

27th January, 1994

MINUTES OF SPECIAL CONVOCATION

Thursday, 27th January, 1994
9:30 a.m.

PRESENT:

The Treasurer, (Paul S.A. Lamek), Bastedo, Bellamy, Bragagnolo, Brennan, Campbell, Copeland, Curtis, Elliott, Feinstein, Howie, Lamont, Lax, McKinnon, Manes, Moliner, Murray, Ruby, Sealy, Somerville, Thom, Topp, Wardlaw and Weaver.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: WAYNE DOUGLAS BERTHIN - Midland

The Secretary placed the matter before Convocation.

The reporter was sworn.

Mr. Neil Perrier appeared for the Law Society and the solicitor appeared on his own behalf.

An adjournment was granted on consent to the Special Convocation in March.

Counsel and solicitor retired.

Re: DAVE ALLEN KLAIMAN - Thornhill

The Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Christina Budweth appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Counsel for the Society requested an adjournment and the solicitor neither opposed or consented to it.

Convocation granted an adjournment to the Special Convocation in March.

Counsel retired.

Re: JEFFREY MARK LEVY - Toronto

The Secretary placed the matter before Convocation.

The Reporter was sworn.

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Ms. Christina Budweth appeared for the Society and Mr. A. Scane, from Mr. Crane's office, appeared on behalf of the solicitor. The solicitor was not present.

An adjournment was granted on consent to the Special Convocation in March.
Counsel retired.

Re: GEORGE FLAK - Toronto

The Secretary place the matter before Convocation.

The reporter was sworn.

Ms. Christina Budweth appeared for the Society and Ms. Sandy Forbes, from Mr. Laskin's office, appeared on behalf of the solicitor. The solicitor was not present.

Counsel sought direction from Convocation that Ms. Curtis be directed to file a recommendation as to penalty. Material was distributed to the Benchers re: McDonald and Law Society of Upper Canada.

Counsel, the reporter and the public withdrew.

Ms. Curtis and Mr. Wardlaw withdrew until the conclusion of this matter.

It was moved by Mr. McKinnon, seconded by Mr. Topp that Convocation request Ms. Curtis to complete her duties by either filing her own recommendation as to penalty or concurring with one of the Recommendations in the Report.

Carried

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

Counsel retired.

Re: CHARLES JOHN LEWONAS - Woodstock

The Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Christina Budweth appeared for the Society and Ms. Janet Leiper appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 12th November, 1993, together with an Affidavit of Service sworn 20th January, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 6th December, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 24th January, 1994 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

27th January, 1994

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Daniel Murphy, Q.C., Chair
K. Julaine Palmer
Mrs. Netty Graham

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

Christina Budweth
for the Society

CHARLES JOHN LEWONAS
of the City
of Woodstock
a barrister and solicitor

Janet Leiper
for the solicitor

Heard: July 27, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 9th, 1993, Complaint D20/93 was issued against Charles John Lewonas alleging he was guilty of professional misconduct.

The matter was heard in public on July 27th, 1993, before this Committee composed of Daniel Murphy, Q.C., Chair, Julaine Palmer and Netty Graham. Mr. Lewonas attended the hearing and was represented by Janet Leiper. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D20/93

2. a) He failed to file with the Society within six (6) months of the termination of his fiscal year ending March 31, 1992, a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act;
- b) During the period March, 1990 to July, 1992, he failed to maintain his books and records in accordance with the provisions of section 15 of Regulation 573 under the Law Society Act; and
- c) He violated the provisions of a co-signing agreement with the Law Society by failing to obtain a co-signing signature for nine cheques drawn against his trust account during the month of June, 1992.

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The matter proceeded in part on the basis of an Agreed Statement of Facts of which the material reads as follows:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D20/93 and is prepared to proceed with a hearing of this matter on July 27, 1993.

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 D20/93 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 March 19, 1970. He practices as a sole practitioner.

Particular 2(a)

5. The Solicitor's fiscal year end is March 31. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending March 31, 1992, as required by S.16(2) of Regulation 708 under The Law Society Act.

6. A Notice of Default in Annual Filing, dated October 6, 1992 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered letter dated November 9, 1992, the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of The Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A copy of the Society's November 9, 1992 letter is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

8. A Third Notice of Default in Annual Filing, dated March 26, 1992 was forwarded to the Solicitor by registered mail. The Solicitor was advised that his name would go before Convocation on April 23, 1993 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on April 22, 1993. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. A copy of the Society's Third Notice of Default in Annual Filing is attached as Exhibit "C" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

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9. By letter dated April 13, 1993 the Law Society advised the Solicitor that his annual filing and late filing levy had not been received. The Solicitor was reminded that his name would go before Convocation on April 23, 1993 should payment not be received by April 22, 1993. A copy of the Society's April 13, 1993 letter is attached as Exhibit "D" to this Agreed Statement of Facts.

10. A Law Society staff employee spoke with the Solicitor by telephone on April 20, 1993. The Solicitor advised that he would deliver his certified cheque to the Society tomorrow, however, he would not be able to provide his Forms 2/3 until after April 30, 1993 when his accountant would be available to complete the same.

11. By undated letter, received by the Society on April 23, 1993, the Solicitor forwarded to the Society a bank draft in the amount of \$1,500.00. A copy of the Solicitor's undated letter is attached as Exhibit "E" to this Agreed Statement of Facts.

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

13. On July 7, 1993, the Solicitor filed the required forms.

Particular 2(b)

14. On March 13, 1992, a Law Society Examiner attended at the Solicitor office to examine his books and records. The Examiner discovered that the Solicitor's books and records were entered only to March 31, 1990, which had been the Solicitor's fiscal year end.

15. On April 10, 1992, the Examiner again attended at the Solicitor's office to examine his books and records. The Examiner discovered that the Solicitor's books and records were entered only to March 31, 1991, which had been the Solicitor's fiscal year end.

16. On July 10, 1992, the Examiner again attended at the Solicitor's office to examine his books and records. The Examiner discovered that the Solicitor's books and records were entered to March 31, 1992. The Solicitor promised the Examiner that he would have the records brought up-to-date by July 17, 1992.

17. On July 17, 1992, the Examiner attended at the Solicitor's office to examine his books and records. The Solicitor had not brought his books and records up-to date.

18. On July 29, 1992, the Examiner attended at the Solicitor's office to examine his books and records. The Solicitor's trust records were entered from March 31, 1991 to July 29, 1992 however, his general records had not been brought up-to-date.

19. To date, the Solicitor has not provided the Law Society with up-to-date books and records.

Particular 2(c)

20. On March 13, 1992, co-signing controls were placed on the Solicitor's trust account and the account was frozen, as the Solicitor had not up-dated his books and records since March 31, 1991. A new trust account was opened to allow the Solicitor to carry on his practice of law. The Solicitor's accountant, Mr. Thorn, agreed to co-sign all trust cheques. By letter dated March 13, 1992, the Solicitor advised the Canadian Imperial Bank of Commerce of the same. A copy of the Solicitor's March 13, 1992 letter is attached as Exhibit "F" to this Agreed Statement of Facts.

21. By letter dated March 13, 1992, the Solicitor undertook to the Society to deposit all trust funds coming into his possession or control, forthwith, into the trust account in his name at the Canadian Imperial Bank of Commerce. A copy of the Solicitor's March 13, 1992 letter is attached as Exhibit "G" to this Agreed Statement of Facts.

22. By letter dated March 13, 1992, the Law Society confirmed with Mr. Thorn the procedures that must be followed before co-signing a trust cheque. A copy of the Law Society's March 13, 1992 letter is attached as Exhibit "H" to this Agreed Statement of Facts.

23. On attending at the Solicitor's office on July 29, 1992, the Law Society's Examiner found the following instances that the Solicitor had issued trust cheques, without obtaining the co-signature of Mr. Thorn:

Cheque dated June 1, 1992, in the amount of \$5,791.35, payable to the Solicitor for fees, a copy of which is attached as Exhibit "I" to this Agreed Statement of Facts.

Cheque dated June 11, 1992, in the amount of \$3,587.51, payable to the Solicitor for fees, a copy of which is attached as Exhibit "J" to this Agreed Statement of Facts.

Cheque dated June 16, 1992, in the amount of \$2,280.90, payable to the Solicitor for fees, a copy of which is attached as Exhibit "K" to this Agreed Statement of Facts.

Cheque dated June 19, 1992, in the amount of \$955.30, payable to the Solicitor for fees, a copy of which is attached as Exhibit "L" to this Agreed Statement of Facts.

Cheque dated June 26, 1992, in the amount of \$1,363.15, payable to the Solicitor for fees, a copy of which is attached as Exhibit "M" to this Agreed Statement of Facts.

Cheque dated June 1, 1992, in the amount of \$84,976.00, payable to David Stock, in trust, a copy of which is attached as Exhibit "N" to this Agreed Statement of Facts.

Cheque dated June 12, 1992, in the amount of \$19,091.60, payable to the Bank of Montreal, a copy of which is attached as Exhibit "N" to this Agreed Statement of Facts.

Cheque dated June 19, 1992, in the amount of \$101,270.70, payable to Waterous et al., a copy of which is attached as Exhibit "N" to this Agreed Statement of Facts.

Cheque dated June 25, 1992, in the amount of \$82,336.42, payable to George Bishop, a copy of which is attached as Exhibit "N" to this Agreed Statement of Facts.

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24. By way of explanation, the Solicitor advised the Examiner on July 29, 1992, that from time to time he found it inconvenient to obtain a co-signature from his accountant.

25. The Solicitor has now brought his trust records up-to-date and the co-signing controls have been removed.

V. DISCIPLINE HISTORY

26. The Solicitor has no previous discipline record.

DATED at Toronto this 27th day of July, 1993."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Charles John Lewonas be suspended for a period of thirty days or so long thereafter until his books and records are maintained in accordance with the provisions of Section 15 of Regulation 573 under the Law Society Act. With respect to the matter of costs, the Committee accepted the recommendation of the Society that the Solicitor pay the Society's costs in the sum of \$1,700.00. These costs will be paid within thirty days following Convocation's decision.

REASONS FOR RECOMMENDATION

This matter which came before the Committee concerned a complaint by the Society that the Solicitor failed to file with the Society within six months of the termination of his fiscal year ended March 31, 1992, a statutory declaration in the form prescribed by the Rules; that the Solicitor during the period March 1990 to July 1992, failed to maintain books and records; and that the Solicitor violated the provision of a co-signing agreement with the Law Society.

There will be a finding of professional misconduct of the complaints set out in paragraphs 2(a), (b) and (c) of the formal complaint.

The Committee would like to deal first with complaints 2(a) and (b). In connection with complaint 2(a), the Solicitor received four notices from the Law Society in spite of those four notices he still failed to file the necessary forms. In connection with complaint 2(b), the Solicitor failed to maintain his books and records in accordance with the provisions of the Law Society Act and in fact his books and records as of the date of this hearing, still have not been brought up to date.

Complaint 2(c), which was a breach of his undertaking to the Law Society to have his cheques co-signed, is by far the most serious. As lawyers, we expect other lawyers to comply with their undertakings and we certainly expect lawyers to comply with undertakings made to the Law Society.

Counsel for the Solicitor has requested that he be reprimanded in Committee and the Law Society's position was that he be reprimanded in Convocation or a suspension. It is the Committee's view that because of the breach of the Solicitor's undertaking to the Law Society, the Solicitor must be suspended from practice to indicate to other solicitors that undertakings made to the Law Society cannot be taken lightly and must be complied with.

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In all the circumstances, the Committee concluded that the appropriate discipline was that recited above.

Charles John Lewonas was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 19th day of March, 1970.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 12th day of November, 1993

Daniel Joseph Murphy, Q.C.
Chair

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

There were no submissions and the Report was adopted.

It was moved by Mr. Topp, seconded by Ms. Bellamy that the Recommendation as to Penalty, that is that the solicitor be suspended for 30 days and thereafter until his books and records were maintained in accordance with the provisions under the Law Society Act and that he pay costs in the amount of \$1,700 within 30 days of Convocation's decision, be adopted.

Ms. Leiper advised Convocation that the solicitor's books and records were not up to date and that the solicitor would not be contesting the Recommendation as to Penalty. The material which was distributed to the Benchers prior to Convocation was withdrawn.

The solicitor through his counsel Ms. Leiper requested that his suspension commence on February 15th, 1994 in order to complete real estate closings for his clients.

Counsel for the Society supported the Recommendation as to Penalty and took no position on the commencement of the suspension.

There were questions from the Bench.

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

The Recommendation as to Penalty was adopted.

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

The solicitor was advised that his suspension would commence on February 15th, 1994.

Counsel and solicitor retired.

Re: NATALIE BRONSTEIN - Toronto

The Secretary placed the matter before Convocation.

The reporter was sworn.

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Messrs. Lamont and Copeland withdrew until the conclusion of this matter.

Ms. Bellamy did not participate.

Ms. Christina Budweth appeared on behalf of the Society. The solicitor was not present nor did counsel appear on her behalf.

Convocation had before it the Report of the Discipline Committee dated 15th November, 1993, together with an Affidavit of Service sworn 20th January, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 6th December, 1993 (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

Paul D. Copeland, Chair
Donald H. L. Lamont, Q.C.
S. Casey Hill

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

Christina Budweth
for the Society

NATALIE BRONSTEIN
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: September 14, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 19, 1993 Complaint D77/93 was issued against Natalie Bronstein alleging that she was guilty of professional misconduct.

The hearing was heard in public on September 14, 1993 before this Committee composed of Paul D. Copeland, Chair, Donald H.L. Lamont, Q.C. and S. Casey Hill. Christina Budweth appeared on behalf of the Law Society.

