

25th March, 1993

MINUTES OF SPECIAL CONVOCATION

Thursday, 25th March, 1993
9:30 a.m.

PRESENT:

The Treasurer (Allan M. Rock), Bastedo, Bellamy, Brennan, Cullity, Elliott, Feinstein, Finkelstein, Graham, Hill, Lamont, Lax, Levy, Murray, Palmer, Scott, Somerville, Strosberg, Thom, Wardlaw and Weaver.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: ARTHUR CHUNG, Toronto

Mr. Somerville 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.

A request for an adjournment was made by the solicitor on consent.

It was moved by Mr. Somerville, seconded by Mr. Brennan that the matter be adjourned to the Special Convocation in April.

Carried

Counsel retired.

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Re: FAROUQ MALLAL, Ottawa

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Ms. Weaver, Ms. Lax, Ms. Graham and Mr. Scott withdrew.

Ms. Christina Budweth appeared for the Society and Mr. Leonard Max appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 11th March, 1993, together with an Affidavit of Service sworn 23rd March, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 12th March, 1993 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor 25th March, 1992 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

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THE LAW SOCIETY OF UPPER CANADA

THE DISCIPLINE COMMITTEE

REPORT AND DECISION

Mary P. Weaver, Q.C., Chair
Joan Lax
Netty Graham

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

Christina Budweth
for the Society

FAROUQ MALLAL
of the City
of Ottawa
a barrister and solicitor

Leonard Max
for the solicitor

Heard: January 26, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On the 21st of September, 1992, Complaint number D144/92 was issued against Farouq Mallal alleging that he was guilty of professional misconduct. The matter was heard in public on January 26, 1993 before this Committee composed of Mary Weaver, Chair, Joan Lax and Mrs. Netty Graham. At the opening of the hearing, counsel for the Law Society with the consent of counsel for the Solicitor asked that particular 2(d) be withdrawn and the hearing be continued with respect to particulars 2(a), (b), (c) and (e).

DECISION

1. The particulars set out in paragraph 2(a) 2(b) 2(c) and 2(e) of complaint D144/92 were admitted and found to have been established:

Complaint D114/92

- 2.(a) During the period August 23, 1991 to September 30, 1991 he misappropriated \$24,058, more or less, from his mixed trust account;
- (b) In September, 1991, he misapplied \$7,500 received by him in trust from DARE Personnel Inc. for the purpose of a loan repayment to Christopher Healey by applying these funds against a loan from himself to the president of DARE Personnel Inc. without authority to do so;
- (c) He breached the provisions of Rule 7 of the Rules of Professional Conduct by borrowing from his client, Prem Gupta, the amount of \$112,500;

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- (e) He breached the provisions of Rule 8 of the Rules of Professional Conduct by withdrawing his services from clients without giving appropriate notice when he abandoned his practice on or about September 30, 1991.

AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D144/92 and is prepared to proceed with a hearing of this matter on January 26 and 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 D144/92 and this agreed statement of facts with his counsel, Leonard Max, Q.C. He admits particulars (a), (b), (c) and (e) of the complaint are supported by the facts hereinafter stated in this document, and that these facts constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on April 13, 1983. The Solicitor is 55 years of age. Since his call to the bar, the Solicitor has been a sole practitioner.

5. The Solicitor gave an undertaking not to practise to the Society on October 22, 1992, and has not practised since that time.

Particular 2(e) - Abandonment of Practice

6. On or about September 30, 1991 the Solicitor left for Pakistan without any prior notice to his clients save and except for a letter to Mrs. Vitanza, a copy of which is attached as Exhibit 1 to this agreed statement of facts.

7. On or about October 17, 1991, the Solicitor telephoned solicitor Ronald Petersen of the firm Rock Talarico Wong. The Solicitor was calling from Pakistan to retain Mr. Petersen to advise the Law Society that he had misappropriated approximately \$11,000 from his trust account. The actual amount of the misappropriation was \$24,058 as referenced in particular 2(a).

8. On October 21, 1991, Mr. Petersen attended at the Solicitor's offices and commenced review and distribution of all active files.

9. The Solicitor admits that his actions constitute abandonment of his practice. The Solicitor states, and the Society will not contest, that by late August of 1991 the Solicitor's cocaine and alcohol addictions had rendered him effectively incapable of carrying on practice.

Particular 2(a) - Misappropriation - \$24,058

10. On August 23, 1991, the Solicitor issued to himself a trust cheque in the amount of \$7,808. These funds were being held in trust on behalf of a client,

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Ramesh Lalwani. On September 5, 1991, the Solicitor deposited \$5,000 to his trust account and credited the trust ledger of Mr. Lalwani. The duplicate deposit slip indicates the notation "return to trust Lalwani Laurier books".

11. The Solicitor issued two additional trust cheques to himself in the amounts of \$8,250 and \$8,000.

12. The Solicitor and Mr. Lalwani did have some discussions wherein the Solicitor sought Mr. Lalwani's authority to borrow some of the funds held in the Solicitor's trust account. Mr. Lalwani did not give the Solicitor his authority to do so. The Solicitor, at the time, rationalized this withdrawal to himself as a borrowing but now admits he withdrew the funds without Mr. Lalwani's authority and that in the circumstances the fact of his so doing constitutes misappropriation.

13. The following is a synopsis of the Solicitor's withdrawals from the Lalwani trust account:

Date	Cheque #	Amount
August 23, 1991	0940	\$7,808
September 30, 1991	0954	8,000
September 30, 1991	0953	8,250
Amount Misappropriated		24,058
Less: September 5, 1991	Repaid	(5,000)
Unreconciled Difference		(830)
Estimated Trust Shortage		\$18,228

14. The Solicitor has since repaid all monies that were misappropriated. He deposited \$11,644.39 with his counsel, Ron Petersen, who injected the funds into the Solicitor's trust account. In addition, a client, Ms. Vitanza agreed to apply the funds misapplied from her client trust account against the Solicitor's loan to her. (Refer to paragraphs 16-22 below) These transactions totalled \$19,144.39 being sufficient to cover the estimated trust shortage of \$18,228.

15. Mr. Lalwani has written to the Society confirming that he has been repaid all funds owed to him and indicating that the matter had now been dealt with to his complete satisfaction, a copy of which is attached as Exhibit 2 to this agreed statement of facts.

Particular 2(b) - Misapplication - \$7,500

16. Jocelyne Vitanza, president of DARE Personnel Inc., had been a client of the Solicitor's since approximately 1988.

17. DARE had an outstanding loan to Christopher Healy. Since June 1, 1991, DARE issued monthly cheques in trust to the Solicitor for repayment of the loan. The Solicitor would in turn issue a cheque from his trust account payable to Mr. Healy. The purpose for handling the payments in this way was to establish a clear record of payments by Mrs. Vitanza to Mr. Healy. A copy of the loan agreement between DARE and Mr. Healy, guaranteed by Ms. Vitanza is attached as Exhibit 3 to this agreed statement of facts.

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18. Ms. Vitanza also borrowed \$25,000 from the Solicitor through the corporation Verina Developments on May 7, 1991. Verina Developments is an Ontario company of which the Solicitor is the sole shareholder and directing mind. By September, 1991 the amount of that loan had been reduced to \$7,500.

19. On September 27, 1991, DARE issued a cheque to the Solicitor in trust in the amount of \$7,500. It was intended that this money would be paid to Mr. Healy. The Solicitor deposited this cheque into his trust account. On the same day, the Solicitor issued cheque number 950 in the amount of \$7,500 from his trust account to Mr. Healy. On September 30, 1991, the Solicitor put a stop payment on the cheque, without the authority or consent of Ms. Vitanza. The Solicitor then removed the \$7,500 from trust applying it to the amount of the loan outstanding from Ms. Vitanza to himself.

20. The agreement between DARE and Mr. Healy stipulated that should any default in the payment schedule occur, Mr. Healy would be entitled to damages in the amount of \$5,000. As a result of the default, counsel on behalf of Mr. Healy made a demand for the \$5,000 penalty. A copy of that demand is attached as Exhibit 4 to this agreed statement of facts. The claim for penalty payment was subsequently withdrawn.

21. The Solicitor explains the foregoing conduct on the basis that he understood Mrs. Vitanza would be making a further payment on the loan to Verina and, that not having received the money, he felt it within his rights to stop payment on the Healy cheque. The Solicitor agrees his course of conduct, particularly in the absence of authority from Mrs. Vitanza, was completely inappropriate and constitutes misapplication of her funds.

22. As stated in paragraph 14 above, the Solicitor and Mrs. Vitanza subsequently arrived at a satisfactory resolution of all matters between them.

Particular 2(c) - Borrowing from Client - Prem Gupta

23. The Solicitor takes the position that he did not view Mrs. Gupta as a client; nonetheless, he admits that the circumstances of his relationship with Mrs. Gupta tell within the parameters of Rule 7.

24. Mr. and Mrs. Surinder Nath and Prem Gupta had on several occasions lent money to a client of the Solicitor's, Anand Aggarwall. On these occasions Mr. Aggarwall always initiated instruction and paid the Solicitor's fees. On these transactions, the Solicitor reported to both the Gupta's and Mr. Aggarwall. Copies of two reports from the Solicitor to the Guptas regarding these transactions are attached collectively as Exhibit 5 to this agreed statement of facts.

25. Mr. Gupta died in the fall of 1990. The Solicitor reported to Mrs. Gupta regarding a further transaction with Mr. Aggarwall which closed on December 11, 1990 by way of letter dated January 9, 1991, a copy of which is attached as Exhibit 6 to this agreed statement of facts.

26. Subsequent to the death of her husband, Mrs. Gupta and the Solicitor had several conversations regarding investment opportunities for her and the benefits she would receive if she were to loan money to him. The Solicitor provided his assurances that her funds would be safe and after some discussion they reached an agreement she would loan money to him. Mrs. Gupta and the Solicitor agreed that any funds she invested with him would receive 17% interest.

27. On July 2, 1991, Mrs. Gupta received the proceeds from the sale of a property and agreed to invest those proceeds through the Solicitor. She provided the Solicitor with a cheque in the amount of \$43,685.25 of which the Solicitor borrowed \$42,500.

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28. The Solicitor advised Mrs. Gupta that this amount would not be sufficient to obtain the maximum rate of good return. Mrs. Gupta advised the Solicitor that she would attempt to obtain additional funds. Several weeks later, Mrs. Gupta received a loan agreement from the Solicitor, a copy of which is attached as Exhibit 7 to this agreed statement of facts. At this time Mrs. Gupta felt responsible for loaning the Solicitor the additional funds and borrowed \$70,000 from a bank in order to do so.

29. Mrs. Gupta was not provided with any security for the loan.

30. The Solicitor failed to ensure Mrs. Gupta understood she should obtain independent legal advice or representation in respect of the loan transactions.

31. Mrs. Gupta and the Solicitor have now reached a settlement pursuant to the terms of which Mrs. Gupta's monetary claim against the Solicitor has now been settled. This settlement was accomplished by the Solicitor borrowing \$50,000 from his sister-in-law which amount was paid to Mrs. Gupta in full settlement of her claim. Copies of letters confirming these facts are attached as Exhibit 8 collectively to this agreed statement of facts.

V. PROPOSED DISPOSITION

32. The Society and the Solicitor will jointly submit that the Solicitor be given permission to resign his membership in the Society.

33. This joint submission is premised on the Solicitor's undertaking to continue and complete his rehabilitation therapy; and, on his undertaking that if the Solicitor makes application for admission to any Law Society in any other province or country he will notify the Law Society of Upper Canada of his intention to do so and hereby gives the Law Society authority to provide the prospective body or employer with a copy of the complaint herein, this agreed statement of facts, any other exhibits filed and this committee's report and any Order of Convocation made in connection with this complaint.

DATED at Toronto, this 25th day of January, 1993."

ADMISSIONS

The solicitor has reviewed the complaint 144/92 and admits the particulars contained therein excluding paragraph 2(d) which was withdrawn.

FACTS

1. The solicitor was called to the Bar on April 13th, 1983. Since his call to the Bar until his undertaking not to practice was given to the Law Society in October of 1992, he had practiced as a sole solicitor.

In addition to the agreed statement of facts, the evidence before the Committee consisted of a psychiatric report from Dr. Allan Wilson, M.D. Ph. D., including a clinical record and a case history from the Royal Ottawa Hospital Department of Psychiatry dated May 6th, 1992 together with and a follow-up report from Dr. Wilson dated the 21st of January 1993. The committee also received letters of support from John Nunziata M.P. and from Don Boudria M.P. and from a solicitor, Antonino Licandro.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Farouq Mallal be given permission to resign his membership in the Society.

REASONS FOR RECOMMENDATION

The committee accepted the penalty which is the joint submission given in writing to the Committee as follows:

This joint submission is premised on the Solicitor's undertaking to continue and complete his rehabilitation therapy and, on his undertaking that if the Solicitor makes application for admission to any Law Society in any other province or country he will notify the Law Society of Upper Canada of his intention to do so and hereby gives the Law Society authority to provide the prospective body or employer with a copy of the complaint herein, this agreed statement of facts, any other exhibits filed and this Committee's report and any Order of Convocation made in connection with this complaint.

The Solicitor is a substance abuser. He has a 38-year history of alcohol abuse and a more recent history of cannabis and cocaine abuse. From the psychiatric report, it is evident that he is attempting to rehabilitate himself. The psychiatric report states that the Solicitor requires a very structured support system to help him continue with the progress he has made in treatment. It also contains information that on at least two occasions he has failed to comply with post-discharge plans. Whether or not he will succeed is uncertain and we make no finding on this. However, we have considered the following factors in arriving at our recommendation:

The evidence establishes that the misconduct occurred within a short time frame (July 1991 to October 1991). This culminated with the Solicitor leaving for Pakistan without prior notice to his clients. According to the medical evidence, compulsive cocaine use seriously interferes with judgment and decision making. The evidence establishes that by August 1991, the Solicitor's cocaine and alcohol addictions had rendered him effectively incapable of carrying on a practice. Although the Solicitor abandoned his practice, this was in some ways fortuitous, since the Solicitor was clearly incapable of conducting his practice. Within a very short time, he retained a lawyer to make arrangements for his clients and instructed him to report the misappropriations to the Law Society. Since then, the Solicitor has fully co-operated with the Law Society and is now attempting to rehabilitate himself through an addiction treatment program.

The Solicitor admitted to the misconduct, thereby saving the Society considerable time and expense in prosecuting this complaint. He voluntarily gave an undertaking not to practise law and has not practised law since October 1992. The amounts misappropriated were relatively small and there was almost immediate restitution of the funds. The evidence included letters of satisfaction and withdrawal of the complaints from the clients whose funds had been taken as well as from Mrs. Gupta whom the Solicitor did not regard as a client.

The Solicitor has no previous discipline history. The Committee received character evidence in the form of letters from Mr. John Nunziata, M.P., Mr. Don Boudria, M.P., and from a solicitor, Mr. Antonio Licandro. It also reviewed a letter from Dr. Bhatia who was the Solicitor's personal physician, and also a client of the Solicitor and a complainant early in these proceedings. Dr. Bhatia has since withdrawn his complaint. The effect of this evidence confirms the Solicitor's previous good character and strongly suggests that the Solicitor's misconduct was substantially if not exclusively caused by the debilitating effects of his addiction.

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We believe that the Solicitor is deeply shamed and humiliated by his conduct and is now making an effort to rehabilitate himself. He is considering moving his family to British Columbia where he plans to continue with his treatment and hopes to re-establish himself. Through his undertaking, he has agreed to notify the Law Society of his intention to make application for admission to any Law Society in Canada or elsewhere. In that event, the Society is authorized to disclose these proceedings to any prospective body or employer. If the Solicitor is unsuccessful in overcoming his addiction, there is of course the possibility that he will not fulfil his undertaking and that the public may be at risk. However, if lawyers with addictions are to be encouraged to rehabilitate themselves, then it is desirable in appropriate cases to provide that opportunity. We were referred to several misappropriation cases where permission to resign was thought to be a more appropriate penalty than disbarment. The facts and circumstances of this case bring it within this class of cases and we believe it to be the most appropriate penalty in this instance.

