:

| Inadequacy | May 20, 1980 | Aug. 23, 1983 | Feb. 5, 1987 | Mar. 18, 1988 |
|---|---|---|---|---|
| 1. Transfers from trust to general for fees prior to delivery of fee billings | x | x | x | x |

| Inadequacy | May 20, 1980 | Aug. 23, 1983 | Feb. 5, 1987 | Mar. 18, 1988 |
|---|---|---|---|---|
| 2. Improper disbursement charges to clients | x | x | | |
| 3. No fees record maintained | x | | | |
| 4. Differences in monthly trust comparisons | x | x | x | x |
| 5. Unearned retainers deposited improperly to general account | | x | | x |
| 6. Client's trust ledger accounts inadequate | | x | | |
| 7. Inactive trust ledger accounts | | x | x | x |
| 8. Personal use of trust account | | x | | |
| 9. No transfer record maintained | | x | | |
| 10. General case receipts book inadequate | | x | | x |
| 11. Trust comparisons in arrears | | x | x | |
| 12. Duplicate deposit slips not detailed | x | | x | |
| 13. Uncorrected reconciling items on trust bank reconciliation | | | x | x |

| Inadequacy | May 20, 1980 | Aug. 23, 1983 | Feb. 5, 1987 | Mar. 18, 1988 |
|---|---|---|---|---|
| 14. Miscellaneous client trust ledger account | | | | x |
| 15. One overdrawn trust ledger account | | | | x |

Mr. Gray acknowledged that his 1986 books and records were not produced at the time of the Society's audit on or about March 18, 1988. He explained that the 1986 books and records were in the possession of his accountants who misplaced them. The 1986 books and records were in the accountant's possession for updating and correction necessitated by the hiring, at his accountant's suggestion, of a bookkeeper who turned out to be unskilled in dealing with lawyer's books and records. Miss O'Connor confirmed the inadequacies particularized above and Mr. Gray did not take issued with the fact of the inadequacies.

Mr. Gray did not present any independent accounting evidence establishing that these deficiencies were corrected. Mr. Gray believes that these inadequacies have been corrected and stated that sometime after February 18, 1989, his 1986 books and records were "found". He stated that he will produce these records to the Society's audit department. The question of the production of the 1986 books and records and the correction of the inadequacies are matters which are relevant to the issue of penalty; but, on the evidence before us, it is clear that the complaint has been established and the Committee so finds.

Mr. Gray was also charged that he was guilty of professional misconduct in that:

HE FAILED TO REPLY TO CORRESPONDENCE FROM THE LAW SOCIETY DATED

FEBRUARY 15, MARCH 30, AND MAY 12, 1988 REGARDING A COMPLAINT

MADE AGAINST HIM BY RICKI HARRIS, BARRISTER AND SOLICITOR.

Mr. Gray acknowledges that he made no response to letters from the Society dated February 15, March 15, March 30, and May 12, 1988 before the laying of this complaint on June 20, 1988. Mr. Gray ultimately responded by letter dated July 30, 1988 addressed to the Society and the Ontario Legal Aid Plan.

Mr. Gray's explanation for failing to respond is difficult to comprehend. He testified at one point that because his response to the Society would be communicated to the complaining counsel, who was adverse in interest to him in a matrimonial action, that the interests of his client would be somehow prejudiced by his response. However, the matrimonial litigation was already settled. Further, the complaint was that Mr. Gray had failed to use his best efforts to have a Legal Aid lien removed from a property to be conveyed as part of the settlement. At another point in his evidence, Mr. Gray stated that he was afraid he would "get beat for my (his) fees".

Again, it is difficult to understand how a response to the Society would compromise Mr. Gray's ability to collect a fee.

At another point in his evidence, Mr. Gray stated that he simply was mad and did not wish to respond.

Anger is probably the reason that Mr. Gray did not respond. But, anger is not a defence to this charge of professional misconduct. Mr. Gray did not fulfill his obligation to respond to the Society within a reasonable period of time and this complaint is also established.

The Committee therefore finds on the balance of probabilities that each complaint has been established and each constitutes professional misconduct.

## RECOMMENDATION AS TO PENALTY

Given all of the circumstances set out, the Committee recommends

that Mr. Gray be suspended from practice for a period of 30 days for his professional misconduct other than the misconduct relating to the failure to maintain his books and records [Complaint D60/80, Subparagraph (d)].

The Committee also recommends that Mr. Gray be suspended for a period of 30 days consecutive to the 30 days previously recommended and month to month thereafter until the deficiencies in his books and records are corrected to the satisfaction of the Society's Counsel, or failing his approval, until ordered by Convocation.

## REASONS FOR RECOMMENDATION

An undertaking is a solemn promise made by a solicitor to a fellow solicitor or other person. A solicitor's undertaking is his or her bond. The practice of law would become infinitely more complicated and costly and the public interest could not be as well protected if solicitors were not scrupulous about fulfilling their undertakings. The Society's governing of its members would be infinitely more complicated and costly if solicitors were not strictly required to abide their undertakings to the Society.