Ms. Bronstein did not attend the hearing although duly served with notice of the hearing. The Complaint, Exhibit #1, was sent by registered mail on March 23, 1993 and received by Ms. Bronstein on March 29, 1993. Four phone calls were made to Ms. Bronstein's office on April 26, 1993 regarding the setting of date for the hearing. No replies were received to these phone calls. On April 27, 1993, the date for hearing was set for June 1, and 2, 1993. By registered mail, in a letter dated May 4, 1993, the Society notified Ms. Bronstein that the hearing was scheduled to proceed on June 1 and 2, 1993. By a letter dated May 31, 1993 with enclosures, forwarded via a process server, Ms. Bronstein was

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provided disclosure of the Society's case regarding Complaint D77/93. In the May 31st letter, Discipline Counsel raised the likelihood of an adjournment being requested by Ms. Bronstein from the June 1 hearing date. The Society requested Ms. Bronstein's view of a July 7, 1993 alternative date for the hearing. No reply was received to this correspondence. On June 1, 1993 Discipline Counsel explained to the Committee the history of the proceedings and the matter was adjourned to July 7, 1993 to proceed. Ms. Bronstein was not present. By a letter of June 7, 1993, the Society apprised Ms. Bronstein of the July 7, 1993 hearing date. On July 7, 1993, the Committee hearing discipline cases was unable to reach the *Bronstein* matter and accordingly it was adjourned to August 24 and 25, 1993. Ms. Bronstein was not present on July 7, 1993. By a letter of July 9, 1993, served upon the concierge at Ms. Bronstein's apartment building, the Society informed the Solicitor of the new hearing dates. In addition, Discipline Counsel stated:

"I remind you once again that the Society will be seeking termination of your membership by way of disbarment and urge you to consider your apparent position not to attend the hearing".

No reply was received to this correspondence. By a letter of July 28, 1993, served upon Ms. Bronstein by leaving the letter with the concierge at her apartment building, Discipline Counsel apprised the Solicitor of the Society's intention to request an adjournment of the hearing from August 24, 1993 to September 14, 1993 because of the unavailability of a witness. No reply was received to this correspondence. On August 24, 1993 the Committee adjourned the hearing to September 14, 1993.

The Committee is entirely satisfied that the Solicitor has been properly apprised of the nature of the hearing, the date of the hearing, and, the jeopardy which she potentially faced in such a hearing.

DECISION

Complaint D77/93

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

"She breached her undertaking to the Society dated February 13, 1992 by:

- (i) failing to "immediately release custody and control over all client files presently under (her) control",
- (ii) failing to "cooperate with the staff trustee in the winding up of (her) practice", and
- (iii) engaging in the practice of law after Friday, February 14, 1992.

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The February 13th, 1992
Undertaking

A Discipline Committee of the Law Society of Upper Canada heard a cluster of discipline complaints (Complaints D46/91, D149/91, D194/91, and D15/92) involving the Solicitor on November 13, 1991 and February 13, 1992. Ms. Bronstein was in attendance at that hearing and was represented by Mr. Frank Marrocco. The relevant particulars of professional misconduct were admitted and found to have been established. On the basis of the Agreed Statements of Fact and the admissions of the Solicitor before the Committee, the Committee made a finding of professional misconduct.

Counsel for the Law Society and counsel for the Solicitor made a joint submission to the Committee on penalty which was accepted by the Discipline Committee on February 13, 1992, as reflected in its published reasons of April 9, 1992. The disposition of the Committee was subsequently affirmed by an Order of Convocation on April 23, 1992.

Central to the Recommendation as to Penalty of the Committee was a signed undertaking of the solicitor of February 13, 1992 (the undertaking) which is reproduced below:

UNDERTAKING

WHEREAS counsel for the Law Society has agreed to join in the following submission regarding the disposition of penalty in the four outstanding discipline complaints, D46/91, D149/91, D194/91 and D15/92, against me:

- i. suspension of my right to practise for a period of six months definitely; and
- ii. suspension of my right to practise thereafter, until I am certified as competent to practise by D. A. Malcolm and a psychiatrist acceptable to both the Society and my counsel;
- iii. that I immediately release custody and control over all client files presently under my control;
- iv. that I enter into a payment plan acceptable to myself and the Society for the repayment of the \$18,264.854 presently outstanding by way of Errors and Omissions deductibles and that my failure to abide by its terms by a consideration in the assessment of my fitness for return to practise;
- v. that I co-operate with the Staff Trustee in the winding up of my practice;
- vi. that I co-operate with the Practice Advisory Service and the Professional Standards Department in implementing the recommendations contained in the February 11, 1992 report of Susan McCaffrey at the resumption of my practice and any other suggestions that the Practice Advisory Service and the Professional Standards Department might make; and
- vii. that I advise the Ontario Grievance Settlement Board of my undertaking not to practise and any suspension of my right to practise that may ultimately be imposed by Convocation.

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I HEREBY UNDERTAKE to cease the practice of law effective Friday, February 14, 1992, until such time [as] discipline complaints D46/91, D149/91, D194/91 and D15/92 matters are heard before Convocation. I agree that if Convocation imposes a period of suspension on my right to practise that the period of suspension will commence and be computed from the date of the Order of Convocation.

I FURTHER ACKNOWLEDGE that I have taken the advice of my counsel, Frank Marrocco, before signing this undertaking.

I FURTHER ACKNOWLEDGE that any breach of this undertaking may lead to further discipline proceedings, and I hereby consent to this document being introduced in evidence in those proceedings. I have retained an executed copy of this undertaking.

DATED at Toronto this 13th day of February, 1992.

It is evident that particulars i., ii. and iii. of Complaint D77/93 relate to paragraphs i., iii., and v., respectively, of the undertaking.

Role of LSUC Staff Trustee

The Committee received evidence from Ms. Patricia Rogerson, presently Director of the Practice Advisory Department of the Society. Prior to holding that position, Ms. Rogerson had been the Staff Trustee of the Society. Additionally, the Committee heard evidence from Mr. Stan Jenkins, a counsel in the Audit and Investigation Department of the Society and received an affidavit from Debra-Sue Doak, a law clerk employed in the Staff Trustee's office.

The office of the Staff Trustee, amongst other duties, is responsible for assisting clients in circumstances where they are not receiving, or are unlikely to receive, assistance from solicitors who they have retained. This frequently occurs in circumstances of illness or disciplinary proceedings involving the relevant solicitor.

Ms. Rogerson testified that because of the nature of the complaints before the Law Society dealt with in February of 1992 it was imperative, in order to protect the interests of the clients of Ms. Bronstein, that her office become involved, on an urgent basis, with the Solicitor's practice. Accordingly, on February 14, 1992, Ms. Rogerson and Ms. Doak attended at the law office of Ms. Bronstein. The prior day, Ms. Bronstein had given the undertaking not to practice law reproduced above. Ms. Rogerson advised Ms. Bronstein of what she could and could not do in her capacity as a lawyer not authorized to practice by the Law Society of Upper Canada. As was her practice, Ms. Rogerson referred to standard documentation given to solicitors in Ms. Bronstein's position indicating that she could see clients only for the purpose of assisting them in transferring their past or present legal work to another solicitor, collecting accounts receivable, billing all unbilled and/or active files to date, and, retaining any wills on behalf of clients as done in the past. A number of acts, constituting the practice of law, were drawn to Ms. Bronstein's attention as prohibited by virtue of her undertaking and pending suspension.

At the February 14, 1992 meeting, as an aspect of assisting the Solicitor in winding up her practice, Ms. Rogerson elicited information regarding the practice itself. The files in the office covered the areas of real estate, family law litigation, corporate law and wills. There were said to be no more than 25 active files. There were a number of non-active files which had never been closed. The Solicitor had a number of clients' wills which the Society was anxious to have returned to the client or to some other solicitor. Ms. Bronstein indicated that her intention for future employment was in the area of mediation/arbitration. It was made clear to the Solicitor that her trust account

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was to be closed and all her client files closed or transferred to new lawyers. Ms. Bronstein was to retain custody of her closed files. The Solicitor represented to staff from the Law Society, at the meeting, that the practice would be wound up by March 26, 1992. In conversation with Ms. Bronstein, Ms. Rogerson established that there were three client files which urgently needed the attention of a lawyer. These files related to the following clients: Gurley (motor vehicle accident), Freeman (child custody) and Calvert (matrimonial file).

By a letter of February 26, 1992, delivered by hand, Ms. Patricia Rogerson wrote to Ms. Bronstein to confirm a number of matters raised with her in the meeting of February 14, 1992 including:

1. That it would be reasonable to expect all matters to be completed and files closed and the trust account emptied by March 26, 1992.
2. That the Solicitor would immediately advise the office of the Staff Trustee as to the identity of the solicitor who was taking over the files and wills in the Solicitor's office.
3. The agreement to deliver on February 17 or 18, 1992 the most recent trust listing and trust account statements was drawn to the attention of the Solicitor.
4. That three particularly urgent client files were to be transferred immediately - confirmation was sought that the files had been transferred.
5. That the open but inactive files were to be closed.
6. That by March 26, 1992 all completed files were to be closed and incomplete files transferred to other counsel.

This correspondence also drew to the Solicitor's attention that nearly two weeks had passed since the meeting and the Staff Trustee's concern regarding the absence of any further action on the part of the Solicitor.

Particular 2(a)(i) -
the failure to immediately
release custody and control
over client files

The Solicitor undertook to the Law Society on February 13, 1992 to immediately release custody and control over all client files presently under her control. This obligation was clearly drawn to her attention by the Staff Trustee in the meeting of February 14, 1992 and again in the Trustee's letter of February 26, 1992 described above. In a letter of March 4, 1992, from the Solicitor to the Staff Trustee, Ms. Bronstein stated that she hoped to place virtually all of her files with another solicitor by March 17, 1992. No steps had apparently been taken at this point to accomplish this objective.

Not having received a further report from the Solicitor with respect to the release of files, Ms. Rogerson wrote the solicitor on March 17, 1992 drawing to her attention that she had undertaken with respect to the three urgent files to take "emergency action" as those clients needed help right away. The Solicitor was requested to inform the Society as to which solicitor was now handling those files. Ms. Rogerson further requested the identification of the solicitor to whom the open and uncompleted files had been transferred pursuant to the representation in the Solicitor's letter of March 4, 1992.

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Ms. Rogerson testified that by April of 1992 there was little evidence available to suggest that Ms. Bronstein had taken any steps to transfer the active files in her office. As a result, and because of an urgent request for the *Calvert* file by the client, Mr. Stan Jenkins telephoned Ms. Bronstein on May 14, 1992. His call was returned on May 26 or 27, 1992. Ms. Bronstein maintained in this conversation that all of her active files had been transferred to another solicitor, Mr. Flude, except for the *Barlow* file. Ms. Rogerson learned on or about May 29, 1992, in discussions with Mr. Flude, that he had only received 3 files from Ms. Bronstein.

Mr. Jenkins testified that he and other staff were having difficulties contacting Ms. Bronstein in order to obtain other client files, or information as to their whereabouts. The Law Society was receiving regular inquiries from clients of the Solicitor.

On June 8, 1992, because of lack of response to telephone inquiries and correspondence, Ms. Rogerson, Ms. Doak, and Mr. Jenkins attended at the Solicitor's premises to attempt to retrieve a missing part of the *Ferrigan* file, missing parts of the *Calvert* file, and the *Martin* file. Trustee staff further attempted to ascertain accurate information regarding the *Gurley* and *Freeman* files. The Solicitor named two counsel to whom she intended to transfer these files having apparently failed to do so in the almost four-month period since her undertaking to immediately release the files.

Mr. Frank Wilkinson was a client of Ms. Bronstein who, as a result of an accident, was pressing a claim with The Great West Life Assurance Company. The Committee heard evidence from Ms. Lynn Goddard, a long-term disability claims analyst with that insurer. The original claim on behalf of the insured, Frank Wilkinson, was submitted on February 19, 1992. The witness indicated that her practice is to conduct a telephone interview with the insured as soon as possible after submission of the claim. She followed the practice on this occasion but was informed by Mr. Wilkinson that he desired a face-to-face meeting with Ms. Goddard at which either his doctor or lawyer should be in attendance. By a letter dated February 24, 1992, Ms. Goddard sent to Mr. Wilkinson a Great West Life Assurance Company questionnaire/transcript to be completed with information relating to the claim. The witness produced a letter dated March 9, 1992 from Natalie Bronstein, on letterhead bearing the description "Barrister & Solicitor" in which Ms. Bronstein stated *inter alia*:

"I am Mr. Wilkinson's solicitor and have been the primary contact between him and his employer, the Hudson's Bay Company, at his request."

The letter indicated that the questionnaire/transcript would be completed and forwarded within two weeks and that any additional queries could be directed to Ms. Bronstein relating to the file. By a letter of May 21, 1992, Ms. Goddard wrote to Ms. Bronstein requesting Mr. Wilkinson's completed transcript as earlier requested as it was required to begin the assessment of the claim. The witness called Ms. Bronstein's office on June 10, 12, and 22nd in an effort to further Mr. Wilkinson's matter but received no replies. By a letter of June 25, 1992, Ms. Goddard was forced to write to Mr. Wilkinson directly indicating that unless his questionnaire/transcript was completed and forwarded to her office the Great West Life Assurance Company would close its file without any further action being taken. It was not until July 14, 1992 that Ms. Goddard was finally contacted by a new lawyer acting for Mr. Wilkinson. This client suffered a prejudicial delay of months because of the Solicitor's failure to release the file to a solicitor who could serve Mr. Wilkinson's interests.

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By a letter of July 29, 1992, Discipline Counsel found it necessary to draw Ms. Bronstein's attention to the difficulties that the Staff Trustee was having in recovering files from her office and the position of Ms. Rogerson that the Solicitor had "not provided any meaningful assistance to her office in... [the] transferring of [her] files". Specific attention was drawn to named active files unreleased by the Solicitor about which the Society had received telephone calls. No reply was received to this letter.

In a letter of November 4, 1992 Mr. Jenkins wrote confirming the contents of a meeting held on October 16, 1992 with Ms. Bronstein and her solicitor, Lynn Mahoney, of the offices of Smith, Lyons. The letter drew to Ms. Bronstein's attention that a number of client files had not been released and transferred including the *Wilkinson* and *Lemire* files.

By further letters from the Society of November 12, 1992 and January 7, 1993, the Society sought information about, or access to, the files of the following clients: *Wilkinson, To, Wisdom, Selva-Agnew*.

On January 29, 1993, Mr. Jenkins was forced again to write to Ms. Bronstein in which he stated *inter alia*:

"Your failure to reply to the Society, and in particular your failure to arrange for the transfer of client files, is causing serious prejudice and damage to certain of your clients. The Society has a duty to protect the public interest. This is not some trivial matter that can be put off. Those matters that directly relate to clients must be dealt with and resolved immediately".

A number of client files were then identified in the letter as matters that had to be dealt with "immediately". No reply was ever received to this letter and these matters remained outstanding as of the date of the hearing before the Committee. On February 8, 1993, Mr. Jenkins wrote to Ms. Bronstein requesting that the *Benayon* file be transferred to Mr. Benayon's new counsel pursuant to a direction to that effect which had been sent to Ms. Bronstein on an earlier occasion. No written or telephonic reply was ever received to this correspondence prior to this hearing.