Farouq Mallal was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 13th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 11th day of March, 1993

"M. Weaver"
Mary P. Weaver, Q.C. Chair

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

Counsel for the Society advised Convocation of two amendments in the Report:

- (1) page 6, para. 23 - the word tell should be "fell"; and
- (2) page 7, first line - the word "that" should be inserted before the word "she".

There were no submissions by counsel for the solicitor.

The Report was adopted.

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

Both counsel made submissions in support of the recommendation.

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

The Recommendation as to Penalty was adopted.

Mr. Strosberg did not vote.

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

Counsel and the solicitor retired.

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25th March, 1993

Re: BRIAN ALAN WHYTE, Gloucester

Mr. Perrier, counsel for the Society asked that the matter be stood down.
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The Treasurer withdrew from Convocation as one of the ineligible Benchers listed in the following Discipline Reports. Mr. Somerville took the Chair as Acting Treasurer.
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Re: MOEEN MAHMOOD AHMAD JANJUA, Mississauga

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. Scott withdrew.

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

Convocation had before it the Report of the Discipline Committee dated 26th February, 1993, together with an Affidavit of Service sworn 23rd March, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 9th March, 1993 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor 25th March, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby, Chair
James M. Spence, Q.C.
Hope Sealy

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

Christina Budweth
for the Society

MOEEN MAHMOOD AHMAD JANJUA
of the City
of Mississauga
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 19, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 4, 1992 Complaint D49/92 was issued and on November 12, 1992, Complaint D176/92 was issued against Moeen Mahmood Ahmad Janjua alleging that he was guilty of professional misconduct.

The matter was heard in public on January 19, 1993 before this Committee composed of Clayton C. Ruby, Chair, James M. Spence, Q.C. and Hope Sealy. Mr. Janjua attended the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D49/92

2. a) While acting as trustee for a family trust, he knowingly swore 11 false Statutory Declarations. The Statutory Declarations allegedly were sworn to verify the source of the balance of funds for the purchase of the 11 rental properties. In each case, he knowingly and falsely indicated that the balance of funds were from his own resources and had not been borrowed.

Complaint D176/92

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending May 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 the regulation made pursuant to the Law Society Act.

Evidence

Part of the evidence before the Committee was contained in the following Agreed Statements of Facts:

"AGREED STATEMENT OF FACTS - D49/92

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D49/92 and this agreed statement of facts and admits the particular 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 1976. He is the sole practitioner with general practice in Mississauga, Ontario.

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5. During the period 1986 and 1987, the Solicitor acted as solicitor for the Janjua Family Trust ("the Trust"). The Trust was engaged in the business of purchasing and selling rental property in the Mississauga area. The Trust was established to benefit various members of the Solicitor's family, the Solicitor being among them. At the times material to this complaint, the Solicitor held a 20% interest in the Trust. Eight other family members held 10% each.

6. In 1987, the Solicitor, as trustee, purchased and held 11 rental properties for the Trust:

1. 7340 Copenhagen Road, Mississauga
2. 2881 Windwood Drive, Unit 39, Mississauga
3. 794 Embassy Drive, Mississauga
4. 1292 Playford Road, Mississauga
5. 1808 Sandgate Crescent, Mississauga
6. 1807 Sandgate Drive, Mississauga
7. 1300 Playford Road, Mississauga
8. 25 Enmount Drive, Unit 25, Brampton
9. 1321 Playford Road, Mississauga
10. 2436 Yeovil Road, Mississauga
11. 3346 Fellmore Drive, Mississauga

7. The purchase of the properties was financed with first mortgages equal to 75% of the purchase price on each of the property from Central Guaranty Trust. A condition of the Central Guaranty mortgage commitment was the requirement that the Janjua Family Trust provide a downpayment of 25% of the purchase price. The mortgage commitment further precluded the use of any secondary financing and required that the Solicitor, on behalf of the Trust, provide a statutory declaration that the conditions had been met. Attached as Exhibit 1 to this agreed statement of facts are copies of the relevant mortgage commitment agreements.

8. Central Trust and the Janjua family were represented in the transaction by Solicitor Ghalioungui.

9. In order to close the transactions, the Solicitor arranged for a second mortgages to be placed on each of the 11 properties. A summary of the purchase price of the properties, the amount of the downpayment, and details of the first and second mortgage financing, prepared by the Solicitor, at the request of the Society is attached as Exhibit 2 to this agreed statement of facts.

10. The Solicitor swore eleven (11) separate Statutory Declarations directed to Central Guaranty deposing that the balance of funds being used to purchase the various properties "are of my own resources and have not been borrowed". Copies of the Statutory Declarations are attached, collectively, as Exhibit 3 to this agreed statement of facts. The Solicitor swore the eleven (11) Statutory Declarations concerning compliance with the downpayment requirements knowing that the Declarations were false.

11. The Solicitor made the arrangements for the secondary financing without the knowledge of Mr. Ghalioungui. These funds flowed directly to the vendors without the involvement of Mr. Ghalioungui.

25th March, 1993

12. During the course of the Law Society's investigation into this matter, the Society's auditor corresponded with Central Guaranty to inquire as to whether they would have advanced the mortgage funds to the Janjua Family Trust had the full extent of the secondary financing been disclosed. Central Trust confirmed that they would have granted the mortgages had they known the full extent of the financing. By letter dated January 28th, 1992, Central Guaranty advised that all of the mortgages had been repaid in full. Copies of the three letters confirming the aforesated are attached, collectively, as Exhibit 4 to this agreed statement of facts.

PRIOR DISCIPLINE

13. The Solicitor was found guilty of professional misconduct on June 3, 1986 for failing to maintain books and records and for charging improper fees and disbursements. The Solicitor was reprimanded in Committee on that occasion.

14. The Solicitor was found guilty of professional misconduct on February 19, 1991 for failing to reply to the Society and failing to serve clients. The Solicitor was reprimanded in Committee. A copy of the complaint is attached as Exhibit 5 to this agreed statement of facts.

15. The Solicitor was suspended on May 24, 1991 and reinstated on June 6, 1991 for failing to pay his errors and omissions insurance levy. He was suspended again on November 29, 1991 and reinstated on December 12, 1991 for the same reason. The Solicitor was suspended again on November 2, 1992 and reinstated on December 10, 1992 for the same reason.

DATED at Toronto this 18th day of January, 1993."

"AGREED STATEMENT OF FACTS - D176/92

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D176/92 and this Agreed Statement of Facts and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1976. He is the sole practitioner with a general practice in Mississauga, Ontario.

5. The Solicitor's fiscal year end is May 31. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending May 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 December 4, 1991 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.

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7. By registered letter dated January 6, 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 when this levy amounted to \$1,500.00 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 may be brought before the Discipline Committee for failure to file. A copy of the Society's January 6, 1992 letter is attached as Exhibit "B" to this Agreed Statement of Facts.

8. The late filing fee began to accrue on January 21, 1992.

9. A Law Society staff employee spoke with the Solicitor by telephone on April 2, 1992. The Solicitor advised that he was meeting with his accountant the next day regarding his annual filing.

10. By registered letter dated May 12, 1992, the Law Society advised the Solicitor that his name would go before Convocation on June 26, 1992 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on June 25, 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. A copy of the Society's May 12, 1992 letter is attached as Exhibit "C" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

11. By letter dated June 12, 1992 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 June 26, 1992 should payment not be received by June 25, 1992. A copy of the Society's June 12, 1992 letter is attached as Exhibit "D" to this Agreed Statement of Facts.

12. By letter dated June 19, 1992, the Solicitor provided the Law Society with a certified cheque in payment of his late filing levy. The Solicitor advised that he was making arrangements with his accountant to complete the examination of his books and hoped to be able to file by early next month. A copy of the Solicitor's June 19, 1992 letter is attached as Exhibit "E" to this Agreed Statement of Facts.

13. Conditional authorization for the herein complaint was granted against the Solicitor on August 14, 1992.

14. By letter dated August 26, 1992, a Law Society staff employee hand delivered to the Solicitor a letter advising him of the conditional authorization and his obligation file his Forms 2/3. The Solicitor was granted an extension until October 8, 1992 to file the required form, failing which, a formal complaint would be issued against him. A copy of the Law Society's August 26, 1992 letter is attached as Exhibit "F" to this Agreed Statement of Facts.

15. 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.

16. To date, the Solicitor has not filed the required forms.

DATED at Toronto this 18th day of January, 1993."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Moeen Mahmood Ahmad Janjua be reprimanded in Convocation respecting his failure to file; that he should be suspended respecting the charge of the false oath for a period of two months; and that he be suspended indefinitely thereafter if his filings are not brought up to date and complete. The suspension is to last until the filings are in fact completed.

REASONS FOR RECOMMENDATION

The Committee had before it two complaints which are in essence very difficult to deal with. On the one hand, we have a failure to file forms as required which involves no direct moral opprobrium. It is not merely a technical offence, it is important. It is the only way in which the Society can monitor its members and assure the public that, in fact, proper activities are going on.

The other complaint is far more troubling. On eleven occasions, false affidavits have been sworn knowing them to be false. It is not an exaggeration to say that this was done, as counsel for the Society puts it, over and over and over again.

There are mitigating facts to take into account in assessing the seriousness of the false affidavit charge. First, this involved a family trust, no stranger was involved. Second, the party that advanced the monies - a commercial institution, and a large one - has indicated to us in writing that they would probably have advanced the funds even if they had known that there were second mortgages on the property. It is likely, as the Solicitor points out, that their primary concern was with the income generated by the properties and not the fact of the mortgages.

No monies were lost and fortunately for all of us, not least of all the Solicitor, there have been no claims arising out of this transaction. But, the Solicitor did pledge his oath on a number of occasions to the proposition that no secondary financing was involved and that was not true. Whether or not an employee of the mortgage company had indicated there was no problem with secondary financing is really not the point of the present charge. The point of the present charge is the false oath.

The Solicitor has had a difficult past. It is a past which we can barely appreciate and understand no matter how hard we try. He was born in Uganda and came from a family there which was obviously honourable. With the advent of Idi Amin and complete totalitarian government and the institution of legalized terror, his family had to flee and they fled with nothing. He was settled in the United Kingdom and called to the bar at Lincoln's Inn. In 1972, he came to Canada and has attempted to make a life here at the bar.

His family has had lawyers among them since virtually the turn of the century and on his description, which we accept, he has had a practice which gives back to the community some of what he has had as a professional. He has had concern for poor people.

25th March, 1993

The Solicitor invested in a number of properties. In describing this, he asked himself the rhetorical question "Was I greedy?" And answers it, "Maybe, maybe a little bit". But, his object was entirely understandable. He wanted to gain, as he put it, a little respectability and maybe leave something to his children so they would have a little head start in life. His family is obviously important to him. He has four young children, the oldest of which is sixteen and a wife whom he lives with and supports.

As a result of the recent recession, his business investments have vanished. Over recent years and months, they have caused him a great deal of anguish and pressure and put a lot of stress on his life.

The Law Society has been active in monitoring his practice and for a period he had co-signing controls placed upon him. No charges have arisen out of that monitoring process.

His practice has dwindled and although we do not have the precise parameters of it, it is apparent that he now derives a very modest income from that practice and is working hard to maintain even that.

In these circumstances, we look upon the alternatives in terms of disposition with two primary responsibilities. One, we feel we are compelled to mark the serious nature of the misconduct involving the oath. Secondly, we wish to avoid further hurting a man who is clearly in difficult and constraining circumstances and doing his best to keep his head above water.

He has physical problems which appear to be serious, and family problems, all of which have been aggravated by the difficulties, economic and otherwise, that have been pressing him. He testified and although the Committee is not prepared to accept everything he said as gospel, he is clearly a man of considerable depth and complexity and with both considerable insight and considerable failures of insight into his own situation.

The Committee took into account all of these factors. We note, as a significant factor, that he has been cooperative throughout this process, and has agreed upon facts and made disclosures to the Law Society.

He has a previous record with the Society, which is important to note, consisting of two failures to file in the past, but as regard the more serious of the misconducts in terms of moral issues, the false declarations, only one of the complaints (namely the one respecting the charging of improper fees and disbursements and failing to maintain books and records dated June 3, 1986) is a prior record and so we take only that record into account respecting the false oath count. The other findings of guilt are subsequent to the acts in this case.

We also take as given for purposes of this disposition that no solicitor, however, constrained his circumstances economically, can be permitted to practise if he does not file. It simply cannot be done. There is no other way to ascertain the conduct of our members and provide proper assurance to the public.

The Committee has attempted to balance these factors and we have therefore proposed that this matter be sent to Convocation with a recommendation that the Solicitor should be reprimanded in Convocation respecting the failure to file; that he should be suspended respecting the charge of the false oath for a period of two months; and that he be suspended indefinitely thereafter if his filings are not brought up to date and complete. That suspension is to last until the filings are in fact completed. In these circumstances, it is not appropriate to award costs and we make no order.

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Moeen Mahmood Ahmad Janjua was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 8th day of April, 1976.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"C. Ruby"
Clay Ruby
Chair

There were no submissions and the Report was adopted.

It was moved by Mr. Strosberg, seconded by Mr. Lamont that the Recommendation as to Penalty contained in the Report be adopted, that is, that the solicitor be reprimanded in Convocation for his failure to file, that he be suspended for two months for the charge of the false oath and suspended indefinitely thereafter until his filings are completed.

Ms. Budweth asked that in addition to the suspension recommended that an order of costs be imposed in the amount of \$1,500 which would be paid before the solicitor re-entered the practice of law.

Questions were taken from the Bench.

The solicitor made submissions in support of the recommendation but argued against the costs order.

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

It was moved by Mr. Levy, seconded by Mr. Hill that the solicitor be suspended for 6 months for the false oath charge with the remaining conditions to remain in place.

It was moved by Mr. Bastedo, seconded by Ms. Elliott that the solicitor be suspended for 3 months and in addition that Reasons be given expressing Convocation's concerns on the seriousness of swearing false declarations.

It was moved by Ms. Palmer, seconded by Mr. Brennan that costs be awarded in the amount of \$1,500.

Counsel, the solicitor, the reporter and the public were recalled and advised of the motions for an increased penalty.

The solicitor requested that any suspension imposed be effective April 1st to allow him to complete pending real estate transactions.

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

The Levy/Hill motion to suspend the solicitor for 6 months plus the other recommendations in the Committee's Report was carried.

The Committee's Recommendation as to Penalty was not put.

The Bastedo/Elliott motion was not put.

25th March, 1993

Ms. Palmer withdrew her motion on costs.

It was moved by Mr. Brennan, seconded by Ms. Graham that the solicitor be ordered to pay costs in the amount of \$1,500.

Lost

It was moved by Mr. Wardlaw, seconded by Ms. Elliott that the solicitor's suspension commence on the 1st of April, 1993.

Carried

Mr. Strosberg did not vote.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision and that Reasons would be provided.

The solicitor was publicly reprimanded.

Counsel and the solicitor retired.

.....

Convocation took a brief recess at 11:00 a.m.

Convocation reconvened at 11:15 a.m.

The Treasurer returned to Convocation.

RESUMPTION OF THE BRIAN ALAN WHYTE MATTER

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. Brennan, Ms. Elliott and Ms. Graham withdrew.

Mr. Neil Perrier appeared for the Society and Mr. J. J. Keaney appeared for the solicitor who was present.

Convocation had before the Report of the Discipline Committee dated 12th March, 1993, together with an Affidavit of Service sworn 23rd March, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 15th March, 1993 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor 25th March, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

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The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Lloyd Brennan, Q.C., Chair
Susan E. Elliott
Mrs. Netty Graham

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

Neil Perrier
for the Society

BRIAN ALAN WHYTE
of the City
of Gloucester
a barrister and solicitor

George Hunter
for the solicitor

Heard: February 18, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 3, 1992, Complaint D142/92 was issued against Brian Alan Whyte alleging that he was guilty of professional misconduct.