The solemnity in which undertakings are held is illustrated by the common law and the Rules of Professional Conduct. A court may on summary application require a solicitor, as an officer of the court, to fulfill his or her undertaking. In United Mining and Finance Corp. v. Becker (1910) 2 K.B. 296 at p. 305 Mr. Justice Hamilton said:

> The conduct which is required of solicitors is, to this extent, perhaps raised to a higher standard than the conduct required of ordinary men, in that it is subject to the special control which a Court exercises over officers so that in certain cases they may be called upon summarily to perform their undertakings, even where the contention that they are not liable to perform them is entirely free from any taint of moral misconduct.

In Legal Ethics: A Study of Professional Conduct, Mr. Mark Orkin said:

> Nevertheless, solicitors as officers of the Court may be summarily ordered to fulfill their undertakings and although the Court may decline to intervene when disputes arise as to the interpretation of an understanding, it will nonetheless require, whenever possible, that undertakings be carried out strictly and honourably as though they were embodied in orders of the Court, the purpose being to ensure honest conduct on the part of its officers.
>
> Undertakings as between solicitors are always a matter uberrimae fidei, and in England a breach of an undertaking given by one solicitor to another is considered to be an act of professional misconduct, as is a breach of an undertaking given to the Law Society.

The foregoing aptly illustrates that "Thou shalt not breach an undertaking" is a commandment of legal life.

The common thread running through the professional misconduct established against Mr. Gray (other than his failure to maintain his books and records), is his cavalier attitude toward, utter disdain for, and willful disregard of his undertakings to and agreement with his fellow solicitors and the Society. This cavalier attitude and shocking disregard is illustrated by:

a. Mr. Gray's knowingly transferring $1000.00 from his trust account to his general account, contrary to his written undertaking which was brought to his attention contemporaneous with the transfer;

b. His failure to abide his written agreement to a fellow solicitor to protect his fees, which failure Mr. Gray testified was justified, because he did not use the word "undertaking", and as such, he was not in breach of any agreement but was only, as he categorized it, engaging in "sharp practice";

c. His failure for about 10 months to abide a written undertaking to the Society whereby he agreed to deposit all trust monies to a designated trust account;

d. His testimony that he still believes that his failure to abide this undertaking to the Society was justified;

e. His testimony that he did not respond to the Society's inquiries because he was angry;

f. His lack of candour while giving his evidence before the Committee;

g. His demeanour while giving his evidence which reflected incredulity, anger, moral indignation, arrogance, and mystification at his being called to account for the breaches of the undertakings and agreement which, inferentially, he seemed to consider to be of little or no importance;

h. His steadfast refusal to express any remorse for his conduct even after a finding of professional misconduct by the Committee;

i. His obvious belief that on balance his conduct was justifiable.

The Committee believes it is fundamentally important to bring home to Mr. Gray the seriousness of his cavalier attitude towards and repeated breaches of his undertakings and agreement.

The Committee began its hearings on February 28, 1989 and completed the hearings on August 14, 1989. Mr. Gray has not yet corrected the deficiencies in his books and records nor has he yet produced his books and records for 1986 to the Society.

The Committee stood ready to receive an accountant's report even after adjourning on August 14, 1989. No accountant's report was tendered evidencing a correction of the deficiencies in Mr. Gray's books and records. Mr. Gray has had ample time to correct the deficiencies and yet there is no <u>independent</u> evidence of the correction of any of the deficiencies.

William Donald Gray was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 21st day of March, 1969.

ALL OF WHICH is respectfully submitted

DATED this 2nd day of November, 1989

"Harvey T. Strosberg"
Chair

There were no representations by either counsel in regard to the Report and it was moved by Mr. Somerville, seconded by Mr. Lerner that the Report of the Discipline Committee be adopted.

Carried

It was moved by Mr. Somerville, seconded by Mr. Lerner that the Recommendation as to Penalty contained in the Report that is that the solicitor be suspended for a total of 60 days be adopted.

There were submissions by both counsel on the issue of penalty. The solicitor's counsel sought a reprimand in Convocation rather than a 60 day suspension and requested in the alternative that Convocation adjourn the matter to await a report from LINK, the new solicitors' support program. Mr. Davidson wanted the solicitor to undertake some type of counselling for what he described as an attitude problem and felt that Convocation would be assisted in determining the appropriate penalty by a report from a counsellor.

The solicitor, counsel and the reporter then withdrew.

It was moved by Mr. Farquharson, but not seconded that the suspension be for a period of 6 months.

It was moved by Mr. Yachetti, seconded by Mr. Thoman that the solicitor be suspended for 3 months.

Withdrawn

The motion as to penalty put by Messrs. Somerville and Lerner was carried.

The solicitor and counsel were recalled and informed of the decision of Convocation that the solicitor be suspended for a total of 60 days.

Mr. Davidson requested that the suspension take effect on April 1st, 1990 to allow the solicitor time to take steps to ensure that his clients were adequately served. It was the Law Society's position that the solicitor required 10 days at the most to put his affairs in order.

The solicitor, counsel and the reporter withdrew.

It was moved by Mr. Farquharson, seconded by Mr. McKinnon that the suspension take effect 10 days from the date of Convocation that is the 5th of February.

Carried

The solicitor and counsel were recalled and informed of the decision that the suspension for 60 days would take effect on February 5th, 1990.

CONVOCATION ADJOURNED AT 11:40 A.M.

.....

Confirmed in Convocation this 22nd day of March, 1990.

Treasurer