Particular 2(a)(ii) -
Failure to cooperate with the
Staff Trustee in the winding-up
of the law practice

At the meeting of February 13, 1992, between Ms. Bronstein and the Staff Trustee and her staff, and again in the confirmatory letter of February 26, 1992 to Ms. Bronstein, it was made clear that she was to cooperate with the Staff Trustee in the winding-up of her practice, an obligation which would require some meaningful effort on the part of Ms. Bronstein. The Trustee and her staff, on the evidence before us, made it evident to the subject solicitor that she was to address herself in thought and action to a considerable number of activities including the following: producing trust account reconciliations and closing the trust account, closing open but inactive files, locating files, ensuring that active files were transferred expeditiously to other solicitors to protect clients' interests, review of real estate files regarding any outstanding real estate undertakings, responding to complaints of clients to the Law Society during the currency of the winding-up of the practice, notification to clients of her status of not practicing law, returning telephone calls of the Law Society, producing client file lists, drawing together all wills filed in the office, etc.

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It became obvious to the Staff Trustee and her staff, through correspondence and face-to-face contact with Ms. Bronstein, that the Solicitor, from the time of her undertaking, commenced a busy mediation and arbitration practice. On Ms. Rogerson's testimony, speaking to the issue of Ms. Bronstein's level of cooperation, the Staff Trustee indicated that she was polite and friendly at all times but seemed as though she simply was not hearing what she was instructed to do.

In reviewing the exchange of correspondence between Ms. Bronstein and staff members of the Law Society of Upper Canada, reproduced in Exhibit #8 before us, it is manifest that Ms. Bronstein failed to extend any meaningful cooperation to those responsible, in the public interest, in winding up her practice.

Despite repeated requests to Ms. Bronstein she was unable at any time to produce satisfactory evidence that she had contacted her clients, as requested, notifying them that she was no longer practising law. In the fall of 1992, the solicitor did produce copies of letters advising her "wills clients" of her "withdrawal" from practice.

Ms. Bronstein was tardy in supplying the list of clients for whom she had wills. There appeared to be wills missing for which explanations were required. Further, the solicitor took months to comply with direction of the Law Society with respect to the transfer or sale of wills files and the writing of clients confirming the action taken with respect to their wills.

According to the evidence of Ms. Doak and Mr. Jenkins, there was a pattern of a failure to return phonecalls as Law Society staff attempted to effect a winding up of Ms. Bronstein's practice.

Ms. Rogerson, the Staff Trustee, in the absence of any meaningful assistance from Ms. Bronstein was forced, together with members of her staff, to themselves review in detail the Solicitor's files in order to determine whether or not matters were opened or closed and at what stage of completion. The Law Society Staff had to physically close files and remove files from the office.

Particular 2(a)(iii) -
engaging in the practice
of law after February 14, 1992

Within weeks of the February 13, 1992 undertaking, staff of the Staff Trustee had matters drawn to their attention which raised suspicions that Ms. Bronstein was practicing law. Ms. Bronstein had characterized the Calvert file as urgent on February 14, 1992 because of pending examinations for discovery in that litigation. Thereafter, Ms. Bronstein had cancelled the examinations on her own without having transferred the file to another solicitor to determine whether the examination should proceed or not. On April 9, 1992, Mr. Jenkins received a call from Robert J. Goodman, a lawyer, who telephoned to inquire as to the status of Ms. Bronstein to practice law. Mr. Goodman thought that she may have been suspended and found himself apparently negotiating in a family law file with Ms. Bronstein. Ms. Bronstein acted for Mrs. Barlow. Mr. Jenkins met with Ms. Bronstein on April 15, 1992 and reviewed her undertaking to the Law Society and unequivocally indicated that there was to be no continuation on her part in settling the Barlow file.

Ms. Evelyn MacNeil testified before the Committee that she separated from her husband of 11 years on December 23, 1991. She had first seen Ms. Bronstein on December 4, 1991 with a view to retaining her to act for her in this matrimonial cause. From the initial interview Ms. McNeil was favourably impressed with Ms. Bronstein and retained her to act, primarily with respect to a separation agreement. It was the MacNeils' desire to effect as amicable a separation as possible. Ms. MacNeil informed Ms. Bronstein that her husband did not have a lawyer to which Ms. Bronstein replied that she would get one for him

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"from her firm" at a later date. The client received forms to be filled out by Ms. Bronstein with respect to her financial situation. The witness received a draft separation agreement in January 1992 which she provided to her husband who was not agreeable with its contents. Ms McNeil reported this back to Ms. Bronstein. A period of negotiations commenced between the MacNeils until the end of April, 1992. By a letter dated April 2, 1992 to Mr. MacNeil, Ms. Bronstein wrote stating the following:

"Dear Mr. MacNeil:

Re: MacNeil Matrimonial Matters.

As you are aware, I represent your wife, Evelyn MacNeil. I understand that negotiations between you and Evelyn have broken down.

I am also given to understand that you may have retained counsel to represent your interests under the Family Law Act, 1986.

I have been authorized to make one final attempt to resolve all outstanding issues between yourself and Evelyn prior to commencing an action. Accordingly, I would ask you to have your lawyer contact my office with a view to finalizing the terms of a separation agreement within the next ten days. I must advise you that if I have not heard from your counsel within that time period I shall have no option but to commence an action against you without further notice. In the event you do not wish to avoid litigation, I would ask you to provide your lawyer with your authority to accept service of the court documents on your behalf.

You should consider the draft separation agreement currently in your possession as my client's formal offer to settle. Please be advised that should an action be commenced we shall be seeking solicitor and client costs as of the date of this letter. As well, we shall be obliged to seek pre-judgement interest on any equalization payment found due to your wife as of the date of separation.

As I am out of the office a great deal over the next two weeks, I would recommend that your lawyer contact me by mail or facsimile transmission."

Ms. McNeil testified that at some point in late April, 1992, she believed that she heard on the radio that Ms. Bronstein, her lawyer, had been suspended from the practice of law. The following day she called the radio station in an effort to verify its transcript of the broadcast and learned that Ms. Bronstein had indeed been suspended. In turn, toward the end of April of 1992, in a conversation with Ms. Bronstein, she raised the issue of Ms. Bronstein's ability to practice law. In response the Solicitor stated in respect of the Law Society: "They're a little mad at me" but that she was "still practicing".

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By a letter dated July 7, 1992, Ms. Bronstein issued an account for "professional services rendered" to Ms. MacNeil. The invoice includes billings relating to dates in March and April of 1992, including a particularization by Ms. Bronstein which appears relevant to the April 2, 1992 correspondence reproduced above:

"Telephone call to you wherein you requested I send a lawyer's letter to H. to light a fire under him, status has not changed, just cannot get him to do anything about signing agreement"

In a letter from Ms. Bronstein's counsel, dated August 21, 1992, to Discipline Counsel at the Law Society, it was maintained by Ms. Bronstein, through the agency of her solicitor, that:

"With respect Ms. Evelyn MacNeil, Ms. Bronstein has informed me that she advised Ms. MacNeil in February, 1992 that she would no longer be acting for her. The letter that she forwarded to David MacNeil was in part to assist Ms. MacNeil in ensuring that a separation agreement was executed since it was the only remaining matter in the file... She wrote the letter to Mr. MacNeil because Ms. MacNeil convinced her that if he got the letter then he would finally respond and execute the agreement. Ms. Bronstein specifically denies that she indicated to Ms. MacNeil that she was still practicing "half and half". This is not the sort of language that Ms. Bronstein would use."

We accept Ms. MacNeil's evidence that she was never informed by Ms. Bronstein that she did not have a right to practice law or that she was suspended from the practice of law. We further accept her evidence as to her telephone conversation with Ms. Bronstein in which the Solicitor indicated that could still act as her lawyer. We are further satisfied that Ms. Bronstein's conduct with respect to the MacNeil file constitutes the practice of law and an example of a breach of her undertaking in this regard.

Ms. Bronstein acted for a client, Mrs. Ferrigan, on a matrimonial file. The Committee heard evidence from Mr. Daniel Melamed, the solicitor for Mr. Ferrigan since 1990. Mr. Melamed testified that in July of 1991 an offer to settle was sent to him from Ms. Bronstein, on behalf of her client. The offer was for the most part acceptable. By January of 1992, there existed a second substantial offer to settle addressing one of the outstanding significant issues between the parties. Mr. Melamed received instructions from his client to accept the offer. Mr. Melamed was however to draft a separation agreement which would address all relevant issues in a more sophisticated and detailed fashion. By a letter of February 11, 1992, Ms. Bronstein wrote to Mr. Melamed indicating that her client was pressing her for completion of the file and that accordingly she was requesting "a draft separation agreement at the earliest possible moment...[as she] would rather have an incomplete document for review than none at all". By a letter dated February 13, 1992, Mr. Melamed forwarded to Ms. Bronstein a draft separation agreement requesting that she review it with her client and contact him at her earliest convenience in order to bring the matter to a final conclusion. In a letter dated March 2, 1992, Ms. Bronstein, using letterhead marked "Barrister & Solicitor" wrote to Mr. Melamed indicating that she had reviewed the draft separation agreement with her client and as a result was proposing a "few minor suggestions and/or changes" to the document which were set out in some detail. On Mr. Melamed's evidence, which we accept, the

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separation agreement is the type of document which necessitates preparation and attention from a lawyer communicating with his/her client. On April 9, 1992 Mr. Melamed forwarded to Ms. Bronstein a revised version of the separation agreement incorporating some of her recommended changes of March 2, 1992. At no time was Mr. Melamed made aware that he was dealing with a lawyer who was not authorized to practice law in the Province of Ontario. In a letter dated August 21, 1992, counsel for Ms. Bronstein maintained: "In regards to the *Ferrigan* matter, it is Ms. Bronstein's position that she was merely finalizing the settlement that had been agreed to prior to her undertaking". We are of the view that the Solicitor continued to practice law in respect of this client file throughout her dealings with Mr. Melamed.

FINDING

On the basis of the evidence the Committee made a finding of professional misconduct as particularized in the Complaint.

The Solicitor was called to the bar on April 19, 1978. She is a sole practitioner in the City of Toronto.

PRIOR DISCIPLINE

On August 20, 1985 the Solicitor was reprimanded in Committee for breaching a condition attached to material delivered to her by a fellow solicitor and for failing to reply promptly to letters from the Law Society regarding deficiencies in her books and records.

On July 15, 1986 the Solicitor appeared before a discipline committee regarding her failure to reply to letters from the Law Society and her failure to follow procedures set out in the Rules of Professional Conduct with respect to the Law Society's Errors & Omissions Department, after becoming aware that an error or omission may have occurred which might have made her liable to her client. The Solicitor was reprimanded in Committee and ordered to pay the Society's costs and a fine totalling \$775.

On June 13, 1988 the Solicitor was reprimanded in Committee for her failure to reply and co-operate with the Society's Errors & Omissions insurance adjuster, failure to serve various clients, failure to reply to letters and telephone calls from a fellow solicitor, breach of her undertaking to the Society, failure to reply to letters and telephone calls from the Society, failure to serve a client, failure to reply to a request for information from a client, failure to reply to a letter from the Law Society and misleading a client. (This information is a summary of 13 particulars contained in three separate complaints heard on June 13, 1988.)

On April 23, 1992 Convocation adopted the discipline committee reasons dated April 9, 1992, central to which was the suspension described in the undertaking reproduced above. The admitted particulars (16 in number), constituting the professional misconduct, included failure to reply to Law Society letters and telephone messages regarding complaints to the Society, breach of an undertaking to the Law Society to promptly and meaningfully reply in writing to all communications from the Society, failure to pay Errors & Omissions deductible, failure to serve clients in a conscientious and diligent and efficient manner and failure to reply to the Society.

RECOMMENDATION AS TO PENALTY

Counsel for the Law Society submitted that the Solicitor should be disbarred.

The Committee has read the reasons for the Discipline Committee which dealt with the Solicitor in 1992 and the February 6, 1992 report of Dr. Andrew Malcolm, a psychiatrist, filed at that hearing and in the instant hearing. In June 1988, Dr. Malcolm had offered the opinion that Ms. Bronstein was not likely to generate any more complaints in the future from clients to the Law Society. The doctor acknowledged in his February, 1992 report that he had been incorrect in his prognosis regarding the Solicitor's proclivity to generate complaints. In the same report, in assessing Ms. Bronstein's progress in recovering from a serious case of reactive depression, Dr. Malcolm stated:

"From a purely psychiatric point of view, however, I can tell you that a severe penalty would not be necessary to impress upon Ms. Bronstein the seriousness of her past errors and omissions. She is contrite enough, in my opinion, and she would now like to address the future and get on with her life as a reliable lawyer and an honest citizen.

. . .

I continue to be optimistic that she will do well in the future and that she will generate no further complaints to The Law Society."

Unfortunately, Dr. Malcolm's optimism has not been reflected in the professional conduct of Ms. Bronstein.

The professional misconduct described in Complaint D77/93 is serious. Deliberate breaches of an undertaking to the Law Society, involving a lack of cooperation with the professional governing body and the unauthorized practice of law, cannot be tolerated if the Law Society is to regulate its members in the public interest. While disbarment may seem an extreme sanction for this misconduct considered in isolation, the context of the Solicitor's entire disciplinary history warrants such a penalty.

Reprimands and suspension have failed to get Ms. Bronstein's attention. The signal theme of the Solicitor's career has regrettably been a contemptuous disregard for those rules considered essential by the profession to protect clients and other members of the public. Ms. Bronstein has proven herself to be ungovernable.

Accordingly, it is the respectful recommendation of the Committee that Natalie Bronstein be disbarred.

Natalie Bronstein was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 19th day of April, 1978.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 15th day of November, 1993

S. Casey Hill

There were no submissions and the Report was adopted.

It was moved by Mr. McKinnon, seconded by Mr. Howie that the Recommendation as to penalty, that is that the solicitor be disbarred, be adopted.

There were submissions by Ms. Budweth in support of the Recommendation as to Penalty.

The Recommendation as to Penalty was adopted.

Counsel retired.

Re: PAUL FRANCIS O'NEILL - Mississauga

The Secretary placed the matter before Convocation.

The reporter was sworn.