The matter was heard in public on February 18, 1993, before this Committee composed of Lloyd Brennan, Q.C., Chair, Susan E. Elliott, and Mrs. Netty Graham. Mr. Whyte attended the hearing and was represented by George Hunter. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D142/92

2. a) He improperly charged disbursements of approximately \$500 to \$700 per year for a period of 2 3/4 years to clients when, in certain instances, the disbursement had not properly been incurred.
- b) He failed to serve a number of his clients in a competent and diligent manner, thereby breaching Rule 2 of the Rules of Professional Conduct by failing to keep notes on the search of title in every real estate file;
- c) He breached Rule 1 of the Rules of Professional Conduct in that his actions, as set out in particulars (a) and (b), above, placed his integrity in doubt.

25th March, 1993

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 D142/92 and is prepared to proceed with a hearing of this matter on February 18, 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. MOTIONS

3. The Society and the Solicitor will make a motion to the Committee that particular 2(a) of Complaint D142/92 be amended as follows:

He improperly charged disbursements of approximately \$500 to \$700 per year for a period of 2 3/4 years to clients when, in certain instances, the disbursement had not properly been incurred.

IV. ADMISSIONS

4. The Solicitor has reviewed Complaint D142/92 and admits particulars 2(b) and (c) contained therein. The Solicitor further admits the above proposed amendment to particular 2(a) of Complaint D142/92. The Solicitor admits that the particulars constitute professional misconduct.

V. FACTS

5. The Solicitor was called to the Bar in 1977. He was an associate at Burke-Robertson from November, 1987 until February, 1990 when he became a partner.

6. A Law Society investigation auditor attended the offices of Burke-Robertson on February 14, 1992 and met with Mr. Tom Barber, managing partner, and Mr. Steven Sharpe, Director of Finance. Mr. Barber stated that the Burke-Robertson Management Committee had received information from an employee of the firm that the Solicitor had been closing real estate files without conducting full searches.

7. Following the receipt of this information by the firm, a sample of the Solicitor's files were examined and the above information was confirmed. The Solicitor was confronted with this information on February 2, 1992 and he admitted that he had not performed full proper searches in several real estate transactions.

25th March, 1993

8. In a letter dated February 17, 1992 (Document Book, Tab 1) to the Law Society, the Solicitor reported himself for having breached certain rules of professional conduct. In this letter the Solicitor acknowledged the following:

- a) He periodically charged expenses on certain files to trust balances on other files;
- b) In a number of cases, he drew cheques on a client's trust balance to directly pay the disbursements on another client's file;
- c) On a number of files, he billed clients for disbursements and paid from trust funds without sending the clients an account; and
- d) He periodically charged disbursements to files where there was no actual expense, or where the disbursement charged was simply an estimate.

9. Ms. Cindy Kargus has been a title searcher at Burke-Robertson for eight years. She confirmed that in most cases when she was asked to do a search by the Solicitor, she would be asked to get a copy of the abstract only. In most cases, the instruments listed on the abstract were not photocopied nor were they reviewed by the Solicitor. She stated that this practice of only obtaining an abstract had been going on for several years.

10. On February 20, 1992, the Solicitor resigned as Partner of Burke-Robertson (Document Book, Tab 2). In his letter, the Solicitor states: "I acknowledge that as a result of my practice and procedures in closing real estate files, it is necessary for the firm to review all of my files and to ensure that full searches of title are made..."

11. A review of the Solicitor's files by Burke-Robertson took several weeks to complete. The final result of this investigation was a list of client files (Document Book, Tab 3) in which there was evidence that the Solicitor had not performed full searches of title. This list shows that searches will have to be done on 412 files. The files reviewed were for the period 1988-1991 and included purchase and sale transactions. The Audit Department was informed by Burke-Robertson that they have notified the Errors & Omissions Insurance Department.

12. It was a policy of Burke-Robertson that a full search be done on all real estate transactions. In Registry searches, the lawyer should be searching back forty years and an abstract should be obtained for the entire period. There should also be notes on the search of title in every file as well as photocopies of relevant instruments listed on the abstract. In Land Title searches, a copy of the abstract should also be on file, although it is not necessary to go back forty years. As with Registry searches, there should be notes on the search of title in every file as well as photocopies of relevant instruments listed on the abstract.

13. Ms. Cindy Kargus confirmed that in most cases when she was asked to do a search for the Solicitor, she would be asked to get a copy of the abstract only. In those cases, the instruments listed on the abstract were not photocopied nor were they reviewed. The instructions to obtain only a copy of the abstract would be on the search requisition that she would receive from the Solicitor's secretary. She stated that this practice of only obtaining an abstract has been going on for several years. Ms. Kargus claimed that she found it unusual that the Solicitor would only request a copy of the abstract whenever he requisitioned a search. Nonetheless, she followed the instructions that were given to her.

14. A sample of the 412 files reviewed by Burke-Robertson was selected. These files are the following:

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File #	Client Name	Transaction	Document Book, Tab #
11344.1	Craig	Purchase	4
11898.5	Emerton	Purchase	5
20205.1	Czuba	Purchase	6
20316.1	Doherty	Purchase	7
11597.1	Deon/Mercier	Purchase	8

15. In his reporting letter to all of the above clients, the Solicitor stated that: "Prior to closing this transaction, we completed a search of title of the property and made such inquiries as were necessary and in my opinion you have good and marketable title to the property...".

CRAIG

16. A review of the Craig file showed that Bruce and Kelley Craig purchased Part of Lot 1, Plan M-18 Part 21 on 50R-1835, Township of Cumberland on July 2, 1991. The Solicitor's file contained only an abstract (Document Book, Tab 4), which suggests that a proper search was not conducted. A review of the abstract indicates that the following instruments should have been reviewed and obtained.

Instrument	Date of Instrument
Deposit	April 20, 1976
Notice of Agreement	November 8, 1976
Notice of Agreement	October 29, 1976
By-Law 2191	August 8, 1977
R-Plan	October 5, 1977
Transfer	May 31, 1983
Charge	May 26, 1983

17. The file did not contain any notes or photocopies concerning the above instruments. In his reporting letter (Document Book, Tab 5) to his client, the Solicitor did not provide any mention or explanations as to the what these instruments were and how they affected the title to the property.

EMERTON

18. A review of the Emerton file showed that Richard Emerton purchased Parcel 145-1 Plan 50M-96 Township of Cumberland on October 15, 1991. The file contained only an abstract (Document Book, Tab 6), which suggests that a proper search was not done. A review of the abstract indicates that the following instruments should have been reviewed and obtained:

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Instrument	Date of Instrument
Indenture	January 16, 1966
Notice of Agreement	June 15, 1984
Notice of Agreement	July 3, 1984
Application	May 6, 1985
Transfer	May 6, 1985
Charge	September 6, 1985
Charge	October 1, 1985

19. The file did not contain any notes or photocopies concerning the above instruments. In his reporting letter to his client (Document Book, Tab 7), the Solicitor did not provide any mention or explanations as to what these instruments were and how they affected title to the property.

20. The search requisition (Document Book, Tab 8), completed by the Solicitor's secretary based on the instructions of the Solicitor, indicates that he requested the searcher to obtain the abstract, executions and deed. The above instruments listed on the abstract were not requested.

CZUBA

21. A review of the Czuba file showed that John and Lynn Czuba purchased Parcel 8-1, Section 50M-197, being Part 1 Plan 50R-6990, Town of Rockland on October 25, 1991. The file contained only an abstract (Document Book, Tab 9), which suggests that a proper search was not conducted. A review of the abstract indicates that the following instruments should have been reviewed and obtained:

Instrument	Date of Instrument
Charge	January 10, 1990
Application	January 3, 1990
Notice	January 30, 1990
By-Law	December 12, 1990
Transfer	December 14, 1990
Transfer	December 14, 1990
Covenants	December 14, 1990
Charge	December 14, 1990
Transfer	September 5, 1991
Charge	September 5, 1991

22. The file did not contain any notes or photocopies concerning these instruments. In his reporting letter (Document Book, Tab 10) to his client, the Solicitor did not provide any mention or explanations as to what these instruments were and how they affected title to the property.

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23. The search requisition (Document Book, Tab 11), completed by the Solicitor's secretary based on the instructions of the Solicitor, shows that he requested the searcher to obtain the abstract, plans, deed and executions. The above instruments listed on the abstract were not requested.

DOHERTY

24. A review of the Doherty file showed that Elizabeth Doherty purchased Unit 17, Level 6, Unit 73, Level B, Carleton Condominium Plan No. 486, City of Nepean on December 20, 1991. The file contained only an abstract (Document Book, Tab 12), which suggests that a proper search was not done. A review of the abstract indicates that the following instruments should have been reviewed and obtained:

Instrument	Date of Instrument
Notice	April 6, 1964
Order-In-Council	March 26, 1982
Order-In-Council	March 26, 1982
Notice	October 31, 1988
Notice	October 30, 1989
Declaration	February 16, 1990

25. The file did not contain any notes or photocopies concerning these instruments. In his reporting letter (Document Book, Tab 13) to his client, the Solicitor did not provide any mention or explanations as to what these instruments were and how they affected title to the property.

26. The search requisition (Document Book, Tab 14), completed by the Solicitor's secretary based on the instructions of the Solicitor, shows that he requested the searcher to obtain the abstract, deed and executions. The above instruments listed on the abstract were not requested.

DEON / MERCIER

27. A review of the Deon & Mercier file showed that Marc Mercier and Joanne Deon purchased Part of Lot 14, Plan 50M-131, being Part 1 on 50R-5199, Township of Clarence, on May 30, 1990. The file contained only an abstract (Document Book, Tab 15), which suggests that a proper search was not done. A review of the abstract indicates that the following instruments should have been reviewed and obtained:

Instrument	Date of Instrument
By-Law	August 19, 1963
Notice of Agreement	April 21, 1986
Application	August 26, 1986
Transfer	May 1, 1989
Charge	May 1, 1989

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28. The file did not contain any notes or photocopies concerning these instruments. In his reporting letter (Document Book, Tab 16) to his client, the Solicitor did not provide any mention or explanations as to what these instruments were and how they affected title to the property.

29. The search requisition (Document Book, Tab 17) completed by the Solicitor's secretary based on the instructions of the Solicitor, does not show any specific documents being requested. The searcher's report to the lawyer (Document Book, Tab 18) shows that the only documents obtained were "copies only as per request". In conclusion, a proper search was not conducted in this file.

30. At Document Book, Tab 19, is a letter dated September 10, 1992 from Allan R. O'Brien of Nelligan, Power to Errors and Omissions regarding efforts and results of searches of the Solicitor's real estate files.

31. At Document Book, Tab 20, is a letter dated January 20, 1993 from Ms. E. Jane Murray of Burke-Robertson to the Law Society's Insurance Adjusters.

32. Both the Law Society and Burke-Robertson performed a review of the Solicitor's client files in order to determine the extent to which the Solicitor improperly charged disbursements to clients which had not been incurred. The Society was unable to quantify the amount involved. The Solicitor has confirmed, and the Society's review would indicate, that the individual amounts were small, since the Society has been unable to identify any large transactions related to the Solicitor's admission. In addition, certain expenses such as mileage are not supported by any evidence in the file, and are therefore not verifiable. Burke-Robertson relies on the integrity of its staff and partners in charging actual expenses incurred.

33. The Solicitor acknowledged that he periodically charged disbursements to clients where there was no actual expense, or where the disbursement was simply an estimate. The Solicitor provided as examples charges for mileage and telephone. He stated that individually, these disbursements rarely exceeded \$10. He estimated that on an annual basis, these charges would probably amount to approximately \$500 to \$700 per year over a period of approximately 2 3/4 years.

VI. PRIOR DISCIPLINE

34. The Solicitor has had no prior discipline.

DATED this 18th day of February, 1993."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Brian Alan Whyte be:

- a) suspended for a period of four months to commence at the time of disposition by Convocation;
- b) for a period of one year following completion of the term of suspension the Solicitor is to practise only under the supervision of a solicitor approved by the Law Society;
- c) the Solicitor is to pay the costs of the Society's investigation in the amount of \$2,500.00;

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- d) the Solicitor is to undertake to the Society that he will continue in treatment with Dr. Cattan and the undertaking is to include Dr. Cattan's agreement to notify the Society if he has concerns as to the Solicitor's ability to practise.

REASONS FOR RECOMMENDATION

35. This is a tragic case for the solicitor, his clients, his family, his former firm and for the profession. Happily, it appears that all those affected by Mr. Whyte's actions, including himself, are on the way to a successful recovery. The possible dire consequences which could have flowed from his actions are now unlikely to occur.

36. The Society submitted the appropriate penalty would include a six month suspension, not retroactive in any way and supervision of the Solicitor for two years by a lawyer approved by the Society.

37. Counsel for the Solicitor suggested a suspension for three months with "some consideration" for the time spent in extremely limited practice and a form of monitorship of practise for a period of six months with the solicitor who had voluntarily been performing such function to date and a spot check arrangement thereafter would suffice.

38. Both counsel agreed that payment of costs of \$2,500 and continuation with Dr. Cattan, as required was appropriate.

39. The Committee felt that a number of factors weighed in favour of the Solicitor and that the Society's position was somewhat harsh but, given the size of the misconduct - the number of files involved and the length of time over which the actions took place - it could not accept the terms proposed by the Solicitor's counsel.

40. The Committee heard evidence from Jane Murray, a partner at Burke-Robertson, who testified that the firm reviewed about 900 files in which the Solicitor had been involved and found that 412 had not been properly searched. About 380 searches were required and, of those, 35 were in the Registry system with the balance being in Land Titles. Full searches were ordered and the files were completely reviewed by two articling students over a period of two months. In addition a lawyer reviewed each search. She estimated that about \$85,000 was spent to review the files - \$65,000 in time and \$20,000 in disbursements, primarily for independent title searchers. Clients were advised of any information which was relevant such as restrictive covenants which affected their title. This information was not always well received.

41. All clients had valid titles but some had clouds on title (such as old undischarged mortgages) which might have affected their ability to re-sell in a timely fashion had the firm not corrected the matters. It was significant to the Committee that no serious title problems were uncovered through this process. Ultimately it appears that 21 files needed corrective action but the deficiencies were described as "quite minor" by the Society's insurance adjuster.

42. The facts indicate the Solicitor was "closing real estate files without conducting full searches." Given the myriad steps required to completely search a title, particularly in the Registry system, the Committee was concerned as to how much (or how little) the Solicitor was doing. The Solicitor was obtaining

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the usual "clearance letters" for each title, was reviewing the abstract, requisitioning discharges and reviewing survey plans where necessary (except for a very few cases) and he was performing execution searches. He did not however review all relevant documents revealed by the abstract as, he thought, since he had been on these titles for fifteen years he knew what the various municipal agreements required. He admitted it was probably just good fortune that no serious title problem arose from his not conducting full searches.

43. There was no issue of the competence of the Solicitor to search titles. He simply cut corners and tried to do what might be called a "book search", without thoroughly reviewing all documents. As 90% of the Solicitor's practise was conducted in the Land Titles system, he apparently felt the titles were easier to search and the risk of a serious problem was lower than in the Registry system.

44. Given his obvious competence, why did this Solicitor start neglecting his files this way? Mr. Whyte traced his problems to merging with a larger law firm. He had practised for ten years in a small (5 lawyer) firm and, when faced with the decision of staying small or expanding, that firm dissolved. Three members, including the Solicitor, joined Burke-Robertson which at the time was a firm of about 24 lawyers. The change from a small firm to one about five times larger was not easy for the Solicitor. As his counsel put it, the Solicitor "lost control" of his practise. The result is he has been devastated physically, financially, professionally and emotionally by the events of the past few years.

45. The corners he cut made little or no sense. Burke-Robertson employed a law clerk to perform the title searches. To simply order the abstract and not ask for a full search saved the law clerk more time than the Solicitor, although the "turn around" time on his searches would presumably be quicker. His explanation was that it was more expedient and, as he was pressed for time during the real estate boom, he needed any extra time.