Mr. Topp and Ms. Sealy withdrew until the conclusion of this matter.

Ms. Lax, Messrs. Bastedo and Manes and Ms. Curtis did not participate.

Mr. Stephen Foster appeared for the Society and Mr. Greg Bowden appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 6th October, 1993, together with an Affidavit of Service sworn 16th November, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th October, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th January, 1994 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert C. Topp, Chair
Patricia J. Peters, Q.C.
Hope Sealy

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

Stephen Foster
for the Society

PAUL FRANCIS O'NEILL
of the City
of Mississauga
a barrister and solicitor

Greg Bowden
for the solicitor

Heard: August 31, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 23, 1992, Complaint D145/92 was issued against Paul Francis O'Neill alleging that he was guilty of professional misconduct. This was replaced with Complaint D145a/92 issued on June 29, 1993.

The matter was heard in public on August 31, 1993, before this Committee composed of Robert C. Topp, Chair, Patricia J. Peters, Q.C. and Hope Sealy. Mr. O'Neill attended the hearing and was represented by Greg Bowden. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

Complaint D145a/92

2. a) He failed to file with the Society within six months of the termination of his fiscal years ending March 31, 1991 and March 31, 1992, 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 engaged in the practice of law in or about the period May 19, 1992 to May 28, 1992 when his right to do so was suspended for his failure to pay his late filing levy for his 1991 year end;
- c) He has failed to maintain books and records in accordance with the requirements of section 15 of Regulation 573 under the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D145a/92 and is prepared to proceed with a hearing of this matter on June 29, 1993.

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 D145a/92 and this Agreed Statement of Facts and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on April 13, 1962.

Particular 2(a) - Failure to File

5. The Solicitor's fiscal year end is March 31. The Solicitor did not file his form 2 or form 3 within six months of the fiscal years ending March 31, 1991 as required by section 16(2) of Regulation 573 under the Law Society Act.

6. A notice of default in annual filing, dated October 4, 1991 was forwarded to the Solicitor by the Law Society.

7. By registered letter dated November 8, 1991, the Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10/day applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that when this levy amounted to \$1,500 he was subject to suspension pursuant to section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him of the obligation to make annual filings and that he may be brought before the discipline committee for failure to file.

8. The late filing fee began to accrue on November 22, 1991.

9. By registered letter dated March 18, 1992, the Law Society advised the Solicitor that his name would go before Convocation on Friday, April 24, 1992 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on Thursday, April 23, 1992. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the discipline committee for failure to file.

10. By letter dated April 10, 1992, the Society advised the Solicitor that his annual filing and late filing levy had not been received. The Solicitor was reminded that his name would go before Convocation on April 24, 1992 should payment not be received by April 23, 1992.

11. By registered mail dated April 27, 1992, the Law Society advised the Solicitor that his rights and privileges as a member of the society had been suspended as of April 24, 1992 as a result of his failure to pay his late filing levy.

12. By letter dated May 28, 1992, the Law Society confirmed with the Solicitor receipt of payment of his late filing levy. The Society advised the Solicitor that his membership had been reinstated that day.

13. The Solicitor did not make his filing for the fiscal year ending March 31, 1992.

14. A notice of default in annual filing, dated October 6, 1992 was forwarded to the Solicitor by the Law Society.

15. By registered letter dated November 9, 1992, the Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10/day applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that when this levy amounted to \$1,500 he was subject to suspension pursuant to section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him of the obligation to make annual filings and that he may be brought before the discipline committee for failure to file.

16. The late filing fee began to accrue on November 24, 1992.

17. By letter dated February 15, 1993, the Society's Records Co-Ordinator returned to the Solicitor his cheque in the amount of \$1,321.48 for Errors and Omissions Insurance levy from July 1, to December 1, 1992 as the same was not certified. The Solicitor was advised that the outstanding amount of \$1,321.45 was required and, pursuant to a ruling of the Finance Committee, the cheque for reinstatement of a membership must be certified. The Society further enclosed the necessary forms for the Solicitor to complete his filings for the 1991 and 1992 year ends, as he had not filed since March of 1990. The Solicitor was requested to return the same to the Society's audit department. The Solicitor did not file the requested forms but the Solicitor sent a certified cheque as requested.

18. The Solicitor telephoned the Law Society on April 6, 1993. The Solicitor advised that he had ceased practising law in approximately May of 1992 and that he would provide his 1991 and 1992 filings shortly. The Solicitor maintained communication with the Law Society and made the Law Society aware of the fact that he was unable to file because he was unable to pay his accountant and his landlord had locked him out of his premises.

19. The Solicitor is presently unable to comply with the requirements of maintaining books and records and with the filing requirements due to the fact that he has been locked out of his office and the records are not presently in his possession although he is making efforts through his counsel to obtain them from the landlord. Prior to being locked out of his premises, the Solicitor was unable to get his accountants to do the necessary work as he was indebted to them and they were not prepared to proceed without funds.

Particular 2(b) - Practised While Under Suspension

20. As a result of the Solicitor's failure to file his forms 2/3 for the year ended March 31, 1991 and as a result of his failure to pay the late filing levy, the Solicitor's right to practice was suspended by Convocation on April 24, 1992. The Solicitor was advised of the suspension by telephone call from the Law Society on May 19, 1993.

21. The Solicitor delivered a cheque in the amount of \$1,500, representing payment of his late filing fees, to the Society under cover of letter dated May 27, 1992. The Solicitor's right to practice was reinstated on May 28, 1992.

22. The Solicitor practised from May 19, 1992 to May 27, 1992 during the period of his suspension. The Solicitor engaged in a minimal practice primarily with respect to two civil matters.

Particular 2(c) - Failure to Maintain Books and Records

23. A Society examiner attended at the Solicitor's office on May 27, 1992. At the date of her attendance, the Solicitor's books and records had not been entered or reconciled since January 1991. As a result of the state of his books, co-signing controls were placed on the Solicitor's trust account which contained a total of \$204.

27th January, 1994

V. PRIOR DISCIPLINE

24. The Solicitor was found guilty of professional misconduct on August 25 and 27, 1982 for acting in a manner which was grossly negligent of his duties to his client. The Solicitor was reprimanded in committee and required to pay the Society's costs.

VI. JOINT SUBMISSION ON PENALTY

25. The parties jointly submit that the Solicitor should be reprimanded in Convocation.

26. If, at the time of Convocation, the Solicitor is still in default, he should be suspended indefinitely until his books and records are up to date and his filings are made to the satisfaction of the Law Society.

27. The Solicitor agrees to pay the Law Society's expenses in the amount of \$500.00 immediately upon recommencing practise following his suspension in this matter.

DATED at Toronto, this 29th day of June, 1993."

DECISION OF THE COMMITTEE

Given the Solicitor's admission as contained in the Agreed Statement of Fact and having heard submissions from Counsel for the Solicitor and Counsel for the Law Society, we conclude that the professional misconduct alleged in Complaint D145a/92 is established.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the Solicitor be reprimanded in Convocation, and be ordered to pay the costs of the Law Society in the sum of \$500.00 immediately upon recommencing practice following his suspension in this matter.

If at the time of Convocation, the Solicitor is still in default, he should be suspended indefinitely until his books and records are up to date and his filings are made to the satisfaction of the Law Society.

REASONS FOR RECOMMENDATION

The Solicitor is 57 years of age having been called to the Bar on April 13th, 1962. He is now suspended on an administrative suspension.

His discipline history is that he was found guilty of professional misconduct in 1982 for acting in a negligent manner and he was reprimanded in Committee and was required to pay the Society's costs.

The evidence indicates that he was not suffering from any particular physical or mental disorder but did indicate that at one point in time, he had undergone serious financial difficulties resulting in his being forced from his office by his landlord thereby making his records unavailable for completion of the necessary forms.

27th January, 1994

Counsel for the Law Society and Counsel for the Solicitor jointly suggest that this finding of professional misconduct should result in a reprimand in Convocation, together with an order for the payment of costs in the sum of \$500.00 upon the solicitor recommencing his practice. In addition it was jointly recommended that the Solicitor, if at the time this matter reaches Convocation, is still in fault, he should be suspended indefinitely until his books and records are up-to-date and his filings are made to the satisfaction of the Law Society.

Your Committee accepts the submission of Counsel for the Law Society and Counsel for the Solicitor and recommends the joint submission to Convocation.

In regard to the allegation of practising while under suspension, although your Committee was concerned and made a finding of professional misconduct, the facts in this matter alleged that the transgression was over an eight day period wherein the Solicitor was involved in completing a few civil litigation files. Notwithstanding the aggravating factor of the Solicitor practising while under suspension, your Committee is satisfied that the appropriate penalty be a reprimand in Convocation and that he be required to pay the Society's costs in the sum of \$500.00 upon his recommencing his practice. The Committee further recommends that if, at the time this matter is reached in Convocation, that the Solicitor is still in default, then he should be suspended indefinitely until his books and records are up to date and his filings are made to the satisfaction of the Law Society.

Paul Francis O'Neill was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 13th day of April, 1962.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 6th day of October, 1993

Robert C. Topp,
Chair

It was moved by Mr. Howie, seconded by Mr. Bragagnolo that the Report be adopted.

There were no submissions and the Report was adopted.

Mr. Bowden advised Convocation that the solicitor's filings were not complete.

It was moved by Mr. Bragagnolo, seconded by Mr. McKinnon that the Recommendation as to Penalty that is that the solicitor be suspended indefinitely until his books, records and filings were in order, pay costs of \$500 immediately upon recommencing practice and be reprimanded in Convocation be adopted.

Counsel for the Solicitor asked that Convocation not suspend the solicitor since the solicitor's Form 2's were filed and a letter from his accountant indicated that work was in progress to complete the Form 3 filings.

Counsel for the Society made submissions in support of an indefinite suspension.

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

27th January, 1994

It was moved by Mr. McKinnon, seconded by Ms. Weaver that the solicitor be reprimanded and pay costs and be suspended for a period of 8 days and indefinitely thereafter until the solicitor's books and records were completed.

It was moved by Ms. Bellamy and failed for want of a seconder that the solicitor pay the costs of \$500 within 90 days.

It was moved by Mr. McKinnon, seconded by Mr. Wardlaw that the Recommendation of the Committee with respect to the reprimand be deleted.

It was moved by Mr. Murray, seconded by Mr. Wardlaw that the solicitor be suspended for 30 days and thereafter indefinitely until books and records were up to date and to pay costs.

Counsel, the solicitor, the reporter and the public were recalled and informed of the motions before Convocation.

The solicitor through his counsel indicated his willingness to proceed and submissions were made on the penalty motions.

There were no submissions from counsel for the Society.

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

The Recommendation as to Penalty in the Report was adopted

The motions made by Messrs. McKinnon and Murray were not put.

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

The solicitor was reprimanded in Convocation, suspended indefinitely until his books and records were complete and ordered to pay the costs of \$500 upon recommencing practice following his suspension.

Counsel and solicitor retired.

Re: DAVID JOHN PARSONS - Frankford

The Deputy Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Lax, Mr. Thom and Ms. Weaver withdrew until the conclusion of this matter.

Mr. Stephen Foster appeared for the Society. No one appeared on behalf of the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 13th October, 1993, together with an Affidavit of Service sworn 20th January, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th December, 1993 (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:

27th January, 1994

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

K. Julaine Palmer, Chair
Joan Lax
Stuart Thom, Q.C.

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

Stephen Foster
for the Society

DAVID JOHN PARSONS
of the Village
of Frankford
a barrister and solicitor

Not Represented
for the solicitor

Heard: August 24, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 7th, 1993, Complaint D121/93 was issued against David John Parsons, alleging that he was guilty of professional misconduct.

The matter was heard in public on August 24th, 1993, before this Committee composed of K. Julaine Palmer, Chair, Joan Lax and Stuart Thom, Q.C.. Mr. Parsons attended the hearing and was not represented. Mr. Stephen Foster appeared on behalf of the Law Society.

DECISION

Complaint D121/93

The following particular of professional misconduct was found to be established:

- 2.(a) He failed to file with the Society within six months of the termination of his fiscal year ending December 31, 1991, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D121/93 and is prepared to proceed with a hearing of this matter on August 24 and 25, 1993.

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 D121/93 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on May 9, 1979. He practices as sole practitioner.

5. The Solicitor's fiscal year end is December 31. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending December 31, 1991, as required by S.16(2) of Regulation 573 under The Law Society Act.

6. A Notice of Default in Annual Filing, dated July 14, 1992 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered letter dated August 14, 1992, the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of The Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A copy of the Society's August 14, 1992 letter is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

8. The late filing fee began to accrue on August 31, 1992.

9. By registered letter dated December 22, 1992, the Law Society advised the Solicitor that his name would go before Convocation on January 29, 1993 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on January 28, 1993. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. A copy of the Society's December 22, 1992 letter is attached as Exhibit "C" to this Agreed Statement of Facts.

10. By letter dated December 30, 1992, the Solicitor advised the Law Society that the financial statements were being prepared and the annual report will be forwarded to the Law Society at the earliest possible date, together with the applicable late filing charges. A copy of the Solicitor's December 30, 1992 letter is attached as Exhibit "D" to this Agreed Statement of Facts.

27th January, 1994

11. By letter dated January 15, 1993, the Law Society advised the Solicitor that his annual filing and late filing levy had not been received. The Solicitor was reminded that his name would go before Convocation on January 29, 1993 should payment not be received by January 28, 1993. A copy of the Society's January 15, 1993 letter is attached as Exhibit "E" to this Agreed Statement of Facts.

12. By registered letter dated February 1, 1993, the Law Society advised the Solicitor that by an Order of Convocation made on January 29, 1993, the Solicitor's rights and privileges as a member of the Society were suspended. A copy of the Society's February 1, 1993 letter is attached as Exhibit "F" to this Agreed Statement of Facts.

13. By letter dated February 9, 1993, the Solicitor forwarded a cheque to the Law Society in the amount of \$1500.00 representing the late filing penalty. A copy of the Solicitor's February 9, 1993 letter is attached as Exhibit "G" to this Agreed Statement of Facts.

14. By letter dated February 12, 1993, the Law Society acknowledged receipt of the Solicitor's payment and advised him that his membership was reinstated. A copy of the Society's February 12, 1993 letter is attached as Exhibit "H" to this Agreed Statement of Facts.

15. As of May 7, 1993, the Solicitor had not filed the required forms and the Complaint was issued in this matter.

V. DISCIPLINE HISTORY

16. On April 27, 1993 a complaint was heard that the Solicitor caused a shortage in his trust account by transferring \$13,855.00 from his trust account to his general account, which amount was subsequently replaced, and failed to maintain, at all times, sufficient balances on deposit in his trust account to meet all of his obligations with respect to monies held in trust for a client. The matter is pending Convocation.

DATED at Toronto this 24th of August, 1993."

Based on the facts contained in the Agreed Statement of Facts and the Solicitor's admission, the Committee found the Solicitor committed professional misconduct.

RECOMMENDATION AS TO PENALTY

Mr. Foster and the Solicitor made a joint submission as to penalty to the Committee. They submitted that the Solicitor should be reprimanded in Convocation if he has filed the statutory declaration and report of a public accountant by the date this matter is before Convocation. If the required documents have not been filed by that date, the Solicitor should be suspended indefinitely until those filings have been accomplished.

REASONS FOR RECOMMENDATION

The Committee concurred in this joint submission as to penalty and recommends it to Convocation.

27th January, 1994

The Committee noted that this matter is scheduled to be dealt with by Convocation at the same time as Complaint D3/93. That matter was heard April 27, 1993. The Committee had no knowledge of the outcome of that hearing, other than what was set out in paragraph 16 of the Agreed Statement of Facts under the heading "V. Discipline History."

David John Parsons was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th day of May, 1979.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 13th day of October, 1993

K. Julaine Palmer,
Chair

It was moved by Mr. McKinnon, seconded by Mr. Brennan that the Report dated October 13th, 1993 be adopted.

Convocation had before it the Report of the Discipline Committee dated 13th December, 1993, together with an Affidavit of Service sworn 20th January, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th December, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Mary Weaver, Q.C., Chair
Fatima Mohideen
Netty Graham

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

Stephen Foster
for the Society

DAVID JOHN PARSONS
of the Village
of Frankford
a barrister and solicitor

Not Represented
for the solicitor

Heard: April 27, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 4th, 1993, Complaint D3/93 was issued against David John Parsons alleging he was guilty of professional misconduct.

The matter was heard in public on April 27th, 1993, before this Committee composed of Mary Weaver, Q.C., Chair, Fatima Mohideen and Netty Graham. Mr. Parsons attended the hearing unrepresented. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

2. a) He caused a shortage in his trust account in respect of the Estate of Jerry Plevak, in that between March 6, 1991 and March 12, 1991 he transferred amounts totalling \$13,855.00 from his trust account to his general account, which amounts were subsequently replaced on April 29, 1991, and failed to maintain, at all times, sufficient balances on deposit in his trust account to meet all his obligations with respect to moneys held in trust for client.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D3/93 and is prepared to proceed with a hearing of this matter on April 27 and 28, 1993.

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 D3/93 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 in 1979.
5. The Solicitor practices as sole practitioner in Frankford, Ontario.
6. On June 3, 1992 the Law Society conducted an examination of the Solicitor's books and records. This examination disclosed that the books and records were five months in arrears. Co-signing controls were immediately placed on the Solicitor's mixed trust account and two existing special trust accounts.

27th January, 1994

7. On August 19, 1992 the Law Society conducted a spot audit of the Solicitor's books and records. This disclosed that the general cash books were entered to July 14, 1992 and the trust cash book to July 31, 1992.

8. By letter dated September 10, 1992, the Law Society requested that the Solicitor maintain his accounting records up to date and correct certain inadequacies such as unreconciled items in trust bank reconciliations, stale-dated trust cheques as reconciling items, and earned fees prior to delivery of billings. A copy of the Law Society's September 10, 1992 letter is produced at Tab 1 of the Book of Documents.

9. The Law Society's audit also raised concerns with respect to the Solicitor's handling of the Estate of Jerry Plevak.

10. The Solicitor had been acting on behalf of the Estate since Mr. Plevak's decease in February, 1991.

11. According to the will, Mr. Plevak's daughter Jean Partridge was appointed executrix and trustee of the estate. The estate was to be paid in equal shares to each of Mr. Plevak's seven children. As well, the will referred to the inter vivos conveyance of a residential property to Ms Partridge. A copy of the Last Will and Testament of Jerry Plevak is produced at Tab 2 of the Book of Documents.

12. A subsequent codicil provided that the monies in one of Mr. Plevak's bank accounts were to go to his other six children. A copy of the First Codicil of Jerry Plevak is produced at Tab 3 of the Book of Documents.

13. On February 5, 1991 a special trust account at the Bank of Montreal was opened for the estate of Jerry Plevak. This was a "Contract Trust Account" which is a scheme set up by the bank to provide for separate interest bearing sub-accounts without the necessity of opening separate pass book accounts.

14. On February 5, 1991 \$5,508.00 was deposited to the special trust account, as indicated in the bank statements for the special trust account. A copy of the special trust account bank statements is produced at Tab 4 of the Book of Documents.

15. On February 27, 1991 \$25,500.00 was transferred to the special trust account from Mr. Plevak's account at the Bank of Montreal. Further deposits of Mr. Plevak's death benefit in the amount of \$2,628.78 and a \$825.00 transfer from another one of Mr. Plevak's bank accounts were made in April, 1991. This brought the total amount of the estate to approximately \$34,500.00.

16. On February 12, 1991 \$2,412.00 was transferred out of the special trust account into the Solicitor's mixed trust account. On the same day, the Solicitor wrote a cheque for \$2,412.00 from the mixed trust account to himself in payment of his fees for handling the estate. A copy of the Solicitor's cheque dated February 12, 1991 is produced at Tab 5 of the Book of Documents.

17. On March 6th, 1991, March 7th, 1991 and March 12th, 1991 the Solicitor transferred \$6,840.00, \$4,290.00 and \$3,775.00 respectively (totalling \$14,905.00) from the special trust account to his mixed trust account.

18. The Solicitor then wrote cheques in these same amounts to himself and deposited them to his general account. Copies of the Solicitor's cheques dated March 6, 1991, March 7th, 1991 and March 12th, 1991 are produced at Tab 6 of the Book of Documents.

27th January, 1994

19. The Solicitor explains these transfers as follows: After settling some disputes amongst the beneficiaries, he determined certain payments to be made from the estate, namely: \$4,290.00 for Stephen Plevak and Mrs. Mohammed, \$6,840.00 for Mrs. Mohammed, and \$3775.00 for Mrs. Partridge. These payments were to be reviewed with Mrs. Partridge and acknowledgement forms sent with the payments for signature by the beneficiaries involved.

20. The Solicitor states that he was concerned about how his computerized accounting system would deal with these transfers from the special "Contract Trust Account" to his mixed trust account. He understood that such transfers caused administrative problems, in particular that the computer would show transfers from the contract trust account as new receipts in his mixed trust account and that this would result in negative numbers showing on the printouts dealing with the monies being received and paid. The Solicitor states that he was worried about being able to explain these properly to anyone who was required to interpret them. He understood that simultaneous cheques from the mixed trust account to his general account would eliminate the problem.

21. The Solicitor states that subsequent to the transfers he had further discussions with Mrs. Partridge and the amounts of the various payments were changed. As such, the payments were not made to the beneficiaries and remained in the Solicitor's general account until replaced in the special trust account.

22. As of March 5, 1991, just prior to the transfers, the Solicitor's general account was overdrafted in the amount of \$18,017.26. The Solicitor had a \$20,000.00 line of credit. Copies of the Solicitor's general account bank statements for the months of March and April, 1991 are produced at Tab 7 of the Book of Documents.

23. As of April 17, 1992, the Solicitor's general account was overdrafted in the amount of \$15,638.78. Without the use of the \$14,905.00 in estate funds, he would have exceeded his line of credit by some \$9,493.78.

24. The Solicitor knew or ought to have known that this had the effect of causing a shortage in his trust account.

25. On April 19, 1991, the Solicitor transferred \$14,045.00 from his personal bank account to his general account. A copy of the bank statements for the Solicitor's personal account for the months of March/April and April/May, 1991 are produced at Tab 8 of the Book of Documents.

26. On April 19, 1991 the Solicitor replaced the shortage in his trust account by writing a cheque on his general account for \$13,855.00 and deposited this into the Plevak special trust account.

27. The \$1,050.00 difference between the original withdrawals of \$14,905.00 and the replacement deposit of \$13,855.00, represents an amount deducted by the Solicitor in respect of a previous account with Mr. Plevak and later accounted for in his final accounting to the beneficiaries. A copy of the Solicitor's accounting to the Estate of Jerry Plevak is produced at Tab 9 of the Book of Documents.

28. On July 23, 1991 the balance of \$31,908.79 in the special trust account was transferred to the Solicitor's mixed trust account. \$660.50 was held back for the final tax return and accountants fees, \$1,595.43 was paid as executor's fees and the balance was paid to beneficiaries.

29. By letter dated September 3, 1992 the Solicitor advised the Law Society of his explanation for the trust shortages described above. A copy of the Solicitor's September 3, 1992 letter is Produced at Tab 10 of the Book of Documents.

27th January, 1994

V. DISCIPLINE HISTORY

30. The Solicitor has no previous discipline record.

VI. PENALTY

31. The Law Society and the Solicitor jointly submit that the Solicitor should be reprimanded in Convocation.

VII. COSTS

32. The Solicitor agrees to pay the Law Society's costs in the amount of \$3500.00.

DATED at Toronto this 27th day of April, 1993."

RECOMMENDATION AS TO PENALTY

The Committee recommends that David John Parsons be Reprimanded in Convocation and that he pay the Law Society's costs in the amount of \$3,500.00.

REASONS FOR RECOMMENDATION

The Committee finds that Mr. Parsons is guilty of professional misconduct for failing to maintain sufficient funds on deposit in his trust account to meet his trust liabilities. The shortage in his trust account was caused by transfers of funds totalling \$13,855.00 from his trust account to his general account on three occasions between March 6, 1991 and March 12, 1991 inclusive. These overdrafts were rectified by the Solicitor on April 19, 1991.

The particulars of the complaint were in relation to one of the Solicitor's estate files. The evidence shows that the deceased had been a client of the Solicitor's for a number of years. The deceased lived with one of his seven children (the executrix) and her spouse in a home jointly owned by these three individuals. Another child was in charge of the deceased's finances and travelled to visit him periodically. Over the years the Solicitor had had various discussions with some of the deceased's children related to the deceased's care and welfare.

The Solicitor stated that there was some considerable hostility amongst the children. His motivation for transferring the funds in question was to alleviate some of this hostility and attendant pressure on the executrix. He planned to do this by settling the two claims made against the estate and distributing to the three most combatant beneficiaries, their share of the estate.

The Solicitor explained the March 6, 1991 transfer of \$4,290.00 as one beneficiary's equal share of the estate. He explained the March 7, 1991 transfer of \$6,840.00 as representing that beneficiary's equal share of the estate plus \$2,550.00 in satisfaction of her claim for compensation or six years travel and other services provided to the deceased. The third transfer of \$3,775.00, made on March 12, 1991, the Solicitor attributed to the executrix's claim for compensation for contributions to the taxes and expenses related to the maintenance of the home which the deceased had not paid in his lifetime.

27th January, 1994

The Committee finds the Solicitor's explanation for these three transfers of funds to be plausible in the circumstances and, in the absence of evidence to the contrary, accepts them as credible. We note that the bulk of the estate consisted of the monies in the deceased's bank accounts and that in the final distribution of those monies, each beneficiary received an equal share of \$4,250.00, an amount closely approximating the \$4,290.00 calculated by the Solicitor for the earlier intended distribution.

The Solicitor's difficulties began when, not being in command of his computerized bookkeeping system, he transferred these funds out of the special trust account into his mixed trust account and from there into his general account in the belief that were he not to do so, his computerized bookkeeping records would inaccurately reflect the state of his mixed trust account. The Solicitor related further that it was his intention to forward those funds out of his general account to the appropriate beneficiaries as soon as he received final direction from the executrix. He felt that by doing things in this manner he could avoid bookkeeping problems while maintaining a paper trail for the funds. Difficulties arose when plans changed and no immediate payout was directed.

The Committee accepts the Solicitor's explanation of the difficulties he was having with his computerized bookkeeping system. He said that both he and his secretary had been in constant contact with the supplier to deal with the problems encountered in the various functions. He acknowledged that such difficulties did not relieve him of his responsibilities and he should have acted sooner to rectify matters. The Committee notes that the Solicitor has since replaced that computerized bookkeeping system with another system.

It is clear that the Solicitor breached regulation 14(12) by failing to maintain sufficient funds on deposit in his trust account to meet all his trust liabilities. The situation is aggravated by the fact that prior to these transfers of funds to the Solicitor's general account, that account was in an overdraft position in the amount of \$18,017.26. Although the Solicitor had a \$20,000.00 line of credit, by April 17, 1991, the Solicitor exceeded his line of credit by some \$9,493.78. The Solicitor stated that as a long time customer of the bank, the limit on his line of credit was a flexible one and could have been informally increased. On April 19, 1991 the Solicitor deposited sufficient money into his general account to come within his line of credit limit and, on that same day, replaced the shortage in his trust account less \$1,050.00 for fees.

It is clear that the overdraft situation in the Solicitor's general account meant that he, in fact, had appropriated the client's money. The Committee finds, however, that the Solicitor did not intentionally misappropriate client trust funds.

The Committee accepts that the transfer of funds in the first instance was motivated by an intention to assist his client. The Committee accepts that the transfer of funds into his general account came about through the Solicitor's inability to understand and properly operate his computerized bookkeeping system. The Committee further accepts that the line of credit arrangements which the Solicitor had with his bank were flexible and he could have exceeded his limit.

Mr. Parsons has not previously been before the Discipline Committee. The embarrassment which he has suffered has been very acute given that he practices and lives in a very small town and the circumstances of his audit by the Law Society have become public. We are satisfied that Mr. Parsons should be reprimanded in Convocation and pay the costs of the Law Society in the amount of \$3,500.00.

27th January, 1994

David John Parsons was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th day of May, 1979.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 13th day of December, 1993

Fatima Mohideen

It was moved by Mr. Somerville, seconded by Mr. Brennan that the Report dated December 13th, 1993 be adopted.

There were no submissions and the Reports were adopted.

It was moved by Mr. Howie, seconded by Mr. Bragagnolo that the Recommendation as to Penalty in the Report dated October 13th, 1993, that is, that the solicitor be reprimanded if he had filed the statutory declaration and submitted a report of a public accountant and if conditions had not been met that the solicitor be suspended indefinitely until his filings were in order, be adopted.