46. Mr. Whyte was also operating a branch office for the firm, handling a tremendous volume of files between the two offices. He was unhappy in his new setting. He had just recently, very reluctantly, become a partner, which required a \$25,000 cash contribution to capital and signing a loan of \$100,000. He worked longer and longer hours, neglected his family and began to drink too much. Mr. Whyte described himself as an angry, bitter and anti-social person for the last few years. That kind of person did not appear before the Committee.

47. The oral and written evidence of many character witnesses for the Solicitor indicated these actions were out of character. Many indicated their belief that the Solicitor had integrity and they would still use his services, even though apprised of the misconduct. The Solicitor's demeanour during the hearing, including his sincere and emotional apology to all parties, the evidence of his psychiatrist as to the reasons leading up to Mr. Whyte's actions and his efforts since then to re-habilitate himself and ultimately to resume a very restricted (in size and nature of work) practise all influenced the Committee to believe that the actions were out-of-character and not likely to be repeated.

48. By the time of the hearing, the Solicitor had been seeing a psychiatrist for about 11 months. While not relying on Dr. Cattan's report alone, the Committee noted that at page 9, he provided some explanation for Mr. Whyte's actions when he stated:

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"In conclusion, Mr. Whyte has most certainly learned his lesson and will unlikely make the same mistakes again. His prognosis will depend to some degree on the outcome of his disciplinary hearing before the Law Society. In the event that the result is a reprimand without the revocation of his licence disbarment I can see with no doubt that Mr. Whyte should be able to discontinue all medications and resume a normal life, as his depression is of the reactive type and secondary to his alcohol abuse, and stress related to his previous voluminous overload of work." (emphasis added)

Evidence of the character witnesses called by the Solicitor was consistent with these statements. Mr. Whyte has dealt with both the stresses and the alcohol abuse and the Committee feels he deserves a chance to re-establish himself as a productive member of the profession. The Committee did not consider this to be a case for a lengthy suspension and certainly not a case for disbarment.

49. Apart from the failure to fully search titles the Solicitor has admitted he improperly charged disbursements. Although the Solicitor admitted this, it was common ground that the amounts were \$5 to \$10 per file for telephone calls, photocopies and mileage charges which could not readily be proven to relate to the files in question and which in some cases may not have been applicable at all to the files against which they were charged. The Society indicated it would probably have been unable to prove or uncover this act of misconduct without the Solicitor's voluntary admission. As opposed to a situation where no disbursements were being incurred at all, this was more a case of the Solicitor not keeping proper track of the disbursements and then misallocating them to files. The Committee felt the Solicitor was unlikely to repeat this misconduct and noted no personal gain was involved.

50. The Committee took into account a number of other factors in arriving at the proposed penalty:

a. the Solicitor had serious psychological problems, as outlined above, for which he was receiving treatment and which treatment appeared to be having the desired result, including abstention from alcohol as evidenced both by blood tests and a witness;

b. the Solicitor's actions were not those of an *absence* of title search but rather an *incomplete* search; had he not searched at all the recommendation would have been for a harsher penalty;

c. the Solicitor has voluntarily spent time under medical and professional supervision and appears to have recognized what caused his problems; he has taken a number of steps to ensure there is no repetition of his behaviour and he has convinced the Committee that he is not at all likely to repeat his misconduct;

d. the Solicitor's personal costs to date have been very high - in addition to the shame, guilt and embarrassment to which the Solicitor and the witnesses all testified, he has suffered financially by having to indemnify his former firm for the cost of the file reviews and by being virtually out of practice (given his physical and emotional fragility) for approximately six months; in addition, there was some evidence from witnesses that Mr. Whyte appeared to have aged about ten years over the period in question;

25th March, 1993

e. the Solicitor fully co-operated with the Society and with his firm to the extent that he was asked to do so; he indicated he was prepared to be more helpful but, perhaps understandably, the firm had not called upon him;

f. there was no personal financial gain or motive except such as may arise from the handling of a large volume of files; the Solicitor's evidence was that his billings remained the same even as his volume increased - the fees were going down and the pressure was going up;

g. there was no issue of incompetence, indeed a less competent Solicitor would in all likelihood not have escaped with so few title problems given the volume of files processed;

h. the Solicitor's personal recovery requires some incentive to him to return to practise, put this behind him and start over;

51. All these factors must however be weighed against the facts and the necessity of confirming to the public and the profession the importance of Rules 1 and 2. Title searches must be professionally and properly performed, regardless of the time and fee pressures which might enter into a practice. While competence to search was not an issue in this case, the Solicitor failed to exercise the diligence and integrity which clients are entitled to receive from their solicitor and failed to perform competently as a solicitor. Mr. Whyte by his own testimony, "lost appreciation of the fact that practising is a privilege and comes with very serious responsibilities to clients". Commentary 1 to Rule 1 states "If personal integrity is lacking the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be." A period of suspension is required to confirm the Society's view that personal integrity is essential to the profession and that incomplete work cannot be countenanced. Mr. Whyte's reputation certainly is tarnished, if not destroyed. He will need time to re-establish himself; the Committee is satisfied he has learned from his mistakes and has taken steps to re-gain his reputation.

52. As a footnote, the Committee was concerned that all members of the profession be alert to the dangers of taking on more work than can properly be handled. There are many lessons to be learned from Mr. Whyte's example. The profession and the public need to realize that if the fee involved is not adequate to permit the requisite attention to be paid to a file, then Rules 1 and 2 are in danger of being violated as corners will undoubtedly be cut. Regardless of the fee being received it is expected that all necessary steps will be taken to ensure the required standard of practise is met. Mr. Whyte's case is an example of what can happen when a solicitor loses sight of the professionalism which is so essential to the practise of law and succumbs to pressures without obtaining assistance.

Brian Alan Whyte was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 25th day of March, 1977.

ALL OF WHICH is respectfully submitted

DATED this 12th day of March, 1993

"S. Elliott"
E. Susan Elliott

25th March, 1993

The Joint Document Book which was distributed to the Benchers was filed as Exhibit 3.

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

There were no submissions by either counsel and the Report was adopted.

It was moved by Mr. Strosberg, seconded by Mr. Somerville that the Recommendation as to Penalty contained in the Report be adopted, that is, that the solicitor be suspended for 4 months with conditions plus costs in the amount of \$2,500.

Counsel for the solicitor made submissions in support of the recommendation except that the suspension be retroactive to two months in consideration of his withdrawal from the practice of law.

Mr. Perrier supported the recommendation of the Committee but argued against the retroactive application of the suspension.

Questions were taken from the Bench.

There was a reply by Mr. Keaney.

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

It was moved by Mr. Finkelstein, seconded by Ms. Lax that the solicitor be suspended for 2 months prospective and 2 months retroactive.

Not Put

The Recommendation as to Penalty was adopted.

Mr. Strosberg did not participate in the debate or vote.

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

Counsel and the solicitor retired.

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CONVOCATION ADJOURNED FOR LUNCHEON AT 12:30 P.M.

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CONVOCATION RECONVENED AT 1:45 P.M.

PRESENT:

The Treasurer, Arnup, Bastedo, Bellamy, Brennan, Elliott, Feinstein, Finkelstein, Graham, Hill, Lamont, Lax, McKinnon, Murray, Palmer, Scott, Somerville, Strosberg, Thom and Wardlaw.

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IN PUBLIC

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25th March, 1993

Re: MARIO GIANGIOPPO, North York

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

Mr. McKinnon and Ms. Weaver withdrew.

Mr. Gavin MacKenzie appeared for the Society and Mr. Peter Rosenthal appeared for the solicitor who was present.

The Report which was before Special Convocation on February 25th, 1993 was adjourned to continue on this date.

Convocation had before it the Report of the Discipline Committee dated 30th December, 1992, together with an Affidavit of Service sworn 18th January, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 11th January, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor 25th March, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Colin McKinnon, Q.C., Chair
Samuel Lerner, Q.C.
Mary P. Weaver, Q.C.

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

Christina Budweth
for the Society

MARIO GIANGIOPPO
of the City
of North York
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 11, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 23, 1992, Complaint D125/92 was issued, On October 9, 1992, Complaint D164/92 was issued and on November 11, 1992, Complaint D72a/92 was issued against Mario Giangioppo alleging that he was guilty of professional misconduct.

25th March, 1993

The matter was heard in public on November 11, 1992 before this Committee composed of Colin McKinnon, Q.C., Chair, Samuel Lerner, Q.C. and Mary P. Weaver, Q.C. Mr. Giangiooppo attended the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D125/92

2. (a) He has failed to pay the costs assessed by the Law Society pursuant to Rule 50A of the Law Society Act, and has thus attracted the provisions of Section 36 of the Law Society Act.
- (b) He has failed to reply to the Society regarding his costs assessed under Rule 50A, despite letters dated January 27, 1992, May 27, 1992 and March 3, 1992.

Complaint D164/92

2. a) He failed to provide a reply to the Law Society regarding a complaint by Anthony J. Frost despite letters dated February 20, 1992 and March 13, 1992, and a telephone request on March 10, 1992.
- b) He failed to provide a reply to the Law Society regarding a complaint by Murray N. Maltz despite letters dated January 15, 1992 and March 13, 1992, and telephone requests on March 9, 1992 and March 10, 1992.
- c) He failed to provide a reply to the Law Society regarding a complaint by Diana Parise despite letters dated January 30, 1992 and February 20, 1992 and telephone messages left on February 14, 1992 and February 18, 1992.
- d) He failed to provide a reply to the Law Society regarding a complaint by Carmen Proevski despite letters dated June 12, 1992 and August 4, 1992 and telephone requests on July 9, 1992 and July 16, 1992.
- e) He failed to provide a reply to the Law Society regarding a complaint by Walker R. Dalzell, despite letters dated April 16, 1992 and June 4, 1992, and a telephone message on May 12, 1992 and a telephone request on May 21, 1992.
- f) He failed to provide a reply to the Law Society regarding a complaint by Willis Hahn, despite letters dated May 19, 1992 and July 20, 1992, and telephone requests on June 17, 1992 and July 8, 1992.
- g) He failed to provide a reply to the Law Society regarding a complaint by Graham R. Wakefield despite letters dated August 12, 1992 and September 14, 1992, and telephone messages left on September 2, 1992 and September 9, 1992.

Complaint D72a/92

1. The solicitor misappropriated or misapplied client trust funds in the amount of approximately \$13,666.37 as follows:

a) He misappropriated \$9,666.37 more or less from his mixed trust account by transferring into his general account for his own use prior to delivering a statement of account, contrary to section 14 (8) (c) of Regulation 573;

b) DiGirolomo - He misapplied \$4,000 more or less of mortgage funds advanced to him on behalf of his client DiGirolomo by Cabot Trust in June, 1991; and,

2)i) The solicitor borrowed directly and indirectly from clients in the total amount of \$488,720.00 contrary to Rule 7 of the Rules of Professional Conduct as follows:

a) North Sylva - He borrowed \$200,000 during the period January 1989 to May 31, 1989, secured by a mortgage on 9687 Keele Street or parts thereof;

b) North Sylva - He borrowed \$60,000 indirectly through his brother and directly through his personal guarantee of the mortgage on 119 Regent Road;

c) Strzoda - He borrowed \$68,720 unsecured;

d) Hang Fu - He borrowed \$30,000 unsecured;

e) Santoianni - He borrowed \$80,000, \$20,000 unsecured and \$60,000 secured by a mortgage on his property at 40 Sanderstead Avenue, Toronto;

f) Petriello - He borrowed \$50,000 secured by a mortgage on his property at 245 Coxfield Avenue, Toronto.

2)ii) In respect of the borrowings referred to in 2) i), the solicitor failed to ensure that the clients were provided with independent representation and that their interests were fully protected by adequate security.

2)iii) In respect of the borrowings referred to in 2) i), the solicitor failed to disclose the said borrowings to the Society during the course of the Society's audit of his practice (with the exception of the borrowing referred to at 2) i) a) and b) North Sylva).

3) He acted for both the borrower and lender clients in mortgage transactions without disclosing his conflict and without obtaining the consent of either client, contrary to the provisions of Rule 5 of the Rules of Professional Conduct. Instances in which he so acted include:

a) North Sylva advanced \$60,000 to the solicitor's brother John Giangio, secured by a mortgage on 119 Regent Road;

b) Syed Ali advanced \$230,000 to Errol Schnapp secured by a mortgage on 7601 Bathurst Street, Toronto;

c) Syed Ali advanced \$155,000 through his corporation Marconi Ventures, to Hilary and Christine Gould secured by a mortgage on 47 Kirkdene Drive;

d) Advances in the amounts of \$50,000, \$43,000 and \$120,000 from D'Addese, Trassolini and Equitable Trust Mortgage, respectively, given for the benefit of Nick Frutti and secured by various mortgages;

25th March, 1993

e) Balnis advance of \$100,000 to Hilary and Christine Gould secured by a mortgage on 47 Kirkdene Drive;

f) Kuchalskis advance of \$55,000 to Hilary and Christine Gould secured by a mortgage on 47 Kirkdene Drive.

4) Contrary to Rule 5 of the Rules of Professional Conduct, the solicitor preferred the interests of one client over those of another.

a) In the circumstances of particulars 3(e) and 3(f) above he preferred the interests of his client Kuchalskis over that of his client Balnis by registering the Kuchalskis mortgage in second position on the property and the Balnis mortgage in third position on the property when the Balnis' believed they would have a second mortgage;

b) In the circumstances of particular 3(b) above he preferred the interests of his client Schnapp over that of his client Ali by postponing Ali's mortgage security from second to fourth position without Mr. Ali's knowledge or consent; thus enabling Mr. Schnapp to obtain financing that he would have otherwise been unable to obtain;

5) The solicitor has failed to serve his client, Mitzi Schnapp, conscientiously and diligently, when he assisted his client, Errol Schnapp, in placing a number of mortgages on a property owned by his mother, Mitzi Schnapp. The solicitor failed to ensure that his client, Mitzi Schnapp fully understood the circumstances of the transactions.

6) Contrary to Rule 23 of the Rules of Professional Conduct, the solicitor personally guaranteed mortgages, or other documents securing indebtedness, in which his clients were involved as both borrower and lender. Instances in which he did so include:

a) a North Sylva mortgage advance in the amount of \$60,000 to Peter Popescul on 119 Regent Road;

b) a mortgage in the amount of \$50,000 given by Nicola and Vittoria Petriello in 1990 secured by a mortgage on 245 Coxfield Avenue;

c) a mortgage in the amount of \$200,000 given by Kuchalskis or North Sylva secured by a mortgage on 9687 Keele Street.

7) The solicitor engaged in the practice of law during the period November 23rd 1990 to January 30th 1991 despite the fact that his right to practice had been suspended for his failure to meet his financial obligations to the Society.

8) He failed to file with the Society within six (6) months of the termination of his fiscal years ending May 31, 1990 and May 31, 1991, 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.

9) The solicitor has failed to maintain a record showing a monthly comparison of total balances held in trust contrary to the provisions of section 15 (1) (h) of Regulation 573 under the Law Society Act for the period November 1989 to January 1991.

10) The solicitor has breached Rule 13 of the Rules of Professional Conduct in that he has failed to reply to letters dated July 30th 1991 and August 21st 1991 from the Law Society.

11) He misled his clients, Gino and Angelina Santoianni when, during the period February to July, 1989, he received personally approximately \$40,000 of \$60,000 which the Santoiannis believed they were advancing to Michael and Joanne Strzoda, he failed to inform the Santoiannis that he was receiving this personal benefit.

12) He misapplied \$97,000 more or less from the proceeds of the sale of 102 Stratford Crescent, Toronto in February, 1991 from his clients, Victoria and Joseph Runge, when he used funds which the Runge believed were advanced to a Mrs. Schnapp secured by a first mortgage on title to her condominium at 7601 Bathurst Street, Apartment 316, to make repayments of various debts owed to him by other clients which involved Mrs. Schnapp's son and this property.

13) He misled his clients, Victoria and Joseph Runge, and failed to ensure that their interests were protected when he failed to provide them with first mortgage security for the advance referred to in particular 12 and in fact postponed their mortgage to other institutional mortgages on title to the same property.