It was moved by Ms. Sealy, seconded by Mr. Brennan that the Recommendation as to Penalty in the Report dated December 13th, 1993, that is, that the solicitor be reprimanded in Convocation and pay the costs of \$3,500, be adopted.

Counsel for the Society sought a penalty of suspension and the payment of costs in the amount of \$3,500.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Feinstein, seconded by Mr. Manes that the solicitor be suspended until he attended before Convocation to be reprimanded.

Withdrawn

It was moved by Mr. Bastedo, seconded by Mr. Lamont that the matter be adjourned to the next Special Convocation in March at which time the solicitor be present for his reprimand.

Withdrawn

It was moved by Mr. Somerville, seconded by Mr. Bragagnolo that the solicitor concurrently be suspended indefinitely until his filings were in order and suspended until he appears before Convocation to be reprimanded and to pay the costs of \$3,500.

Carried

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

Counsel retired.

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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Re: ANDREW EARL STEEPE - London

The Secretary placed the matter before Convocation.

The reporter was sworn.

Mr. Neil Perrier appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 12th November, 1993, together with an Affidavit of Service sworn 20th January, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 6th December 1993 (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

Daniel Murphy, Q.C., Chair
K. Julaine Palmer
Mrs. Netty Graham

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

Neil Perrier
for the Society

ANDREW EARL STEEPE
of the City
of London
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 27, 1993

27th January, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 26th, 1993, Complaint D48b/93 was issued against Andrew Earl Steepe alleging he was guilty of professional misconduct.

The matter was heard in public on July 27th, 1993, before this Committee composed of Daniel Murphy, Q.C., (Chair), Julaine Palmer and Netty Graham. Mr. Steepe attended the hearing unrepresented. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

2. a) He misled the Toronto-Dominion Bank by advising it that his client, James O'Neil, expected to receive settlement funds in excess of \$15,000 when the Solicitor knew he had not commenced litigation, in order to induce the Toronto-Dominion Bank to lend money to James O'Neil;
- b) He misled his client, James O'Neil, on the status of his litigation against Canadian Pacific Railway by falsely advising of a favourable court decision and settlement;
- c) He misled his client, Ian Reid, on the status of his litigation against the Hospice of London, by falsely advising of commencement of litigation and of court results when he knew that no action had been commenced;
- d) He misled his clients, Aime Chaisson and Ian Reid, by falsely advising that a \$5,000 interim payment was to be received from the insurance company for Aime Chaisson;
- e) He improperly signed and witnessed the name of a client, James O'Neil, to a Promissory Note in the sum of \$1,000, without the knowledge or consent of Mr. O'Neil;
- f) He improperly prepared a Promissory Note in the sum of \$1,000 to support a non-existent loan transaction to Betty Marriott;
- g) He failed to prepare and register a chattel mortgage securing a loan in the sum of \$5,000 from client Cheryl LeMay to client Protopapas;
- h) He acted for both lender and borrower in the Cheryl LeMay loan to William Protopapas without ensuring that his lender clients obtained independent legal advice;
- i) He acted in a conflict of interest when he acted for his client, William Protopapas, in negotiating the terms of his Promissory note to Cheryl LeMay, then acted against Mr. Protopapas, in litigation on the same note;

27th January, 1994

- j) He actively misled the Law Society's representative, Mr. William Simpson, in an investigation of the James O'Neil and Canadian Pacific Railway file by giving false explanations which he later admitted were untrue;
- k) He failed to file with the Society within six months of the termination of his fiscal years ending January 1, 1990 and January 1, 1991, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D48b/93 and is prepared to proceed with a hearing of this matter on July 27, 1993.

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 D48b/93 and admits that the particulars are true. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was a sole practitioner and was called to the Bar in 1980. His practice was 80% civil litigation and the remaining 20% of a general nature. He voluntarily ceased practice in November, 1990 and formally closed his office and transferred files by February 4, 1991.

Particulars 2(a) and (b)

Civil Action v. Canadian Pacific Railway ("CPR")

5. The Solicitor was retained by James O'Neil (Mr. O'Neil) to commence a civil action against CPR in or about 1984. The Solicitor never commenced an action against CPR. In the summer of 1986, the Solicitor stated to Mr. O'Neil that he had won a favourable decision on his behalf against CPR in the Supreme Court in the approximate sum of \$15,000, when in fact no action had been commenced nor had a settlement been agreed to.

6. On April 1, 1987, the Solicitor advanced the sum of \$4,000 to Mr. O'Neil from his own funds which, he represented, were a partial settlement paid by CPR of the claim. (Document Book, Tab 1 - trust deposit slip dated April 1, 1987). The Solicitor represented to his client that CPR had forwarded him the sum of \$5,000 as a "goodwill settlement" and that he had retained \$1,000 for his fees when, in fact, this was not true.

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7. In December, 1989, the Solicitor forwarded to Mr. O'Neil a further sum of \$2,000 which Mr. O'Neil believed was a further settlement payment from CPR (Document Book, Tab 2 - \$1,000 trust cheque T1009; Tab 3 - \$1,000 trust cheque T1010). It was later discovered that the \$2,000 was money received by the Solicitor from other investor clients, namely, Betty Marriott and Cheryl LeMay.

8. The Solicitor prepared Promissory Notes as security for the advances to Mr. O'Neil (Document Book, Tab 4 - \$1,000 Promissory Note to Ms. LeMay dated December 22, 1989 and purportedly signed by Mr. O'Neil; Tab 5 - \$1,000 Promissory Note to Ms. Marriott dated December 22, 1989 unsigned; Tab 6 - trust deposit slip dated December 18, 1990). These Promissory Notes were not provided to Ms. Marriott or Ms. LeMay. The Solicitor forged Mr. O'Neil's name as maker of the Promissory Note for \$1,000 to Ms. LeMay and signed as a witness. This was done just prior to the attendance of the Law Society investigator. The Solicitor states that the signing of Mr. O'Neil's name to the Promissory Note was done in a moment of panic upon his realization that the investigation would reveal the nature of the transaction.

9. On August 22, 1986 the Solicitor sent a letter (Document Book, Tab 7) to the Toronto-Dominion Bank at the time Mr. O'Neil was negotiating a loan with the bank. The Solicitor's letter was confirmation that settlement funds in excess of \$15,000 were expected from a matter with CPR. At the time the Solicitor authored and signed the letter the Solicitor knew that no settlement had been agreed to between Mr. O'Neil and CPR.

10. Mr. O'Neil was to receive pension funds in the sum of approximately \$10,000

in 1986, and increased, with interest, to over \$16,000 by 1990. These monies were obtained by the Solicitor but are separate and apart from the funds referred to in paragraph 9.

IAN REID

Particular 2(c)

Civil Action Against Hospice of London

11. In August, 1988, Ian Reid retained the Solicitor to enjoin the Hospice of London from showing a promotional film which included appearances by him. Mr. Reid was led to believe by the Solicitor that litigation in the matter was proceeding. The Solicitor eventually falsely reported that Mr. Justice Reid had heard the injunction application, reserved his decision and that further material was required by Ian Reid. In January, 1990, Ian Reid learned that the Solicitor had in fact taken no steps to proceed on the file. The Solicitor admits that no action had been commenced.

12. The Solicitor misled Ian Reid when he informed him that he had commenced proceedings against the London Hospice. He misled Ian Reid when he advised that he had made two court appearances on the matter when, in fact, there had been no court proceedings whatsoever. Mr. Reid has not subsequently pursued the matter as the litigation was statute barred by the time he learned that the Solicitor had taken no steps in the matter.

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Particular 2(d)

Proposed Civil Action re: Motorcycle Accident

13. In November, 1989, Ian Reid retained the Solicitor to represent his daughter, Miss Aime Chaisson, who was injured in a motorcycle accident. The Solicitor indicated he could obtain an approximate settlement in the amount of \$10,000. He reported that his initial contact with the adjuster was positive, and 1 week later he advised that the adjuster was forwarding a \$5,000 interim payment under section 224 of the Insurance Act. He later indicated he thought he could get a \$20,000 settlement. He later promised the \$5,000 cheque would be available on December 4, 1989 and it could be picked up at his office. He then made himself inaccessible to Mr. Reid for the whole of that month.

14. There had never been an arrangement between the Solicitor and the adjuster to send \$5,000 to the Solicitor.

15. The Solicitor misled his client to believe that he was to receive an interim payment for her of \$5,000 from the defendant insurance company when, in fact, no payment was expected.

CHERYL LEMAY

Particular 2(e)

Investments

16. The following are details of the purported loan which the Solicitor arranged for a client, Ms. LeMay from Mr. O'Neil:

A.	Borrower:	James O'Neil
	Amount:	\$1,000
	Loan dated:	December 22, 1989
	Security:	Nil
	Interest:	14%

17. This purported loan was discussed in paragraphs 5 - 10 pertaining to particulars 2(a) and (b) of the complaint of Mr. O'Neil. Ms. LeMay confirms that this money has been repaid. The Promissory Note prepared by the Solicitor was never provided to Ms. LeMay. The Solicitor repaid the money with interest. Ms. LeMay was unaware that the Solicitor had personally repaid this money.

BETTY MARRIOTT

Particular 2(f)

	Borrower:	James O'Neil
	Amount:	\$1,000
	Loan dated:	December 22, 1989
	Security:	Nil
	Interest:	14%

18. This loan was discussed in paragraphs 5 - 10 pertaining to particulars 2(a) and (b) of the complaint of Mr. O'Neil. Ms. Marriott confirms that the money has been repaid. She did not know that the Solicitor had personally repaid her.

19. The Solicitor failed to ensure that a genuine Promissory Note executed by Mr. O'Neil and enforceable against him was in place to secure Ms. Marriott's loan to him.

20. Ms. Marriott and Ms. LeMay were not billed for any of the above transactions.

Particulars 2(q), (h), (i)

21. The following are particulars pertaining to the Protopapas loan:

B. Borrower: William Protopapas
Amount: \$5,000
Loan dated: November 9, 1989
Security: Promissory Note (Document Book, Tab 9)
In addition, the Solicitor's own list of investments for Ms. LeMay, records that this loan was to be secured by a chattel mortgage. However, there was no copy of a mortgage in the file, and searches under the PPSA and in the Land Registry Office disclosed no registrations securing this loan.

22. Mr. Protopapas was a client of the Solicitor. Ms. LeMay did not obtain independent legal advice with respect to this purported mortgage transaction.

23. The Solicitor had acted for Mr. Protopapas in an action against the vendors of property which Mr. Protopapas had purchased.

24. On November 9, 1989, he borrowed from Ms. LeMay the sum of \$5,000 repayable upon the Solicitor negotiating a settlement of his lawsuit described in the preceding paragraph. Mr. Protopapas provided, in addition to the Promissory Note, an irrevocable direction to the Solicitor to repay the debt to Ms. LeMay out of the settlement or judgment proceeds. The Solicitor did not secure the loan with a collateral mortgage.

25. In December, 1989, Mr. Protopapas changed lawyers from the Solicitor to Lerner & Associates, retaining the latter to prosecute his lawsuit.

26. According to the Solicitor's notes dated January 30, 1991 (Document Book, Tab 10), he wrote to the borrower, Mr. Protopapas, on June 4 and 25, 1990 regarding the loan. Having received no reply, the Solicitor issued a Statement of Claim against his former client, Mr. Protopapas, on July 12, 1990 (Document Book, Tab 11) and obtained a default judgment on August 21, 1990 (Document Book, Tab 12) for \$5,545.28 together with costs. On the same day a Writ of Seizure and Sale was issued (Document Book, Tab 13), but apparently not acted upon. Then days after the default judgment, Lerner & Associates forwarded a Statement of Defence (Document Book, Tab 14) on behalf of Mr. Protopapas alleging that the Solicitor had represented to him that repayment of the loan was not required until his lawsuit was settled or tried, and that Mr. Protopapas believed the loan was interest free. Mr. Protopapas never moved to set aside the default judgment and re-open the pleadings. The Writ of Seizure and Sale remains on title to date.

27. The Solicitor breached the provisions of Rule 5 by acting for Ms. LeMay as lender and Mr. Protopapas as borrower of \$5,000 in November, 1989. He did not ensure that Ms. LeMay or Mr. Protopapas had independent legal advice to review and assess the security offered for her loan.

28. The Solicitor failed to prepare and register an executed chattel mortgage and registered financing statement were in place to secure Ms. LeMay's loan to Mr. Protopapas.

29. The Solicitor breached the provisions of Rule 5 by acting against a client in the same matter in which he had acted for him, namely Mr. Protopapas. He acted for Mr. Protopapas in negotiating the terms of his note to Ms. LeMay, then sued Mr. Protopapas on the same note.

27th January, 1994

Particular 2(j)

Misleading The Law Society

30. Initially, the Solicitor denied having misled Mr. O'Neil regarding his claim against the Canadian Pacific Railway. In later interviews with the Law Society examiner the Solicitor said this was because after all his promises to Mr. O'Neil it was too great a loss of face for him to admit his initial advice was wrong.

31. On November 27 and 28, 1990 during the course of the investigation into the above-mentioned transactions, the Solicitor made the following misleading statements to a Law Society investigator:

1. he had never informed Mr. O'Neil that he had commenced a lawsuit for him and did not know where Mr. O'Neil got the impression that he had;
2. CPR had indicated that they did not wish to be involved in a lawsuit but on April 1, 1987, they forwarded the Solicitor \$5,000 as a "goodwill settlement" when in fact CPR had never made any such payment.

32. The Solicitor later admitted that these statements to the Law Society investigator, Mr. William Simpson, were false.

Particular 2(k)
Failure to File

33. The Solicitor's fiscal year end is January 1. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal years ending January 1, 1990, and January 1, 1991 as required by S. 16(2) of Regulation 573 under The Law Society Act.

Re: Fiscal period ended January 1, 1990

34. A Notice of Default in Annual Filing, dated August 9, 1991 (Document Book, Tab 16) was forwarded to the Solicitor by the Law Society.

35. By registered letter dated September 19, 1991 (Document Book, Tab 17), the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. This letter was returned as the Solicitor had by then ceased practice. The Solicitor was advised that once the fee amounted to \$1500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of The Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. No response was received.

36. The Late filing fee began to accrue on October 4, 1991.

Re: Fiscal period ended January 1, 1991

37. A Notice of Default in Annual Filings, dated August 8, 1992 (Document Book, Tab 18) was forwarded to the Solicitor by the Law Society.

27th January, 1994

38. By registered letter dated September 11, 1992 (Document Book, Tab 19), the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of The Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. No response was received.

39. The late filing fee began to accrue on October 9, 1992.

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

41. To date, the Solicitor has not filed the required forms for fiscal years ending January 1, 1990 and 1991.

42. The Solicitor has also not paid the late filing fee.

V. PRIOR DISCIPLINE

43. The Solicitor has been suspended since November 23, 1990 for failing to pay his Errors & Omissions levy.

44. On May 28, 1987 the Solicitor was reprimanded in Convocation for misleading a client as follows:

- a) Between November 1983 and March, 1986 the Solicitor advised his client that he had commenced an action on her behalf for damages when, in fact, no such action was properly commenced until April, 1986;
- b) He misled the client by informing her that he was involved in settlement negotiations on her behalf with the Osler Hoskin firm, when, in fact, he knew that no settlement negotiations were in progress and that the Osler Hoskin firm had no involvement whatsoever in the matter;
- c) He misled the client by informing her that he had obtained a Statement of Retraction from a material witness thereby enhancing the client's position when, in fact, no such retraction existed. He produced a false document to his client to corroborate this false assertion.

DATED at Toronto this 27th day of July, 1993."

RECOMMENDATION AS TO PENALTY

The Committee accepts the joint submission that Andrew Earl Steepe be granted permission to resign.

REASONS FOR RECOMMENDATION

The Law Society brought to our attention two cases, the Donald Richard Manse case and the Michael Frank Stoyka case. In both these cases, Convocation permitted the Solicitor to resign. Both cases are similar to some extent to this case, although not identical. The mitigating factors, as the Committee sees them, are as follows:

1. The Solicitor didn't benefit and in fact it probably cost him \$6,000 or \$7,000 to cover up for the lies that he made to his clients;
2. The money that was borrowed was not borrowed to benefit the Solicitor personally and was repaid with interest;
3. The Solicitor wound up his practice in November of 1990;
4. The Solicitor advised us of a broken marriage, a drinking problem during the subject period and his mother dying with cancer;
5. The Solicitor was out of work for approximately a year and a half and is now employed with the Ministry of Labour as an Employment Standards Mediator.

Having regard to the above-referred to mitigating factors and having regard to the fact that the Solicitor appears to have re-habilitated himself, this Committee agrees with the joint submission by the Solicitor and the Law Society that the Solicitor be permitted to resign, without prejudice to his right to request re-admittance in the future.

Andrew Earl Steepe was called to the Bar and admitted as a solicitor of the Supreme court of Ontario on the 17th day of April, 1978.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 12th day of November, 1993

Daniel Joseph Murphy, Q.C.,
Chair

The Report was adopted.

It was moved by Mr. Howie, seconded by Mr. Bragagnolo that the Recommendation as to Penalty, that is, that the solicitor be permitted to resign, be adopted.

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

It was moved by Mr. Topp, seconded by Mr. Wardlaw that the Recommendation be amended in that if the solicitor failed to resign in 30 days he would be disbarred.

Counsel, the reporter and the public withdrew.

The Recommendation as to Penalty as amended was adopted.

27th January, 1994

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

Counsel retired.

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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Re: MARVIN LARRY ELLISON - Scarborough

The Secretary placed the matter before Convocation.

The reporter was sworn.

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

Convocation had before it the Report of the Discipline Committee dated 17th September, 1993, together with an Affidavit of Service sworn 16th November, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd October, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 24th November, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Daniel Murphy, Q.C., Chair
K. Julaine Palmer
Mrs. Netty Graham

27th January, 1994

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

Christina Budweth
for the Society

MARVIN LARRY ELLISON
of the City
of Scarborough
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 27, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 10, 1993, Complaint D67/93 was issued against Marvin Larry Ellison, alleging that he was guilty of professional misconduct.

The matter was heard in public on July 27, 1993, before this Committee composed of Daniel Murphy, Q.C., Chair, Julaine Palmer and Netty Graham. The Solicitor attended the hearing and represented himself. Christina Budweth appeared on behalf of the Law Society.

DECISION

Complaint D67/93

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

- 2. a) He failed to maintain the books and records of his practise in accordance with sections 14 and 15 of Regulation 573 under the Law Society Act.
- b) He engaged in the practice of law during the period November 23, 1990 to May 27, 1991 and November 29, 1991 to November 16, 1992 when his right to do so was suspended for failure to pay his errors and omissions levy.

A particular relating to the Solicitor's failure to file with the Society a statutory declaration in the form prescribed by the Rules and a report of a public accountant relating to his fiscal years ending January 30, 1991 and January 30, 1992 was withdrawn at Ms. Budweth's request, since the required forms were filed before the complaint was served in March 1993.

EVIDENCE

Part of the evidence before the Committee was the following Agreed Statement of Facts. The Solicitor also testified.

"AGREED STATEMENT OF FACTS"

1. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D67/93 and is prepared to proceed with a hearing of this matter on July 27 and 28, 1993.

II. IN PUBLIC/IN CAMERA

2. The parties agreed 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 D67/93 and this agreed statement of facts and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar in March, 1968. He has a marginal general practice in Scarborough, Ontario. Since approximately August 1986, the Solicitor has been actually involved in the day-to-day management of a family business, Juvenile International Incorporated.

Particular 2(a) - Failure to Maintain Books and Records

5. The Society's examiner visited the Solicitor's office on October 8, 1992. The examiner was unable to determine whether or not the Solicitor had sufficient trust funds on hand to meet client liabilities because of the status of his books and records. The Solicitor advised the examiner he could not recall when he last reconciled his trust records. On October 8, 1992 there was approximately \$9,054.84 in the trust account. Co-signing controls were instituted.

6. When the examiner returned to the Solicitor's office on November 10, 1992 the Solicitor's book had been updated but the following inadequacies remained:

- a) Trust comparisons were not being made regularly as required by subsection 1(h) of section 15 of the Regulation;
- b) Accounting records generally were in arrears in entering and posting contrary to subsection 2(a) of section 15 of the Regulation;
- c) A number of inactive trust ledger accounts existed whose balances had not been reviewed;
- d) Trust bank reconciliations supporting the monthly trust comparisons require more detail;
- e) Clients' general ledger accounts contained accounts in credit balance. Earned fees had not been delivered forthwith as required by subsection 6(b) of section 14 of the Regulation;
- f) Earned fees were permitted to accumulate in the trust account contrary to subsection 7 of section 14 of the Regulation;
- g) On one occasion, money had been transferred from the member's trust account to his general account on account of fees for which billings or other written notifications had not first been delivered to clients.

27th January, 1994

Particular 2(b) - Practised While Under Suspension

- (i) November 23, 1990 to May 27, 1991
- (ii) November 29, 1991 to November 16, 1992

- (i) November 23, 1990 to May 27, 1991

7. The Solicitor's right to practice was suspended on November 23, 1990 as a result of his failure to pay his errors and omissions levy. The Solicitor was notified of the suspension by registered letter dated November 26, 1990. A copy of the suspension letter is attached as Exhibit 1 to this agreed statement of facts.

8. The Solicitor was advised of his failure to make the errors and omissions levy payment but not the possibility of his suspension by letters dated June 8, 1990; September 21, 1990 and by way of a final notice of November 19, 1990.

9. During the examiner's review of the Solicitor's books and records, she found the following evidence that the Solicitor was engaged in the practice of law his period of suspension.

1. The Solicitor's trust receipts and disbursements journal during the period November 1990 to May 1991 disclosed the Solicitor's handling of client funds throughout the period of suspension;

2. Copies of the Solicitor's trust bank deposit slips during the period December 20, 1990 to May 25, 1991 evidenced the Solicitor receiving trust funds during the period of suspension and depositing the same into a trust account at the Royal Bank of Canada;

3. On April 26, 1991, the Solicitor acted on behalf of James and Heather Kenning both in the sale of their home and the purchase of another property.

10. During discussions with the Law Society examiner the Solicitor stated that he was aware of his suspension during the entire period of suspension and that although he had every intention of paying the outstanding premium he had just "never found the time".

11. The Solicitor's right to practice was reinstated on May 27, 1991.

- (ii) November 29, 1991 to November 16, 1992

12. The Solicitor's right to practice was suspended again on November 29, 1991 for his failure to pay his errors and omissions levy. The Solicitor was advised of his suspension by letter dated December 2, 1991, a copy of which is attached as Exhibit 2 to this agreed statement of facts.

13. The Solicitor was reminded of his failure to make the errors and omissions payment and the possibility of his pending suspension by way of notices dated June 1, 1991 and November 5, 1991.

14. During the Society's examiners view of the Solicitor's books and records she found the following evidence that the Solicitor had continued to engage in the practice of law throughout the period of his suspension:

1. The Solicitor's client file register indicated 11 new files all of which were real estate transactions;

2. The Solicitor's trust receipts and disbursements journal for the period November 1991 to October 1992 disclosed the Solicitor's handling of client funds throughout his period of suspension;

27th January, 1994

3. The Solicitor's trust bank deposit slips indicate that during the period March 1992 to October 1992 he was receiving trust money depositing same into his trust account at the Royal Bank of Canada;

4. The Solicitor closed a real estate transaction for client's Allan and Sandra McMillan on June 29, 1992;

5. The Solicitor closed a real estate transaction on behalf of his client William V. Fairhall on June 22, 1992;

6. The Solicitor closed a real estate transaction on behalf of his clients George and Elizabeth Buchan on October 1, 1992.

15. When questioned about the suspension and his practice during that period the Solicitor admitted to the examiner that he knew he had been suspended and that while he had every intention of payment the outstanding premiums he "just never found the time".

16. The Solicitor explained to the examiner that he was in the business of importing wholesale baby products through Juvenile International Incorporated and that the business consumed most of his time and it did not allow him to attend to all matters related to his law practice.

17. The Solicitor's right to practice was reinstated on November 16, 1992.

V. PRIOR DISCIPLINE

18. The Solicitor was reprimanded in committee on March 15, 1989 for his failure to file his forms 2/3 for the fiscal years ended January 31, 1986, January 31, 1987 and January 31, 1988.

DATED at Toronto this 26th day of July, 1993."

The Solicitor testified under oath before the Committee. He stated that he had been involved in the import business since 1986. He testified that there are no signs at the business indicating he practises law. Inside his private office, he has hung his diploma and he has displayed some law books and two corporate seals. He maintains a telephone listing under "Marvin Ellison, Barrister and Solicitor"; however, he testified that this number is answered by another law office and persons who call for him are directed to another lawyer there.

The Solicitor testified that he mainly acts for relatives and friends. He said in at least two cases, when he practised while under suspension, his clients were quite insistent that he should perform the work. He did not tell any of his clients that he was under suspension. He said that at least three or four transactions involved certifying to lenders.

The Solicitor testified that his accounting records were "chaotic", when the Law Society examiner visited, because of the demands of his import business - he did all the entries himself. After the examiner's visit, the Solicitor met with his accountant, who introduced him to a bookkeeper. The bookkeeper updated his records and now performs this work instead of the Solicitor.

The Solicitor testified that he feels "silly" and "awfully stupid" as a result of these events. He stated he wanted to put this behind him and continue as a member of the Law Society. He stated that his income from law in the past few years has been less than what is required to pay his fees and his Errors and Omissions levy.

27th January, 1994

He testified he felt he ought to change his membership status in coming years, to show himself as the employee of a corporation, not practising law, but in the past he had "just never done that". The solicitor explained that he treated the suspension letters from the Law Society as if he had a debt; he said he never focused on the suspension part of the letter. It was not until he met with the examiner on October 8, 1992 and she brought to his attention the fact that he had been practising while suspended that he "processed the import of this" on that date.

The Committee was impressed by the forthrightness of the Solicitor. He appeared solemn, contrite and without arrogance. He stated that saying "sorry, did not seem enough".

FINDING OF PROFESSIONAL MISCONDUCT

The Solicitor admits, and the Committee finds, that the particulars of professional misconduct have been established. The Committee finds that the Solicitor failed to maintain the books and records of his practice in accordance with Regulation 573 and that he practised law from November 23, 1990 to May 27, 1991 and from November 29, 1991 to November 16, 1992 while his right to do so was suspended.

RECOMMENDATION OF THE MAJORITY OF THE COMMITTEE AS TO PENALTY

The members of the Committee differ with respect to the length of suspension which should be imposed as penalty upon this Solicitor. All members of the Committee agree that, regardless of the length of suspension or other penalty imposed by Convocation, that the Solicitor should pay expenses of \$1,900.00 to the Law Society, representing a portion of the costs of investigation and prosecution of this offence.

The majority of the Committee regards the professional misconduct here to be serious. Members must recognize that they are not permitted to practise while suspended. By practising while suspended this Solicitor has breached his obligations both to the profession and to the public.

The majority of the Committee sympathizes with the Solicitor. In attempting to accommodate old friends, family, and clients he has allowed himself to fall into professional misconduct with his governing body. The Solicitor testified he was not actively pursuing legal business, yet he failed to ensure he was in good standing with the Law Society while he engaged in the practice of law.

The majority of this Committee reiterates what has been stated so often by Discipline Committees before: only by Solicitors maintaining contemporaneous, adequate financial records, within the dictates of the Regulations, can we be assured that the public's money is protected. When the examiner visited Mr. Ellison's premises on October 8, 1992 she found disorder. Co-signing controls were instituted. More than a month later when she returned, she found serious inadequacies remaining. These deficiencies are set out at paragraph 6 of the Agreed Statement of Fact. They included one example of transferring money for fees from trust to general without first delivering an account.

27th January, 1994

The Solicitor practised while under suspension during two periods - during the 6-month period of November 23, 1990 to May 27, 1991 and during the 12-month period of November 29, 1991 to November 16, 1992. Although his practice may not have been large, he did handle trust funds during both periods and acted on behalf of clients in both the purchase and sale of real property. Further particulars are set out above in paragraphs 9 and 14 of the Agreed Statement of Facts. During the 12 month period of suspension, the Solicitor opened 11 new real estate transaction files.

The Solicitor admitted to the Law Society examiner that he knew he had been suspended and his only excuse for not paying his insurance premiums was that he "just never found the time".