Evidence

Part of the evidence before the Committee contained the following Agreed Statements of Fact:

Agreed Statement of Fact - D125/92

"AGREED STATEMENT OF FACT"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D125/92 and is prepared to proceed with a hearing of this matter on November 3 and 4, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D125/92 and the agreed statement of facts and admits the particulars contained therein. The Solicitor admits that the particulars detailed 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 7, 1982.

5. The Society conducted an extensive audit of the Solicitor's practice during the period June 21, 1991 to November 27, 1991. The total time expended in the audit was 171 hours. As the audit was in excess of 10 hours the Solicitor was assessed the costs of the audit pursuant to the provisions of Rule 50A of the rules under the Law Society Act.

6. The Solicitor was provided with notice of the assessment and a copy of the account under cover of letter dated January 27, 1992, copies of which are attached collectively as Exhibit 1 to this agreed statement of facts.

7. The Solicitor did not and does not dispute the amount of the assessment.

25th March, 1993

8. By letter dated March 3, 1992 the Solicitor was reminded he had not yet remitted the amount of costs assessed and that his failure to pay would result in the suspension of his right to practice by Convocation.

9. By letter dated April 30, 1992, the Society confirmed that it had previously corresponded with the Solicitor on two separate occasions regarding his obligation to satisfy the account for audit costs. The Solicitor was advised if the matter was not resolved within two weeks it would be referred to counsel for the discipline committee for action.

10. The Solicitor has, to date, failed to reply to the Society and has failed to remit the costs owing.

DATED at Toronto this 30th day of October, 1992."

Agreed Statement of Fact D164/92

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D164/92 and is prepared to proceed with a hearing of this matter on November 3, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D164/92 and admits the particulars contained therein. The Solicitor also admits that the particulars in the complaint together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 7, 1982. He has been suspended from the practice of law since March 6, 1992 regarding non-payment of his annual fee.

Particular 2a)

Anthony J. Frost, Complainant

5. Anthony J. Frost, a solicitor with the firm Garvey, Ferriss, acted on behalf of the Royal Bank of Canada. The Solicitor represented to the Royal Bank that he held a valid third mortgage on 71 Riverside Drive, Toronto in the amount of \$150,000.00, and assigned this mortgage on October 18, 1990 to the Royal Bank as security for his loans. The Solicitor defaulted on the loan. The owner of 71 Riverside Drive, Toronto provided the Royal Bank with evidence that the third mortgage was invalid. The Royal Bank obtained judgment against the Solicitor in the amount of \$54,864.12 plus costs and interest on August 26, 1991. The Royal Bank's attempts to collect on the judgment have been unsuccessful. Mr. Frost advised the Society of the aforementioned by letter dated February 5, 1992.

6. By letter dated February 20, 1992, the Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to provide his written comments to the same within two weeks. No reply was received.

25th March, 1993

7. A Law Society staff employee spoke with the Solicitor by telephone on March 10, 1992. The Solicitor advised that he would respond on or before March 24, 1992. No reply was received.

8. By registered letter, dated March 13, 1992, the Society forwarded to the Solicitor a copy of its February 20, 1992 letter. The Solicitor was reminded of his obligation to reply to the Society. The Solicitor was advised that should a reply not be received on or before March 24, 1992, the matter would be referred to the Discipline Committee. No reply was received.

9. The Solicitor has not requested an extension to reply nor has he provided the Society with an explanation for his failure to reply.

Particular 2b)

Murray N. Maltz, Complainant

10. Sheila Ross had agreed to loan funds to Errol Schnapp. Ms. Ross and Mr. Schnapp attended at the Solicitor's office to execute a promissory note. The Solicitor had advised Ms. Ross that the promissory note was sufficient security and that he was in the process of refinancing a condominium owned by Mr. Schnapp. The Solicitor stated that he would have Mr. Schnapp execute an irrevocable direction that stated upon refinancing, the outstanding debt to Ms. Ross would be paid. After the condominium was refinanced, Ms. Ross discovered that the condominium was not owned by Mr. Schnapp, personally, but by a company. Ms. Ross retained Murray N. Maltz to bring an action against the Solicitor and Mr. Schnapp. Mr. Maltz advised the Society of the aforementioned by letter dated December 10, 1991.

11. By letter dated January 15, 1992, the Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was advised of the Society's procedure regarding "third-party complaints". The Solicitor was requested to provide his comments to the letter of complaint within two weeks. No reply was received.

12. A Law Society staff employee spoke with the Solicitor by telephone on March 9, 1992. The Solicitor stated that he had provided his response to the Society's Audit Department and the Society's Insurer. The Solicitor stated that he was not aware that he was required to respond to each department individually. The Society advised the Solicitor that a copy of his response to the audit department and the insurer would be obtained.

13. The Solicitor had met with an adjuster from the Society's insurer on February 10, 1992 at which time he provided a written statement.

14. A Law Society staff employee spoke with the Solicitor by telephone on March 10, 1992 to ask when he would be replying. The Solicitor advised that he would respond to the complaint on or before March 24, 1992. No reply was received.

15. By registered letter, dated March 13, 1992, the Society forwarded to the Solicitor a copy of its January 15, 1992 letter. The Solicitor was reminded of his obligation to reply to the Society. The Solicitor was advised that should a reply not be received on or before March 24, 1992, the matter would be referred to the Discipline Committee. No reply was received.

16. The Solicitor has not requested an extension to reply nor has he provided the Society with an explanation for his failure to reply. Nor did the Solicitor send the complaints department a copy of his statement to the adjuster. The Solicitor provided a copy of this statement to discipline counsel in October 30, 1992.

25th March, 1993

Particular 2c)

Diana Parise, Complainant

17. By letter dated January 20, 1992, Diana Parise advised the Society that the Solicitor had acted on her behalf with respect to the purchase of a condominium, municipally known as #507, 26 Hanover Road, Brampton and she had not received copies of several certificates the Solicitor indicated he had obtained despite several assurances from the Solicitor that the same would be forwarded.

18. By letter dated January 30, 1992, the Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to provide his comments to the same within two weeks. No reply was received.

19. A Law Society staff employee left telephone messages for the Solicitor at his office on February 14, 1992 and February 18, 1992, requesting he return the calls. The calls were not returned.

20. By registered letter, dated February 20, 1992, the Society forwarded to the Solicitor a copy of its January 30, 1992 letter. The Solicitor was reminded of his obligation to reply to the Society. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. No reply was received.

21. To date, the Solicitor has not requested an extension to reply nor has he provided the Society with an explanation for his failure to reply.

Particular 2d)

Carmen Proevski, Complainant

22. Carmen Proevski, New Loan Document Clerk with Montreal Trust, advised the Society by letter dated May 25, 1992, that Montreal Trust had retained the Solicitor to act its behalf regarding the registration of a mortgage on property municipally known as 840 William Street, Sudbury. Despite letters dated January 24, 1992, March 23, 1992, and May 7, 1992 the Solicitor had not provided Montreal Trust with the registered mortgage, Solicitor's report, tax certificate, insurance coverage and sheriff's certificate. Montreal Trust advised the Society of the aforementioned by letter dated May 25, 1992.

23. By letter dated June 12, 1992, the Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to reply to the same within two weeks. No reply was received.

24. A Law Society staff employee left a telephone message for the Solicitor at his office on July 9, 1992 requesting he return the call. The call was not returned.

25. A Law Society staff employee spoke with the Solicitor by telephone on July 16, 1992 and requested the Solicitor reply by July 21, 1992. No reply was received.

26. By registered letter, dated August 4, 1992, the Society reminded the Solicitor of his obligation to reply to the Society. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. No reply was received.

27. The Solicitor has not requested an extension to reply nor has he provided the Society with an explanation for his failure to reply.

25th March, 1993

Particular 2f)

Walker R. Dalzell

28. Walker R. Dalzell, a solicitor with the law firm Dalzell, Inglis, Waite, represented Lorenzo Fasulo in matrimonial proceedings. Mr. Fasulo alleges that Mrs. Fasulo forged his signature, and that of her parents, upon a mortgage that was registered against the matrimonial home in the amount of \$75,000.00. The Solicitor acted on behalf of Mrs. Fasulo and the mortgagee, Royal Trust Corporation of Canada. Mr. Dalzell wrote to the Solicitor by letters December 20, 1991 and February 11, 1992 requesting the necessary documentation required to investigate this matter. The Solicitor did not reply to Mr. Dalzell. Mr. Dalzell advised the Society of the aforementioned by letter dated April 8, 1992.

29. By letter dated April 16, 1992, the Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to reply within two weeks. No reply was received.

30. A Law Society staff employee left a telephone message for the Solicitor at his office on May 12, 1992 requesting he return the call. The Solicitor did not return the call.

31. A Law Society staff employee spoke with the Solicitor by telephone on May 21, 1992. The Solicitor advised that he would respond by May 26, 1992. No reply was received.

32. By registered letter, dated June 4, 1992, the Society forwarded to the Solicitor a copy to its April 16, 1992 letter. The Solicitor was reminded of his obligation to reply to the Society. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. No reply was received.

Particular 2f)

Willis Hahn, Complainant

33. Mr. Hahn had loaned the sum of \$137,000.00 to the Solicitor and his wife. The Solicitor executed a promissory note in the said amount. The Solicitor and his wife had defaulted on the loan. The Solicitor has not responded to Mr. Hahn's requests regarding payment of the loan. Mr. Hahn advised the Society of the aforementioned by letter dated May 2, 1992.

34. By letter dated May 19, 1992, the Society forwarded to the Solicitor, a copy of the letter of complaint. The Solicitor was requested to reply to the same within two weeks. No reply was received.

35. A Law Society staff employee spoke with the Solicitor by telephone on June 17, 1992. The Solicitor advised that he would respond on or before June 30, 1992. No reply was received.

36. A Law Society staff employee spoke with the Solicitor by telephone on July 8, 1992. The Solicitor advised that he was in the middle of an office move and that he had met with an adjuster from the Society's Insurer. The Solicitor stated that he would reply on or before July 15, 1992. No reply was received.

37. By registered letter, dated July 20, 1992, the Society reminded the Solicitor of his obligation to reply to the Society. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. No reply was received.

38. The Solicitor had not requested an extension to reply nor has he provided the Society with an explanation for his failure to reply.

25th March, 1993

Particular 2g)

Graham. R. Wakefield, Complainant

39. Graham R. Wakefield, a fellow solicitor, acted on behalf of Arlene Grace Pace in the purchase of property municipally known as 20 Forest Manor Road, Apt. 505, North York, from the Solicitor.

In order to facilitate the closing, Mr. Wakefield accepted the Solicitor's undertaking, dated April 2, 1991, to obtain and register a good and valid discharge of a mortgage to Central Trust Company, Instrument #D73335 within sixty days of the date of the undertaking. Mr. Wakefield attempted to ascertain the status of the discharge from the Solicitor by letters and telephone. The Solicitor has not responded to Mr. Wakefield's communications. Mr. Wakefield advised the Society of the aforementioned by letter dated July 28, 1992.

40. By letter dated August 12, 1992, the Society forwarded to the Solicitor a copy of the letter of complaint. The Solicitor was requested to provide his comments to the same within two weeks. No reply was received.

41. A Law Society staff employee left a telephone message for the Solicitor on his office answering machine, requesting he return the call. The Solicitor did not return the call.

42. A Law society staff employee left a telephone message for the Solicitor on his office answering machine, advising him that a response was expected on or before September 1, 1992. No reply was received.

43. By registered letter, dated September 14, 1992, the Society forwarded to the Solicitor a copy of the Society's August 12, 1992 letter. The Solicitor was reminded of his obligation to reply to the Society. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. No reply was received.

44. The Solicitor has not requested an extension to reply nor has he provided the Society with an explanation for his failure to reply.

EXHIBITS

45. The Solicitor and the Society will present a joint document book in support of the facts herein.

DATED at Toronto this 30th day of October, 1992."

Agreed Statement of Facts - D72a/92

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D72a/92 and is prepared to proceed with a hearing of this matter on November 3 and 4, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D72a/92 and the agreed statement of facts and admits particulars 2i)(e), 2ii) and 2iii); 3(e) and (f), 4(a); and 8, 9 and 10 contained therein. The Solicitor admits that the particulars detailed 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 7, 1982. From 1984 to November, 1989 he practised in partnership with Massimo Panicali. From November, 1989 he has been a sole practitioner practising primarily in the area of real estate law.

Particular 8 - Failure to File for Year End May 31, 1990 and May 31, 1991

5. The Solicitor's fiscal year end is May 31. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal years ending May 31, 1990 and May 31, 1991 as required by Section 16(2) of Regulation 573 under the Law Society Act.

6. The Solicitor has not, to date, filed the required forms.

Particular 9 - Failure to Maintain Monthly Trust Comparisons

7. Section 15(1)(h) of Regulation 573 under the Law Society Act requires a solicitor to maintain a record showing, monthly, a comparison of total balances held in trust and trust obligations to clients as reflected in the client trust ledgers.

8. When the Society's examiner attended at the Solicitor's office on June 21, 1991, the Solicitor advised he was a few months behind in his trust comparisons. On June 26, 1991 the Solicitor provided for examiner's review his trust comparisons for the period February, 1991 to May, 1991, inclusive. The examiner requested the previous year's trust comparisons. The Solicitor admitted that the previous years' accounts had not been reconciled since his partner's departure in approximately November, 1989. Mr. Pancali had previously attended to completing the reconciliations.

9. During the period December, 1989 to January, 1991 the Solicitor's trust account was maintained at the Toronto-Dominion Bank. The mixed trust account was transferred to the Canadian Imperial Bank of Commerce in February, 1991.

10. The Solicitor has yet to provide the comparisons.

Particular 10 - Failure to Reply

11. Throughout the examination of the Solicitor's practice the examiner formulated questions which could not be answered by examining the Solicitor's books, records, accounts and client files. The examiner questioned the Solicitor about details of specific transactions. In a number of instances he advised he would have to review the file to refresh his memory.

12. In an effort to obtain all the information required, the examiner compiled a list of unanswered questions and delivered it to his office on July 30, 1991. A copy of the list is attached as Exhibit 1 to this agreed statement of facts. The Solicitor was requested to provide the information by August 2, 1991.

25th March, 1993

13. When the information was not provided by the date requested, the examiner placed telephone calls to the Solicitor's office and left messages requesting that he call her. He failed to do so.

14. The follow-up letter was delivered by courier on August 21, 1991. The letter requested a response to the questions posed in the July 30, 1991 letter. The Society did not receive a response.

15. The Solicitor did not provide a reply until a meeting with the examiner on October 8, 1991.

Particulars 3(e) and (f) and 4(a)

16. Hilary J. Gould and Christine A. Gould purchased 47 Kirkdene Drive on June 25, 1984. The property was originally financed by way of a mortgage from Scotia Mortgage Corporation which was eventually discharged.

17. A mortgage in favour of Cabot Trust Company was registered on title to the property on September 22, 1988. A mortgage in favour of North Sylva Co. Ltd. in the amount of \$55,000 was registered in second position on that same date. The Solicitor acted for Hilary and Christine Gould in the placement of both mortgages.

18. The North Sylva second mortgage was collaterally secured by a third mortgage on 948 Kennedy Road which was also a property owned by the Goulds. The Solicitor reported this mortgage to them as a third mortgage.

19. North Sylva Co Ltd. is a corporation owned by Eugene and Jean Kuchalskis. They are the sole shareholders and directing minds of the corporation. While the Solicitor has no personal knowledge of the corporate structure he would not dispute this. North Sylva Co. Ltd. was originally in the business of the distribution of sports equipment, wholesale. When the Kuchalskis retired from that business they began to use the corporate vehicle for investment of their retirement funds. The Solicitor also acted for North Sylva Co. Ltd. in the mortgage transaction between the Goulds and North Sylva described in paragraph 17.

20. The Solicitor did not disclose his conflict of interest in acting for both parties nor did he obtain the consent of either client to do so, contrary to the provisions of Rule 5 of the Rules of Professional Conduct. It was obvious that the Solicitor was acting for both sides on the transaction.

21. The Solicitor also acted for Hilary and Christine Gould in the placement of a mortgage on their home on 47 Kirkdene Drive, Scarborough to secure an advance of \$100,000 from Alfred Balnis. The Solicitor also acted for Mr. and Mrs. Balnis in this transaction.

22. The Solicitor did not disclose his conflict of interest in acting for both parties nor did he obtain the consent of either client to do so, contrary to the provisions of Rule 5 of the Rules of Professional Conduct. It was obvious that the Solicitor was acting on both sides of the transaction.

23. Mr. and Mrs. Balnis were introduced to the Solicitor through a real estate/mortgage broker, Erna Engel. They were prepared to invest \$100,000 in a mortgage on the property as a second mortgage. They were advised by the Solicitor that they would have a second mortgage on 47 Kirkdene Drive which he advised them was appraised at \$350,000.

25th March, 1993

24. The Balnis' advanced \$100,000. The Solicitor did in fact register a mortgage in their favour on title to 47 Kirkdene Drive on September 12, 1990. The mortgage was registered in third position, behind the second Kuchalskis' mortgage, not in second position as represented to the Balnis'. A copy of the title search a copy of the abstract of title for 47 Kirkdene Drive is attached as Exhibit 2 to this agreed statement of facts.

25. Mr. and Mrs. Balnis would not have invested in a third mortgage rather than a second mortgage on 47 Kirkdene Drive.

26. The Solicitor reported to the Balnis' by letter dated September 25, 1990. A copy of this letter is attached as Exhibit 3 to this agreed statement of facts.

27. By letter dated September 14, 1990, the Solicitor reported to the Kuchalskis' the amendment of their third mortgage in favour of North Sylva Co. Ltd. on 948 Kennedy Road Scarborough. The Solicitor's hand written notes on the letter confirm their second mortgage position on 47 Kirkdene Drive.

28. In the spring of 1991 mortgage cheques to the Balnis' and Kuchalskis' were returned NSF. The last cheque that the Kuchalskis were able to negotiate successfully was April 24, 1991.

29. Mrs. Kuchalskis' brother was Alfred Balnis. Mr. Balnis died subsequent to the events material to this complaint. In May, 1991, after the Kuchalskis' returned from their winter vacation, the couples were visiting and inadvertently discovered, while discussing the NSF cheques on their mortgage investments, that they both held a mortgage on the same property.

30. Mr. and Mrs. Kuchalskis confronted the Solicitor with the duplication. The Solicitor asked Mr. and Mrs. Kuchalskis to execute a postponement agreement to allow the Balnis' to move into second position. A copy of the unsigned postponement agreement is attached as Exhibit 4 to this agreed statement of facts.

31. The Kuchalskis' declined to sign the postponement agreement.

32. The Solicitor described the Gould's credit worthiness to the Kuchalskis from time to time when they expressed concern that cheques were being returned NSF.

33. 47 Kirkdene Drive has now been sold under power of sale by Cabot Trust. The proceeds of the sale were not sufficient to satisfy the Cabot Trust mortgage. Payments on both the Kuchalskis and Balnis mortgages represented payment of interest only. Accordingly, the Kuchalskis' and the Balnis' have lost the entirety of their principal as well as accrued interest. The Balnis' have calculated their loss at \$106,250. The Kuchalskis' have calculated their loss at December, 1991 to be \$60,039.

34. On October 8, 1991 Hilary Gould filed an assignment of personal bankruptcy. It is highly improbable that either the Kuchalskis' or Balnis' will recover anything from either of the Goulds. The Balnis' have commenced an action against the Goulds pursuant to section 178 of the Bankruptcy Act.

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Particulars 2i)(e), 2ii), 2iii) and 11 - Santoianni

35. Angelina Santoianni is presently 45 years old. Her husband Gino is 52 years old. The Santoianni's have four children aged 22, 20, 16 and 12. Mrs. Santoianni does not work outside the home. Mr. Santoianni works in the food industry. From 1984 to September, 1991 he was employed with Lancia Bravo Foods. He was laid off when that corporation was purchased by Weston Foods in the fall of 1991. He was unemployed until February 1992 when he secured a position as a baker with the Italian Home Bakery.

36. The Santoianni's and the Solicitor were long time acquaintances. They had known one another since the Santoiannis came to Canada some 25 years ago. Their families came from the same town in Italy. They started an Italian club in Toronto, The Bonefro Social Club, where they regularly saw each other at various functions.

37. Michael and Joanne Strzoda are long time friends of the Solicitor and his wife. They were attendants at the Solicitor's wedding.

38. Sometime in 1986, the Santoianni's lent the Strzoda's \$30,000 to assist in the purchase of their home at 200 Charlton Avenue, Thornhill. The advance was secured by a mortgage which was repaid promptly and with no difficulty.

39. On a number of occasions following the first Strzoda loan the Solicitor approached Mr. Santoianni regarding investment opportunities. Mr. Santoianni declined the Solicitor's further recommendations of investment in mortgages.

40. Sometime in 1989, the Solicitor approached Mr. Santoianni again advising that the Strzoda's required \$60,000 to enable them to complete the purchase of a new home at 26 Pleasant Valley Place, Bramalea. The Solicitor advised that the advance would be secured by a first mortgage on this property when it closed. Mr. Santoianni agreed to lend the money because of his previous positive experience with the Strzoda's.

41. Mr. Santoianni provided the Solicitor with a cheque for \$60,000 on February 10, 1989. That cheque was deposited into the Solicitor's trust account. A mortgage in the amount of \$60,000 was registered on title to the Strzoda's property at 200 Charlton Avenue, Thornhill on February 14, 1989. A copy of this mortgage is attached as Exhibit 5 to this agreed statement of facts.

42. Approximately seven weeks after the cheque had been cashed, the Santoianni's approached the Solicitor and asked him about the status of their investment as they had heard nothing from the Solicitor or the Strzodas nor had they received any cheques representing payments on the mortgage.

43. In that seven week period, the Solicitor and Mr. Strzoda had made arrangements regarding disbursement of the funds of which the Santoiannis were not aware. Those arrangements are as follows:

While a mortgage for \$60,000 was registered against the Strzoda's property as described in paragraph 41, the Strzoda's did not benefit from the entire proceeds of the Santoianni's \$60,000 advance. The Strzoda's agreed to let the Solicitor use some of this money. The record of receipt and disbursement of the funds is recorded on the Strzoda's client trust ledger card as follows:

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Feb 9/89	received from Santoianni	\$60,000
Feb 10/89	to Bramalea Realty Limited	15,000
Feb 10/89	to Joanne Strzoda	5,000
Feb 14/89	to Admore Financial	40,000
	(Mr. Giangiooppo's debt)	
Feb 25/89	received from Joanne Strzoda	20,000
Feb 28/89	to Fairbank Group Inc.	10,000
	(Mr. Giangiooppo's company)	
Mar 1/89	to Bramalea Realty Limited	10,000
	(Mr. Giangiooppo's debt)	

A copy of the client trust ledger card is attached as Exhibit 6 to this agreed statement of facts.

44. The Solicitor did not advise the Santoianni's of the arrangements outlined in paragraph 43. He told them sometime later that the Strzodas had opted for institutional lending because they needed \$80,000 rather than \$60,000. The Solicitor then told the Santoianni's that he himself could use the \$60,000 and that he would give them a mortgage on his own property at 40 Sanderstead Avenue, Toronto. The Solicitor reassured the Santoianni's that this would be a safe investment for them. The Solicitor never did tell the Santoianni's that he had already used some of the money they had given to Strzoda.

45. The Solicitor did register a mortgage on his property at 40 Sanderstead Avenue on July 27, 1989. A copy of that mortgage is attached as Exhibit 7 to this agreed statement of facts. The mortgage contained a non-transfer clause. It provided for monthly payments of interest only. It was not until after the Santoiannis had agreed to lend the money that the Solicitor advised them that they did not have a first mortgage as their mortgage with the Strzodas was but that they had a second mortgage. After some discussion regarding this point the Santoianni's agreed they continued to be willing to lend the Solicitor the money. The Solicitor did not suggest that the Santoiannis seek independent legal advice for this loan.

46. In the spring of 1990 the Solicitor approached the Santoiannis and requested a further \$20,000 loan. The money was advanced. The Solicitor did not register a new mortgage or amending agreement on title to reflect the additional \$20,000 as he advised that he would thus it was an unsecured loan. It was prepared and signed and an unregistered copy provided to the Santoianni's. A copy of the unregistered amendment agreement is attached as Exhibit 8 to this agreed statement of facts.

47. The Santoianni's received NSF cheques for the months of November and December, 1990 and January and February, 1991. The Santoianni's demanded their \$20,000 back plus interest. They were paid this amount in March or April of 1991. A copy of the note covering the cheque is attached to this agreed statement of facts as Exhibit 9.

48. By this time the Solicitor had already transferred ownership of 40 Sanderstead Avenue to one Marie Campbell. A copy of the Transfer/Deed of land is attached as Exhibit 10 to this agreed statement of facts. The Solicitor admits that he did not advise or seek the authority of the Santoiannis for this transfer. Further, the Solicitor acknowledges that this transfer without their authority constitutes a breach of the non-transfer clause of the mortgage. It would be the Solicitor's evidence that he understood that his obligation under the mortgage would continue as a matter of law.

49. The mortgage payments for April, May and June were returned NSF. Copies of the NSF cheques as well as the duplicate cheque for April, 1991 are attached collectively as Exhibit 11 to this agreed statement of facts.

25th March, 1993

50. In July of 1991 the Solicitor delivered discharges to the Santoiannis under cover of a note which requested that they execute the documents. A copy of the discharge and covering note is attached as Exhibit 12 to this agreed statement of facts.

51. The Santoianni's declined to sign the discharge at that time.

52. Mr. Santoianni, as stated earlier, lost his job in September, 1991 and the Santoiannis began to press the Solicitor for repayment of their mortgage advance. The Solicitor again attempted to persuade them to sign a discharge of their mortgage which they declined to do. At that time the Solicitor presented them with a promissory note dated September 10, 1991 which he assured them would continue to evidence the debt and that they would be in a better position because the note evidenced a willingness to pay. A copy of the promissory note is attached as Exhibit 13 to this agreed statement of facts.

53. Under cover of letter dated February 17, 1992 the Solicitor re-iterated acknowledgment of his indebtedness and provided the Santoiannis with a new promissory note. A copy of that note and the covering letter with which it was enclosed are attached as Exhibit 14 to this agreed statement of facts.

54. 40 Sanderstead Avenue was sold on May 28, 1992 by the first mortgagee. The first mortgagees suffered a loss of \$18,000. The Santoiannis have now lost their entire mortgage investment which comprised virtually all of their savings. A copy of a reporting letter from the solicitors for Canada Trust to the Santoiannis complete with enclosures is attached as Exhibit 15 to this agreed statement of facts.

DISPOSITION

55. The Society will submit that the Solicitor's membership in the Society should be terminated by way of disbarment. The Solicitor will join in this submission.

DATED at Toronto this 30th day of October, 1992."

Agreed Statement of Facts - D72a/92

"PART II - AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D72a/92 and is prepared to proceed with a hearing of this matter on November 3 and 4, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D72a/92 and the agreed statement of facts and admits particulars 2i)(b), 2ii), 3(a), 6(a); 2i)(a), 2ii) and 6(c) contained therein. The Solicitor admits that the particulars detailed in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

25th March, 1993

IV. FACTS

4. The Solicitor was called to the bar on April 7, 1982. From 1984 to November, 1989 he practised in partnership with Massimo Panicali. From November, 1989 he has been a sole practitioner practising primarily in the area of real estate law.

Particulars 2i)(b), 2ii), 3(a) and 6(a) - North Sylva - \$60,000 Mortgage re: 119 Regent Road

5. In 1989, the Solicitor approached Mr. and Mrs. Kuchalskis and asked them to lend money to his brother John and John's wife, Maria, to assist them in re-financing the vendor take back mortgage given on the purchase of a home at 119 Regent Road, Downsview.

6. The Solicitor represented to Mr. and Mrs. Kuchalskis that their \$50,000 loan would be secured by a second mortgage on the property.

7. The Solicitor suggested to the Kuchalskis' that the money should be advanced through their corporation, North Sylva Co Ltd. The Kuchalskis followed his advice and advanced \$50,000 in December, 1989. Initially, the advance was secured by a second mortgage on 119 Regent Road. The Solicitor did not provide a report to the Kuchalskis regarding this transaction although he did give them a copy of the registered mortgage.

8. The Solicitor discharged the North Sylva second mortgage in August, 1990 and a new mortgage for \$50,000 was registered the same day. The Solicitor did not tell the Kuchalskis' that this mortgage was registered in third position putting it behind a first mortgage to Canada Trust in the amount of \$170,000 and a second mortgage to Willi Hahn for \$80,000. It was at this time that the Solicitor raised the issues of the possibility of additional security being provided by a mortgage on his property at 245 Cocksfield Avenue referred to in Exhibit 2. The Solicitor also provided assurances that if his brother defaulted on the mortgage he would assume responsibility.

9. 119 Regent Road had been purchased by John Giangiooppo for \$256,000; in August, 1990, the financing of the property was:

Purchase Price - \$256,000 - June, 1989	\$256,000
Canada Trust mortgage	170,000
Willi Hahn mortgage	80,000
Canada Trust mortgage	50,000
Total Financing - August, 1990	300,000
Less Purchase Price	256,000
Amount Overfinanced	(44,000)

10. 119 Regent Road was sold to another of the Solicitor's clients, Peter Popescul, in November, 1990 for \$276,000. At the time of the purchase, Mr. Popescul assumed the Canada Trust first mortgage with a principal value of \$168,500. He also assumed the second mortgage from Willi Hahn to John Giangiooppo for \$80,000.

25th March, 1993

11. The Solicitor advised the Kuchalskis of the pending sale to the Popesculs. He told them that their "second mortgage" would have to be changed to a third and increased to \$60,000 to facilitate the sale to Popescul. The Solicitor told them that their mortgage would be discharged and that a new mortgage in the name of Mr. and Mrs. Kuchalskis rather than North Sylva would be registered, with himself as guarantor.

12. Based on the Solicitor's assurances that their investment would be safe and on the fact that he would act as guarantor, the Kuchalskis agreed to the arrangements outlined in paragraph 11 above. A copy of the new mortgage registered on title November 30, 1990 is attached as Exhibit 1 to this agreed statement of facts. The Solicitor reported to the Kuchalskis by letter dated January 7, 1991, a copy of which is attached as Exhibit 2 to this agreed statement of facts. This mortgage provided for payments of interest only as did all of the others which the Kuchalskis arranged through the Solicitor's office. The Solicitor did not give a mortgage on 245 Cocksfield Avenue to the Kuchalskis.

13. In June, 1991, Mr. and Mrs. Popescul decided to sell the property. The Solicitor approached the Kuchalskis to obtain a discharge of their mortgage. The Kuchalskis insisted that they would not sign a discharge until they received the \$60,000 owing to them. Approximately one week before the sale, the Solicitor advised the Kuchalskis there would be no money for them on closing and that if they would provide a discharge of their mortgage they would receive a promissory note from Mr. and Mrs. Popescul, as well as their corporation National Marine Arts Inc., which would be guaranteed by the Solicitor, personally. A copy of the promissory note and the Solicitor's guarantee are attached as Exhibit 3, collectively, to this agreed statement of facts. A copy of the ledger statement regarding the Popescul sale is attached as Exhibit 4 to this agreed statement of facts.

14. The Solicitor sent the Popesculs to a solicitor, Joseph Baglieri, for independent legal advice regarding the promissory note.

15. After the promissory note was executed the Solicitor made a few interests payments when the Popesculs failed to do so. The last payment that the Kuchalskis were able to negotiate was on July 1, 1991 when the Solicitor made the payment for the Popesculs. As at November 1, 1991 the Kuchalskis calculated their loss in unpaid principle and interest to be \$63,000.

16. Throughout the above noted transactions, the Solicitor acted for his brother, John, and his wife Maria; the Popesculs, as well as, the Kuchalskis'. The Solicitor did not advise the parties of his conflict of interest nor did he receive their authorization to continue to act in the face of the conflict, contrary to the provisions of Rule 5 of the Rules of Professional Conduct. It was apparent and the parties were aware that the Solicitor was acting for various parties throughout.