The Solicitor now seeks a lesser penalty than he would have faced had he complied with his obligations in the first place. Following the reasoning enunciated in the Reasons for Recommendation in the Roderick Grant MacGregor decision (January 29, 1993), the majority of this Committee is of the view that "the Solicitor should not be put in a better position by the disposition of this case than he would have been in had he complied with his obligations."

In the MacGregor case, the Solicitor practiced under suspension during three successive periods, totalling four months, in an eight month block of time. The Committee recommended, and Convocation agreed, that the Solicitor should be suspended "for the four months during which he practiced while under suspension, plus an additional month as both a specific and general deterrent, for a total of five months."

The majority of this Committee is of the view that this principle should also be followed in this case. Thus, we recommend that the Solicitor be suspended for a period of nineteen months - representing the eighteen months when he practised while under suspension plus an additional month.

This penalty is lengthier than that urged upon us by Ms. Budweth. She sought a suspension in the area of six months. She emphasized that this Solicitor was extremely cooperative and forthcoming and acknowledged that he was not carrying on an active practice, as it is traditionally seen.

The majority of this Committee is concerned that Convocation may view a nineteen month suspension as harsh in the circumstances. However, we believe we need to uphold the principle enunciated in MacGregor and continue to convey to our members the seriousness of breaches like those of this Solicitor. Such offences are, admittedly, not as heinous as stealing clients' money, but they are serious nonetheless.

When the Law Society examiner attended at Mr. Ellison's premises on October 8, 1992, she did know whether he was among the dishonest of this profession or among those haunted by procrastination. This Law Society is only able to carry on regulating this profession as long as we have the confidence of the public that we are capable of discharging our obligation. Only if our members adhere to the regulations which govern us all, can the public have that assurance.

27th January, 1994

Marvin Larry Ellison was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 22nd day of March, 1968.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 17th day of September, 1993

K. Julaine Palmer

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

There were no submissions and the Report was adopted.

It was moved by Ms. Bellamy, seconded by Ms. Sealy that the majority Recommendation as to Penalty, that is that the solicitor be suspended for a period of 19 months and pay costs in the amount of \$1,900, be adopted.

Counsel for the Society and the solicitor made submissions in support of the minority Recommendation for a suspension of 6 months with costs.

There were questions from the Bench.

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

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

Not Put

It was moved by Mr. Bastedo and failed for want of a seconder that the solicitor be suspended for 1 month and pay the Society's costs.

The majority Recommendation was adopted.

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

Counsel and solicitor retired.

Re: KISHORE PREMJI TANNA - Etobicoke

The Secretary placed the matter before Convocation.

The reporter was sworn.

Messrs. Howie and Murray withdrew until the conclusion of this matter.

Mr. Stephen Foster appeared for the Society and the solicitor appeared on his own behalf.

27th January, 1994

Convocation had before it the Report of the Discipline Committee dated 12th October, 1993, together with an Affidavit of Service sworn 16th November, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th October, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th January, 1994 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Kenneth E. Howie, Q.C., Chair

Ross W. Murray, Q.C.

Mrs. Netty Graham

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

Stephen Foster
for the Society

KISHORE PREMJI TANNA
of the City
of Etobicoke
a barrister and solicitor

Not Represented
for the solicitor

Heard: May 4, 1993 and
September 9, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 20, 1993, Complaint D4/93 was issued against Kishore Premji Tanna alleging that he was guilty of professional misconduct.

The matter was heard in public on May 4, 1993 and September 9, 1993 before this Committee composed of Kenneth E. Howie, Q.C., Chair, Ross W. Murray, Q.C. and Mrs. Netty Graham. Mr. Tanna attended the hearing and was unrepresented. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

Complaint D4/93

2. (a) He failed to produce all of his books, records and accounts when requested to do so by the Law Society's Department of Audit and Investigation;

27th January, 1994

- (b) He failed to comply with a written Undertaking dated November 18, 1991 given to the Law Society to produce his books and records no later than January 6, 1992;
- (c) He failed to maintain proper books, records and accounts in connection with his practice;
- (d) He failed to correct inadequacies with respect to maintaining his books, records and accounts even though instructed to do so following examinations by the Law Society;
- (e) He failed to serve his client, Viswasvarrao Pilleseaty, in a conscientious, diligent and efficient manner and displayed unsatisfactory professional practice in connection with the purchase of a property located at 29 Kendal Avenue.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D4/93 and is prepared to proceed with a hearing of this matter on May 4 and 5, 1993.

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 D4/93 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 in 1975.

5. The Solicitor practices as a sole practitioner in Rexdale with a branch office for interviewing clients in Toronto. His practice is primarily in the area of real estate. In the past, the Solicitor also conducted his practice from a second office in Toronto.

Particulars a), b), c), d) - Books and Records

6. The Law Society has conducted six examinations of the Solicitor's books: July 21, 1980 (Document Book Tab ¹), November 4, 1982 (Document Book Tab ²), July 12, 1985 (Document Book Tab ³), January 27, 1987 (Document Book Tab ⁴), November 24, 1987 (Document Book Tab ⁵) and August 17, 1989.

27th January, 1994

7. In respect of the last examination which began on August 17, 1989, the Law Society's examiner attended at the Solicitor's office on various occasions from August 17, 1989 to September 4, 1991. By letter dated September 18, 1991 the Law Society reviewed these visits, advised the Solicitor that he had not produced sufficient books and records for the completion of the examination, and requested the Solicitor to make arrangements for a further examination on October 18, 1991 (Document Book Tab ⁶).

8. By letter dated October 16, 1991 the Solicitor explained some of the problems he was having producing his books and records and requested a further extension of time (Document Book Tab ⁷).

9. By letter dated October 22, 1991 the Law Society granted a further extension to November 4, 1991 and advised the Solicitor that if he failed to produce the items requested the matter would be referred to the Discipline Committee (Document Book Tab ⁸).

10. By letter dated October 29, 1991 (Document Book Tab ⁹) the Solicitor further explained some of the problems he was having producing his books and records and stated:

You have cooperated so far and I am sure I would be able to complete within a very short period and after that I would not have problem since the bookkeeper and accountant are now familiar with the system. Would you please bear with me for some time.

11. On November 18, 1991 the Law Society's examiner met with the Solicitor at his office and it was agreed she would return to complete her examination on January 6, 1992. This was confirmed by the Law Society by letter dated October 18, 1991 (Document Book Tab ¹⁰) (which the letter mistakenly refers to January 6, 1991).

12. On November 18, 1991 the Solicitor signed an Undertaking to the Law Society acknowledging the deficiencies in his books and records and undertaking to produce and make available for examination his complete books and records no later than January 6, 1992 (Document Book Tab ¹¹).

13. By letter dated January 2, 1992 (Document Book Tab ¹²) the Solicitor advised that it had not been possible to prepare his books and records for examination so far as they were related to his closed account for the downtown office for the year 1990 from January, 1990 to July, 1990. The Solicitor attached a letter from his bookkeeper setting out some of the problems in producing the books and records.

14. The Law Society's examiner did not personally receive the Solicitor's letter of January 2, 1992 and, as such, attended at the Solicitor's office on January 6, 1992. The Solicitor was not able to produce his complete books and records and the Law Society's examiner refused to grant any further extensions (Document Book Tab 13)

15. The Solicitor did not produced sufficient books and records to allow the examiner to complete an examination. In particular, he did not produce any current books and records relating to that part of his practice conducted from his former Toronto office. He did not produced a current general receipts journal and general disbursements journal respecting his Rexdale office (Document Book Tab ¹³).

16. With respect to the books and records which were produced for the 1989 examination, the following inadequacies were revealed: trust comparisons were in arrears; books and records generally were in arrears; transfer of fees from trust prior to billing; overdrawn clients' trust ledger accounts; uncorrected trust reconciling items; unexplained trust differences.

17. All of these inadequacies had arisen in one or more of the previous examinations of the Solicitor's books and records and the Solicitor had been instructed to correct them.

18. However, the records and books were brought up-to-date and annual filings were made with the exception of the records for 1990 at the downtown office as mentioned in the Solicitor's letter dated January 2, 1992.

19. The Solicitor contends that he has made every effort to produce books and records for examination but that he has encountered difficulties in being able to remedy the deficiencies in the books and records on time. His accountant who used to maintain his records and books for 14 years died while the Solicitor's accounts were in the process of transferring from a manual to a computerized system, known as "Nuvview". Subsequent accountants had taken time to peruse, grasp and complete the transfer to, the Nuvview system. As regard the incomplete outstanding records of closed downtown account of 1990, the same were lost and the Solicitor had ordered copies of the whole record from the bank which took eight months to provide and the bookkeeper found difficulties in the record as mentioned in his letter dated January 2, 1992.

Particular e) - Failure to Serve Pillerseaty

20. The 1989 examination of the Solicitor's books and records was initiated following receipt by the Law Society of a complaint respecting the Solicitor's handling of a real estate transaction involving Mr. Viswasvarrao Pillerseaty. The complaint alleged that the Solicitor had failed to turn over his file to Mr. Pillerseaty, failed to provide an accounting and acted while in conflict of interest on the transaction.

21. In November, 1987 the Solicitor acted for Mr. Pillerseaty on the sale of a property located at 29 Kendal Ave.

22. During the period of time in question Mr. Pillerseaty was employed as a para-legal with the Solicitor and also participated in a business investment with the Solicitor.

23. The Solicitor received the balance of the sale proceeds on closing but failed to pay these out to Mr. Pillerseaty within a reasonable period of time. Instead, the proceeds were released to Mr. Pillerseaty in instalments over a period of several months.

24. The Solicitor maintains that the proceeds had not been paid to Mr. Pillerseaty immediately because they were to be applied to Mr. Pillerseaty's purchase of a property located at 3559 Eglinton Avenue West in March 1988 and that the same were placed in an interest bearing account at the instructions of Mr. Pillerseaty and interest thereon was accounted to Mr. Pillerseaty and were disbursed as per Mr. Pillerseaty's instructions and further that Mr. Pillerseaty's solicitor has been provided with the accounts. The Solicitor's files contained copies of statements of account dated November 23, 1987 (Document Book Tab 14) and March 29, 1988 (Document Book Tab 15) which included cash flow statements and support the Solicitor's explanation. However, the statements are incomplete.

25. The Solicitor did not report to Mr. Pillerseaty with respect to this transaction because of his mistaken belief that as he had acted gratuitously for Mr. Pillerseaty who was employed as a law clerk with him, that the transaction would not require reporting and further that all the files and records were available and accessible to Mr. Pillerseaty as he was working with his office.

26. The Solicitor did not report to Mr. Pillerseaty with respect to this transaction.

V. DISCIPLINE HISTORY

27. The Solicitor has no previous discipline record.

DATED at Toronto this 6th day of May, 1993."

The Committee makes a finding of professional misconduct in respect of all of the particulars contained in paragraph 2 of the Complaint.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the Solicitor be reprimanded in Convocation, provided he has attended to all the outstanding particulars contained in paragraph 2 of the complaint to the satisfaction of the Law Society by the time of the first hearing date in Convocation.

In the event that the Solicitor has failed to attend to all of the matters contained in the complaint to the satisfaction of the Law Society, the Committee recommends that the Solicitor should be suspended for a period of one month. The suspension at the end of that time should continue thereafter, indefinitely, until all the outstanding matters have been attended to by the Solicitor, to the satisfaction of the Law Society.

The Committee recommends that the Solicitor should be called upon to pay costs in the amount of \$500.00.

REASONS FOR RECOMMENDATION

The matters which are the subject of complaint have been outstanding since 1992. The matter came before this Committee in May 1993 at which time the finding of professional misconduct was made and the Committee granted the Solicitor an adjournment to August of 1993 in order to attend to the matters which are the subject matter of the complaint.

The Solicitor at the hearing on September 9, 1993 sought a further adjournment indicating that he had been unable to attend to any of the matters which are the subject matter of the complaint. The Committee refused to grant the adjournment at that time and proceeded. It became clear at the hearing that the Solicitor had not attended to any of the matters contained in the complaint. His submissions were to the effect that he had been simply too busy with his practice and with practice reviews to be able to attend to the matters.

The Committee is satisfied that the Solicitor has some problems with respect to lost documentation and has financial problems which have imposed some difficulty upon him in terms of purchasing the accounting assistance required to complete the problems associated with the inadequacies with respect to maintaining his books and accounts. The Committee has some sympathy for the Solicitor's problems financially, but felt that the Solicitor cannot use that as an excuse indefinitely to fail to fulfill the obligations of him by the Rules.

The Committee found it quite upsetting that the Solicitor has still not reported out to his client the real estate transaction referred to in paragraph (e) in the complaint, although the Solicitor conceded that it will only take him half an hour to do so.

27th January, 1994

The Committee has deliberately requested that the matter not be brought before Convocation until November in order to provide the Solicitor with one last opportunity to attend to the matters, in which case the Committee is of the view that suspension is not required, either for a fixed term or for an indefinite period.

Kishore Premji Tanna 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 12th day of October, 1993

Kenneth E. Howie, Q.C.,
Chair

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

There were no submissions and the Report was adopted.

Counsel for the Society advised Convocation that the solicitor had not to date met all the conditions required.

It was moved by Mr. Topp, seconded by Mr. Bastedo that the solicitor be suspended 1 month and then thereafter until the conditions were met and to pay the costs of \$1,500.

Counsel for the Society made submissions in support of a suspension with costs.

The solicitor explained to Convocation the difficulty he had in completing the outstanding matters.

It was moved by Mr. Somerville, seconded by Mr. Bragagnolo that the matter be adjourned until the Special Convocation in March to allow evidence to be brought forth on the issue of the availability of the solicitor's records.

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

The motions made by Messrs. Topp and Somerville were not put.

It was moved by Mr. Bastedo, seconded by Mr. Copeland that the matter be adjourned sine die to be brought back on when either party felt in a position to proceed and no later than the May Special Convocation.

Carried

It was moved by Mr. McKinnon, seconded by Mr. Bragagnolo that the matter be adjourned to March Special Convocation and that the Law Society staff be directed to contact the bank to determine the status of the missing records.

Not Put

It was moved by Mr. McKinnon, seconded by Mr. Bragagnolo that the Society be directed to communicate directly with the bank with the solicitor's permission to determine the state of affairs of the bank records and report back to Convocation no later than May.

Carried

27th January, 1994

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

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CONVOCATION ROSE AT 12:50 P.M.

Confirmed in Convocation this day of 1994.

Treasurer