17. The Solicitor did not advise the Kuchalskis to seek independent legal advice or legal representation at any time during the transactions.

18. It is highly improbable that the Kuchalskis will be recover any of their investment.

Particulars 2i)(a), 2ii) and 6(c) - Kuchalskis/North Sylva \$200,000 mortgage - 9687 Keele Street

19. After the Solicitor had acted on a number of mortgage transactions for the Kuchalskis which had been arranged by real estate agent/mortgage broker Erna Engel, the Solicitor began to suggest investments that the Kuchalskis could make through him directly. One of these was an investment on his own property at 9687 Keele Street.

25th March, 1993

20. The Solicitor and his wife purchased 9687 Keele Street, jointly, January 20, 1989. The purchase price of the property was \$730,000. The purchase was financed by a \$450,000 first mortgage from Cabot Trust and a \$97,500 mortgage from the Kuchalskis' corporation, North Sylva Co. Ltd., as well as \$75,000 secured by a third mortgage to Mr. and Mrs. De Giusti. At this time the Kuchalskis' second mortgage was adequate security for their advance. A copy of the \$97,500 mortgage is attached as Exhibit 5 to this agreed statement of facts.

21. Title to the entire parcel was transferred to Lina Giangiooppo in October, 1989. The Solicitor did not seek the Kuchalskis' authority for the transfer nor did he report it to them.

22. The property was subdivided into three parts effective May 11, 1990. Part one of the lot remained in the name of Lina Giangiooppo. Part 2 was transferred to Fairbank Group at a value of \$220,000. Part 3 was transferred to Sub Searches Ltd. at a value of \$220,000. Both Fairbank and Sub Searches are corporations wholly owned and controlled by the Solicitor. Also on May 11, 1990 the Kuchalskis North Sylva mortgage was increased from \$97,500 to \$200,000. This resulted in a discharge of the earlier mortgage being replaced at a \$200,000 mortgage; however, the new mortgage was registered only on Part 1 of the property. At this time the Solicitor advised the Kuchalskis that the corporation should hold 50% of the mortgage while they should hold the other 50% for tax purposes. The Solicitor failed to advise them their mortgage would now only be secured by one part of the property. In addition, the new mortgage ranked in third rather than second position on title to the part on which it was now registered. The Solicitor personally guaranteed this new \$200,000 mortgage. An abstract of title of 9687 Keele Street is attached as Exhibit 6 to this agreed statement of facts.

23. The \$200,000 mortgage was discharged August 21, 1990. A new mortgage was registered the same day for the same amount but was secured only on Part 2 of the original lot. Parts 2 and 3 were much smaller and less valuable than Part 1. Accordingly, the Kuchalskis now had security on an even less valuable parcel. In this instance both the Solicitor and his wife guaranteed the new mortgage. Copies of the two \$200,000 mortgages are attached as Exhibits 7 and 8, respectively, to this agreed statement of facts.

24. Loan payments to the Kuchalskis/North Sylva were made from a trust account no. 574937 at the Canadian Imperial Bank of Commerce. After several of the loan payments were returned NSF, the Kuchalskis approached the Solicitor and asked about the status of the mortgage. The Solicitor advised that the property was listed for sale and that the transaction would close soon.

25. In January, 1991, the Kuchalskis told the Solicitor that they were going on holiday in the middle of February and continued to pressure him for repayment of the loan.

26. Near the end of January, 1991 the Solicitor had them sign a blank discharge dated December 6, 1990. He advised them that as they were going to be in Florida at the time of the sale and this would be the most convenient way to clear the issue of the discharge on the sale of the property. He advised them he would re-invest their funds in another good mortgage and asked for their telephone number in Florida so that he could obtain instructions from them while they were on vacation.

27. The Kuchalskis provided him with a phone number and the Solicitor repeated his assurances that he would hold the discharge in trust until the money representing payment of the Kuchalskis mortgage was received on the sale.

25th March, 1993

28. The Kuchalskis telephoned the Solicitor no less than 10 times during their vacation. He did not return their calls nor is there any evidence that he attempted to contact them.

29. When the Kuchalskis returned from vacation the Solicitor advised them that he had sold the property and discharged the mortgage but that there was no money for them as he had to sell for less than the outstanding mortgages. The part lot on which the Kuchalskis held their mortgage was sold to one Mario Savo in December, 1990 for \$124,500.

30. The Solicitor did not actually register the discharge of the Kuchalskis mortgage until after the sale of Part 1 in April, 1991. Part 1 was sold at that time for \$430,000, which was not sufficient to pay out the first mortgage to Cabot Trust of \$450,000.

31. The Solicitor gave Mr. and Mrs. Kuchalskis a promissory note dated May 21, 1991 due July 1, 1992, representing the principal of the discharged mortgage plus four payments of \$2,000 each from previous mortgage payments that had been returned NSF. A copy of the promissory note is attached as Exhibit 9 to this agreed statement of facts. The Solicitor made the first payment under the promissory note, July 1, 1991, but the August payment was returned NSF and has not been replaced.

32. The Solicitor failed to advise the Kuchalskis' to seek independent legal advice or representation with respect to this transaction. They have lost their entire \$200,000 investment.

DISPOSITION

33. The Society will submit that the Solicitor's membership in the Society should be terminated by way of disbarment. The Solicitor consents to this disposition.

DATED at Toronto this 2nd day of November, 1992."

"PART III - AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D72a/92 and is prepared to proceed with a hearing of this matter on November 11, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D72a/92 and the agreed statement of facts and admits particulars 2i)(f), 2ii), 2iii) and Particular 6 - Petriello; 12 and 13 - Runge; 2i)(d) and 2iii) - Hang Fu Lun; and 2i)(c) and 2iii) - Strzoda. The Solicitor admits that the particulars detailed 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 7, 1982. From 1984 to November, 1989 he practised in partnership with Massimo Panicali. From November, 1989 he has been a sole practitioner practising primarily in the area of real estate law.

Particular 2i)(f), 2ii), 2iii) and Particular 6 - Petriello - \$50,000 loan

5. The Solicitor acted for the Petriello's on the sale of their home in 1990. The Solicitor requested that they invest some of the proceeds of the sale in a mortgage on his property at 245 Cocksfield Avenue, Downsview. The Solicitor persuaded the Petriello's to invest in his property by advising them that he was building a home there.

6. The Petriello's agreed to invest \$50,000 with the Solicitor for a term of six months. The funds were advanced and the Solicitor registered a mortgage against his property at 245 Cocksfield Avenue on March 8, 1990. Title to this property was actually held in the name of the Solicitor's wife; therefore, the Solicitor provided his personal guarantee to this loan. A copy of the mortgage is attached as Exhibit 1 to this agreed statement of facts.

7. The Solicitor did not provide the Petriello's with an appraisal of the property. He did not tell them his purchase price nor did he send them a reporting letter. Finally, the Solicitor did not recommend to the Petriello's that they seek independent legal representation or at least independent legal advice.

8. The Petriello funds were used to pay lot levies on 9687 Keele Street. The \$50,000 mortgage was repaid by being incorporated into the downpayment on the Petriello's purchase of 173 Regent Road on June 16, 1990. However, at the same time the Solicitor borrowed \$15,000 from the Petriello's on June 17, 1990. He gave them 12 postdated cheques for \$200/month starting July 20, 1990 by way of repayment. The Petriello's cashed these cheques until January 20, 1991.

9. The 245 Cocksfield mortgage was discharged on October 18, 1990.

10. On January 10, 1991, the Solicitor borrowed a further \$35,000 from the Petriello's. He gave them a receipt acknowledging a total debt of \$50,000 due and 12 postdated cheques in the amount of \$666.67 each. At the time of the receipt of these cheques the Petriello's stopped cashing the \$200 cheques and cashed only the \$666.67 cheques until May 10, 1991 when the cheques began to be returned NSF.

11. On February 8, 1991 the Solicitor registered a mortgage in favour of the Petriello's on title to 140 Baycrest. The face value of the mortgage was \$60,000. It was expected that the Petriellos would advance a further \$10,000.00 which they refused to do. At the time the Solicitor registered the 140 Baycrest mortgage in favour of the Petriello's first mortgage on that property, held by Home Savings and Loan, had already been under power of sale since November, 1990.

12. The Petriello \$15,000 advance was unsecured from October 18, 1990 to February 8, 1991. The \$35,000 advance was unsecured from January 10, 1991 to February 8, 1991.

13. The Petriello's would not have invested a further \$35,000 or taken security on 140 Baycrest if they had been aware that the property was already power of sale when the funds were advanced. The property was sold by Homes Savings and Loan under power of sale on May 16, 1991.

25th March, 1993

14. The Solicitor failed to ensure that the Petriello's mortgage advances were properly secured throughout as they believed it would be.

15. A transcription of the abstract of title of 140 Baycrest Avenue is attached as Exhibit 2 to this agreed statement of facts.

16. The Petriello's have commenced a civil action against the Solicitor. It is unlikely that they will recover any of their money.

Particular 12 and 13 - Runge \$97,000 Misapplication

17. Joseph and Victoria Runge met the Solicitor in July, 1990 when they required a mortgage on an investment property they owned on Stibbard Avenue. When they later sold their home at 102 Stratford Crescent in early 1991 they again retained the Solicitor to act for them.

18. The closing of the sale of 102 Stratford Crescent took place in February, 1991. On closing \$125,603.51 was directed to be paid to the Solicitor in trust. During a meeting between Mr. and Mrs. Runge, their son Eric and the Solicitor which took place shortly after the closing, the Solicitor advised the Runge's that he would invest their money in a first mortgage at an interest rate of 12% which would be considerably better than a 9% return which was being offered by the banks and in which Mr. and Mrs. Runge had intended to invest. The Runge's gave the authority for this investment. They also directed that \$15,000 should be paid to their son Eric as well as asking that \$10,000 be put into a thirty day term deposit.

19. Mr. Runge specifically advised the Solicitor that he wanted the investment to be a "safe one". He advised the Solicitor that Mrs. Runge made some very bad investments previously and he was concerned that the sale proceeds of the Stratford Crescent home not be available to her for investment.

20. Initially, the Solicitor told the Society's investigator that he invested \$95,000 of the proceeds of the Runge sale in a first mortgage at 7601 Bathurst Street, Apartment 316, a property owned by Mitzi Schnapp. A copy of the abstract of title and copies of documents registered on title are attached collectively as Exhibit 3. The Solicitor stated that he had advised the Runge's of the specifics of this investment. Mr. and Mrs. Runge told the same examiner that the Solicitor had never reported to them on their investment. While the mortgage was registered on the Schnapp home no funds were advanced to either of the Schnapp's for this mortgage.

20. The position of the Runge mortgage is now unclear. It may be in fourth rather than first position, and subject to the valid Cabot Trust and Equitable Trust mortgages, both of which are supposed to be in first position. The Solicitor acted for both Cabot Trust and Equitable Trust in the placement of the mortgages. It was a condition of both mortgage commitments that the respective mortgages be in first position and the Solicitor reported to both Cabot Trust and Equitable Trust that their mortgages were in first position. Due to the Solicitor's unsuccessful attempts in arranging postponements and discharges, the state of title of 7601 Bathurst Street, Apartment 316 is unclear.

21. The Runge mortgage funds were disbursed by the Solicitor as follows:

25th March, 1993

1)	Eric Runge	\$15,000.00	
2)	Joseph Runge	2,592.01	
	Zeppieri & Associates	4,200.00	(not related to Runge file)
	Maple Heritage Village	25,000.00	(related to Giangiooppo)
	Fairgroup Inc.	25,000.00	(related to Giangiooppo)
	Mario Giangiooppo	40,000.00	
	Canada Trust	3,120.94	(not related to Runge file)
		\$114,912.95	

22. Maple Heritage Village and Fairgroup Inc. are both corporations of which the Solicitor is the sole shareholder and directing mind. The Solicitor's explanations for these payments is that Schnapp's owed money to Mr. Ali and Mr. Ali owed money to the Solicitor and thus the payments were made directly to him. Errol Schnapp was at this time completely uncreditworthy. He had significant debts, owned no property and had no steady source of income.

23. If the Runges had known of this circulation of funds or if they had known that Mr. Schnapp was in a precarious financial situation, which the Solicitor admits he was, they would never have permitted an investment of this type and would never have accepted security on 7601 Bathurst Street.

24. The Solicitor did purchase a \$10,000 term deposit with some of the Runge sale proceeds as he was instructed to do. The term deposit was allowed to mature until March 18, 1991 at which time it totalled \$10,063.70. The Solicitor then re-deposited this money into his trust account and made payments totalling \$7,500 to Errol Schnapp.

25. \$1,405.48 of interest on the \$95,000 investment was paid to Eric Runge on April 1, 1991. This represented interest for 45 days at 12%.

26. Cheques for August and September, 1991 were returned NSF.

27. The Runges are destitute. They are living in a rented apartment and were counting on the proceeds of the mortgage investment to see them through their retirement. They have made a claim against the compensation fund and have received some emergency payment from this source.

Particular 2i)(d) - Hang Fu Lun - \$30,000 Loan

28. The Solicitor met Mr. Lun through his former firm Gaetano Lo Faso & Associates. The Solicitor acted for Mr. Lun on a number of real estate transactions. In March, 1991, the Solicitor required \$30,000 to reduce his line of credit with the Toronto-Dominion bank. The Solicitor approached Mr. Lun and asked if he could borrow the money from him. Mr. Lun agreed.

29. The Solicitor offered to register a mortgage on a property at 258 Maxwell Street, North York as security for the loan. Mr. Lun declined his offer. In fact, Mr. Lun requested that the Solicitor not disclose to him the nature of his financial difficulties which made the loan necessary.

30. Mr. Lun has given a statement to the Law Society in which he has stated that he may never be repaid the \$30,000 he lent to the Solicitor. He has also stated that he does not intend to make a claim against the compensation fund of the Law Society for repayment of these funds.

31. Mr. Lun has in fact not been repaid.

32. At no time during the transaction did the Solicitor advise Mr. Lun to seek independent legal advice or representation regarding this transaction.

25th March, 1993

Particular 2i)(c) - \$68,720 Loan from Strzoda

33. Michael and Joanne Strzoda are long time friends of the Solicitor. The Solicitor has also been a solicitor for the Strzoda's for a number of years.

34. In April, 1991 Joanne Strzoda loaned the Solicitor \$68,270.40. The funds have since been repaid.

35. The Solicitor did not provide security for this advance nor did he advise Joanne Strzoda to seek independent legal advice or representation.

DISPOSITION

36. The Society will submit that the Solicitor's membership in the Society should be terminated by way of disbarment. The Solicitor consents to this disposition.

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

"PART IV - AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D72a/92 and is prepared to proceed with a hearing of this matter on November 11, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D72a/92 and the agreed statement of facts and admits particulars 3(b) and 4(b) - Syed Ali; 5 - Mitzi Schnapp; 1(a) and 1(b) contained therein. The Solicitor admits that the particulars detailed 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 7, 1982. From 1984 to November, 1989 he practised in partnership with Massimo Panicali. From November, 1989 he has been a sole practitioner practising primarily in the area of real estate law.

Particular 5 - Mitzi Schnapp

5. Mitzi Schnapp is originally from Montreal. Her husband died in 1983 and she moved to Toronto in 1986. When she left Montreal Mrs. Schnapp sold her home which was her only capital asset. Shortly after her arrival in Toronto, Mrs. Schnapp purchased a condominium at 7601 Bathurst Street, Suite 316 for a total consideration of \$119,900. A copy of the abstract of title and copies of all documents registered on title are appended to Part III of this agreed statement of facts as Exhibit 3.

6. Mrs. Schnapp has three children, Marvin who resides in Calgary, Errol and Sandra.

25th March, 1993

7. The series of encumbrances on Mrs. Schnapp's home began in late 1987 when Marvin Schnapp called his mother requesting a loan of \$30,000 to finance the purchase of a home in Calgary. Mrs. Schnapp advised him that she did not have access to \$30,000. He suggested that she mortgage her condominium in order to obtain the cash for him. Mrs. Schnapp agreed to do so.

8. It was at this time that she was introduced to the Solicitor through her son Errol. Mrs. Schnapp attended at the Solicitor's office to execute a mortgage on her condominium to secure a \$30,000 loan from Erna Engel. Mrs. Schnapp did not meet Mrs. Engel. She understood that all arrangements for repayment of the loan would be made directly between her son, Marvin, and Mrs. Engel. The mortgage was registered on title to her property December 7, 1987. Marvin Schnapp did not make payments on the mortgage, they were made by Errol Schnapp.

9. Mrs. Schnapp would testify that of all the mortgages and transfers apparent on title to her home she was aware of only two of the additional transactions. These transactions being the \$75,000 mortgage in favour of Equitable Trust and the \$115,000 mortgage in favour of Cabot Trust. It would appear that the circumstances of the Equitable Trust mortgage transpired much as Mrs. Schnapp believed they would. The Engel mortgage was paid off as she believed it would be and the remainder of the funds went to one of her sons.

10. The circumstances and consequences of the Cabot Trust mortgage were completely misrepresented to her. This mortgage was explained to her as a re-negotiation of the Equitable Trust mortgage at a lower rate. The Equitable Trust mortgage was not paid out as she believed it would be.

11. During Mrs. Schnapp's attendances at the Solicitor's office she signed mortgage documents regarding the transactions of which she was aware. She also signed a number of blank documents which were later used improperly by the Solicitor. During the Society's investigation of the Solicitor's files regarding the Mitzi Schnapp transactions, the examiner discovered both a signed blank mortgage document and application for credit, copies of which are attached collectively as Exhibit 1 to this agreed statement of facts.

12. The Solicitor admits that Mrs. Schnapp was unaware of the effect of the transfer of her home to Orefine Holdings in July, 1990. The Solicitor also admits, and is evident from the documents attached as Exhibit 3 to Part III of this agreed statement of facts that after the registration of the Orefine transfer, Mrs. Schnapp's son, Errol, authorized the encumbrance of the property on behalf of Orefine. The Solicitor knew that Mrs. Schnapp was unaware of all mortgages being registered on her property.

13. Throughout, the Solicitor failed to adequately protect the interests of Mrs. Schnapp.

14. An appraisal of 7601 Bathurst Street, Suite 316 prepared in June, 1991 assesses the value of the condominium unit to be \$168,000. A copy of the appraisal is attached as Exhibit 2 to this agreed statement of facts.

15. Mrs. Schnapp's condominium is significantly overfinanced and she is in danger of losing it as she is not able to make all of the mortgage payments required to keep the various encumbrances in good standing.

Particular 3(b) and 4(b) - Syed Ali Mortgage - \$230,000

16. Syed Ali met Errol Schnapp through a mutual business associate in Montreal in approximately 1985.

25th March, 1993

17. Mr. Ali met the Solicitor in approximately 1977 through his bank manager. The Solicitor acted on Mr. Ali's purchase of a condominium in 1977. The two developed a friendship thereafter. The Solicitor subsequently acted for Mr. Ali on approximately five or six transactions in which he invested in mortgages and other business ventures. In these transactions, Mr. Ali had no difficulty in recovering the funds advanced.

18. Mr. Ali is in the business of recovering precious metal from scrap metal obtained through a variety of sources. The refined metal is resold in the jewellery industry and to dentists for cosmetic and reconstructive purposes. Mr. Schnapp and Mr. Ali became involved in this business together. Mr. Schnapp would find metal which he would provide to Mr. Ali who would arrange its refining and sale. Mr. Ali entered into approximately eight transactions with Mr. Schnapp where all business arrangements between them were completed in a satisfactory fashion. Thereafter, a situation developed where Mr. Schnapp owed Mr. Ali increasing sums of money. When this debt grew to \$63,000, Mr. Ali approached the Solicitor, for assistance. The Solicitor prepared a promissory note on behalf of Mr. Ali for execution by Mr. Schnapp evidencing his debt in the amount of \$63,000.

19. The debt later rose to \$120,000 at which time a second promissory note was prepared by the Solicitor and executed by Mr. Schnapp. It was intended at this time that a mortgage would also be registered against Mr. Schnapp's home; however, this was not done as Mr. Schnapp's father-in-law would not consent to the encumbrance of title to their matrimonial home.

20. Mr. Ali became concerned about the mounting debt owed to him by Mr. Schnapp and expressed his concerns in this regard to the Solicitor. The Solicitor advised him that in order to recover his money from Mr. Schnapp, Mr. Ali would need to lend him more money so that he could complete his business deals and repay the entire debt. On the Solicitor's advice, Mr. Ali lent Mr. Schnapp additional funds increasing the debt to \$230,000. The Solicitor drafted a mortgage which was to be registered on title to 7601 Bathurst Street, Unit 316, Thornhill on March 15, 1991 in favour of Luxury Metals. The Solicitor advised Mr. Ali that his mortgage would be second only to a small mortgage in the amount of \$30,000 or \$40,000 and assured him that there was "plenty of security in the property".

21. Sometime later Mr. Ali learned there was a mortgage of \$95,000 in priority position to his own mortgage. He did not object to this because he still believed there was sufficient equity in the property.

22. Difficulties have recently arisen as a result of the Solicitor's involvement in both the Cabot Trust and Equitable Trust mortgages. In order to fulfil his representation to Cabot Trust and Equitable Trust that their respective mortgages were registered on first position on title to the property, the Solicitor attempted to persuade Mr. Ali to postpone his mortgage both to Equitable Trust and Cabot Trust. Mr. Ali has refused to postpone to Equitable Trust; accordingly, the state of title of 7601 Bathurst Street, Apartment 316 is completely unclear.

23. Throughout the course of the Solicitor's involvement in the borrowing transactions between Mr. Ali and Mr. Schnapp, he acted in a conflict of interest without advising either party of the nature of this conflict or obtaining their consent contrary to the provisions of rule 5 of the Rules of Professional Conduct. The Solicitor actively preferred the interests of his client Errol Schnapp over those of his client Syed Ali by encouraging Mr. Ali to invest further funds with Mr. Schnapp when he knew Mr. Schnapp was not credit worthy.

25th March, 1993

Particular 1(b) - DiGirolomo

24. Mr. DiGirolomo retained the Solicitor to complete a mortgage transaction with Cabot Trust in June, 1991. The figures shown on the DiGirolomo client trust ledger card do not match the statement of trust funds given to Mr. DiGirolomo. The transcription of a comparison of the two trust statements is attached as Exhibit 3 to this agreed statement of facts.

25. He reported that he paid the first mortgagee \$119,726.86 when in fact he paid \$119,801.44.

26. He did not report that he paid an amount of \$1,580.40 to Central Guarantee Trust. This is not a disbursement related to the DiGirolomo file. He did not report the \$1,400 receipt unrelated to this file. A copy of the client trust ledger and report to Mr. DiGirolomo dated June 5, 1991 are attached collectively as Exhibit 4 to this agreed statement of facts.

27. The previous agreed statement of facts disclose that the Solicitor was indebted directly to Mr. Ali, the Kuchalskis' and the Runiges, or at least in some way connected to them.

Particular 1(a) - \$9,666.37 - Transfer from trust to general prior to delivery of fee billing

28. The Society's examiner's review of the Solicitor's client files indicated that in ten out of ten files which she examined the Solicitor had transferred fees from his mixed trust account to his general account prior to delivery of a statement of account. The following is a table which sets out the examiner's findings:

Client	Amount	Date Transferred	Date Billed
Tripodi	\$891.91	June 24/91	June 21/91 (still in file)
Troiani	\$844.42	June 20/91 June 14/91	June 22/91 (\$844.42)
DiGirolomo	\$904.43 \$1,500.00	June 11/91 June 5/91	no account done u n t i l requested dated June 5/91
Cacheiro	\$1,000.00	June 7/91	no account done
Luxury Metals (related to Fairbank Group)	\$764.79	June ?/91	no account
Luxury Metals	\$415.61	May 22/91	no account done until requested dated June 5/91

25th March, 1993

Frutti	\$2,000.00	May 16/91	no account
Hang-fu	\$450.00	May 6/91	no account
Turk	\$895.21	May 6/91	May 8/91
Total	\$9,666.37		

29. The Solicitor provided to the Society on the morning of Wednesday, November 11, 1992 a sheaf of documents which is attached as Exhibit 5 to this agreed statement of facts which he has advised was shown to the clients at or about the date of the fee transfer. The Society is not now in a position to confirm or deny this.

DISPOSITION

30. The Society will submit that the Solicitor's membership in the Society should be terminated by way of disbarment. The Solicitor consents to this disposition.

DATED at Toronto this 11th day of November, 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Mario Giangiooppo be disbarred.

REASONS FOR RECOMMENDATION

The penalty of disbarment is not in issue. The Solicitor has joined with the Society's counsel in a joint recommendation for disbarment.

The Committee fully concurs with the recommended penalty. The Solicitor has occasioned significant damage to clients during his relatively short tenure at the Bar. The various Agreed Statements of Fact recount a litany of occurrences evidencing a serious case of ungovernability. They evidence breaches of trust so profound as to bring discredit upon the profession.

The Agreed Statements of Fact demonstrate that the phrase "conflict of interest" was foreign to the Solicitor's lexicon. Innocent clients were duped into believing that the trust funds entrusted to the Solicitor were safe. In a number of instances these innocent clients were deprived of their life savings. The conduct of the Solicitor will have serious effects upon the Law Society's Insurance and Compensation Funds.

The persistent path of misrepresentation engaged in by the Solicitor is reprehensible in the extreme. The censure of this Discipline Committee can be of little solace to those clients of the Solicitor who have suffered so extensively.

Added to this is the fact that no explanation has been forthcoming from the Solicitor to explain his egregious conduct. The Committee is unanimously of the view that the Solicitor must be disbarred.

25th March, 1993

Mario Giangiooppo was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 7th day of April, 1982.

ALL OF WHICH is respectfully submitted

DATED this 30th day of December, 1992

"C. McKinnon"
Colin D. McKinnon, Q.C.
Chair

The Affidavit of Mario Giangiooppo dated March 17th, 1993 was filed as Exhibit 3 and the Affidavit of Christina Margaret Budweth dated March 19th, 1993 was filed as Exhibit 4.

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

There were submissions by Mr. Rosenthal that the solicitor be given a 2 year suspension retroactive to April 1992 and following his return to practice that his practice be restricted with supervision acceptable to the solicitor and Senior Counsel-Discipline and if not acceptable that the matter be sent back to a Committee.

There were submissions by Mr. MacKenzie in support of the recommendation of the Committee.

Counsel, the solicitor, the reporter and the public withdrew so that Convocation could deal with the issue of procedure.

It was moved by Mr. Bastedo, seconded by Mr. Murray that the matter be sent back to the original Committee for a rehearing as to penalty only.

Not Put

It was moved by Mr. Hill, seconded by Mr. Finkelstein that the Affidavits be excluded and that Convocation proceed on the basis of the original Report.

Lost

A motion to amend Mr. Bastedo's motion was made to refer the matter back to a Committee to receive such additional evidence as that Committee considered appropriate and report to Convocation. Mr. Bastedo accepted the amendment.

Lost

Mr. Strosberg did not participate or vote.

Counsel, the solicitor, the reporter and the public were recalled and counsel were advised that Convocation would hear submissions both on the adoption of the Report and the recommended penalty and would consider the affidavit evidence tendered in its deliberations.

Convocation took a ten minute recess.

Convocation resumed at 3:45 p.m.

Mr. Rosenthal made further submissions.

25th March, 1993

Counsel, the solicitor, the reporter and the public withdrew to deliberate briefly on whether submissions were required from Society's counsel.

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

Counsel, the solicitor, the reporter and the public were recalled and heard submissions from the Society's counsel on the statement in paragraph 9 of Mr. Giangiozzo's affidavit of March 17th.

There was a reply by Mr. Rosenthal.

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

The Report and Recommendation as to Penalty were voted on and adopted.

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

Counsel and the solicitor retired.

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

Re: RICHARD MICHAEL HUGH POWER, Toronto

Mr. Strosberg placed the matter before Convocation.

The reporter was sworn.

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

This matter which was before Special Convocation on January 28th, 1993 was adjourned to continue on this date.

Convocation had before it the Report of the Discipline Committee dated 30th November, 1992, together with an Affidavit of Service sworn 15th January, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th December, 1992 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor 28th January, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Rino C. Bragagnolo, Q.C., Chair
Mary P. Weaver, Q.C.
Carole Curtis

25th March, 1993

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

Neil Perrier
for the Society

RICHARD MICHAEL HUGH POWER
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: September 1, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 1, 1992 Complaint D85/92 was issued against Richard Michael Hugh Power alleging that he was guilty of professional misconduct.

The matter was heard in public on September 1, 1992 before a Committee composed of Rino C. Bragagnolo, Q.C., Chair, Carole Curtis and Mary P. Weaver, Q.C. The Solicitor nor counsel for the Solicitor was in attendance. The matter was scheduled to proceed on August 25, 1992 at which time the Solicitor was not in attendance and the previous Committee ordered that the matter proceed preemptory on September 1, 1992. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D85/92

2. a) He failed to reply to the Law Society regarding deficiencies in the examination of his books and records despite letters dated October 24, 1991, November 26, 1991, January 24, 1992 and February 13, 1992.
- b) He failed to file with the Society within six months of the termination of his fiscal year ending July 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 the regulation made pursuant to the Law Society Act;
- c) Withdrawn at the request of the Law Society.

25th March, 1993

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

The Committee heard viva voce evidence of two Law Society employees, namely, Margot Devlin, Manager-Audit Examinations and Irene Andrighetti, Manager-Processing Section-Audit, and it found that Complaints 2(a) and 2(b) had been established because the Solicitor had not satisfied the Society's concerns set out in the letter of October 24, 1992, leading to Complaint 2(a) and further that he has not filed the Statutory Declaration and the forms prescribed by the Rules, and thereby, he has contravened Section 16(2) of the Regulation as more particularly described in Complaint 2(b).

RECOMMENDATION AS TO PENALTY

The Committee recommends that the Solicitor be suspended indefinitely until he has filed Forms 2/3 for the year 1990-1991 and has satisfied the Society's concerns set out in the letter of October 24, 1992 and that upon the Solicitor having complied with these conditions, the Solicitor should be reprimanded in Convocation and ordered to pay the Society's costs fixed at \$1,000.00

REASONS FOR RECOMMENDATION

The Solicitor's failure to reply to the Law Society regarding deficiencies in the examination of his books and records, despite correspondence requiring him to do so, dated October 24, 1991, November 26, 1991, January 24, 1992 and February 13, 1992, as well as his refusal to appear before the Discipline Committee to explain his misconduct, clearly indicate unwillingness on the part of the Solicitor to be governed by the Society.

Richard Michael Hugh Power was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1984.

ALL OF WHICH is respectfully submitted

DATED this 30th day of November, 1992

"R. Bragagnolo"
Rino Bragagnolo, Chair

A document of Letters from the Law Society's Audit Department to the solicitor was entered as Exhibit 3.

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

Mr. Perrier asked that the Report be amended by changing the date of October 24, 1992 to "1991" which appears twice in the Report under the headings Reasons and Recommendation.

There were no submissions and the Report was adopted.

25th March, 1993

It was moved by Mr. Strosberg, seconded by Mr. Scott that the Recommendation as to Penalty contained in the Report be adopted, that is that the solicitor be suspended indefinitely until he files his Forms 2/3 for the year 1990-1991 and upon completion the solicitor be reprimanded and ordered to pay the Society's costs of \$1,000.00.

There were submissions by both counsel.

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

It was moved by Ms. Bellamy, seconded by Mr. Scott that the solicitor be reprimanded today.

Convocation accepted the deletion of the word "indefinitely" from the Recommendation.

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 publicly reprimanded.

Counsel and the solicitor retired.

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CONVOCATION ROSE AT 5:25 P.M.

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Confirmed at Convocation this day of , 1993.

Treasurer