

25th November, 1993

MINUTES OF SPECIAL CONVOCATION

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

PRESENT:

The Treasurer, (Paul S.A. Lamek), Arnup, Bellamy, Brennan, Campbell, Carter, Copeland, Cullity, Curtis, Finkelstein, Graham, Hill, Lax, Levy, Mohideen, Moliner, Murray, D. O'Connor, Palmer, Peters, Richardson, Sealy, Strosberg, Thom, Topp, Wardlaw and Weaver.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: GEORGE FLAK, Toronto

The Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Christina Budweth appeared for the Society and Ms. Sandy Forbes appeared on behalf of the solicitor. The solicitor was not present.

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

Counsel retired.

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Re: PAUL FRANCIS O'NEILL, Mississauga

The Secretary placed the matter before Convocation.

The reporter was sworn.

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

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

Counsel retired.

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25th November, 1993

Re: THOMAS HOLYOAKE BOX, Markham

The Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Christina Budweth appeared for the Society and Mr. Fox appeared for the solicitor. The solicitor was not present.

Counsel for the Society requested an adjournment on consent to allow sufficient time for all outstanding discipline matters to be heard together at Convocation and for a psychiatric report to be available at that time.

The adjournment was granted to the Special Convocation in February.

Counsel retired.

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Re: KISHORE PREMJI TANNA, Etobicoke

The Secretary placed the matter before Convocation.

The reporter was sworn.

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

An adjournment on consent was requested so that the solicitor could locate missing documents and get his books and records up to date.

An adjournment was granted to the Special Convocation in January.

Counsel and solicitor retired.

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Re: PETER SIMONS, Toronto

The Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Weaver, Ms. Graham and Mr. Strosberg withdrew.

Mr. Stephen Foster appeared for the Society and Mr. David Sloan appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 27th May, 1993, together with an Affidavit of Service sworn 11th, June, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 31st May, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th November, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

25th November, 1993

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

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

Stephen Foster
for the Society

PETER SIMONS
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: April 27, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 2, 1992 Complaint D205/92 was issued and on February 11, 1993 Complaint D52/93 was issued against Peter Simons alleging that he was guilty of professional misconduct.

The matter was heard in public on April 27, 1993 before this Committee composed of Mary P. Weaver, Q.C., Fatima Mohideen and Mrs. Netty Graham. The Solicitor attended the hearing and represented himself. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

Complaint D205/92

2. a) He failed to inform the Society, in writing of the termination date of his fiscal year thereby contravening Section 16(1) of the regulation made pursuant to the Law Society Act.
- b) He failed to file with the Society a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 573 made pursuant to the Law Society Act.

Complaint D52/93

2. a) He practised law while his rights and privileges as a member were suspended from May 24, 1991 to June 26, 1991;
- b) He practised law while his rights and privileges as a member were suspended from November 29, 1991 to August 20, 1992;
- c) He failed to co-operate with the Law Society during its investigation of his books and records pursuant to Section 18 of Regulation 573 of the Law Society Act from on or about July 15, 1992 to October 29, 1992.

Evidence

The entirety of the evidence with respect to the allegations of professional misconduct was contained in the Agreed Statement of Facts which is as follows:

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D205/92 and D52/93 and is prepared to proceed with a hearing of these matters on April 13 and 14, 1993.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed the Complaints D205/92 and D52/93 and admits the particulars contained therein. The Solicitor also admits that the particulars in the complaints together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 31, 1989.
5. In April of 1989 the Solicitor began working on a contract basis for Optimum Insurance Company, now known as Monnex Insurance Management Inc. He subsequently began practising as a sole practitioner under the firm name of Cohen & Simons, Associates at Law.

Complaint D52/93

Particular 2(a)

Practised law while his rights and privileges as a member were suspended from May 24, 1991 to June 26, 1991

6. On May 24, 1991, the member's rights and privileges were suspended by order of Convocation pursuant to section 26 of the Law Society Act for failure to pay his Errors and Omissions premiums. A copy of the Law Society's letter to the Solicitor dated May 27, 1991, sent by registered mail, advising him of the same is contained as Tab 1, Document Book.

7. The following documentation from the Solicitor's clients' files, bank records and the Solicitor's Daily Journal evidences that the Solicitor practised law while his rights and privileges as a member were suspended from May 24, 1991 to June 26, 1991:

- (i) On June 12, 1991, the Solicitor deposited into his trust account the sum of \$7,500. On June 16, 1991, the Solicitor wrote a cheque on his trust account to Joe Quan in the amount of \$7,500. Mr. Quan cashed the cheque on June 18, 1991. A copy of the Royal Bank of Canada Account Statement, dated June 20, 1991 is contained at Tab 2 of the Document Book. A copy of the Solicitor's cheque to Mr. Quan is contained at Tab 3 of the Document Book.
- (ii) On June 26, 1991, the Solicitor wrote a cheque on his trust account to Blake, Cassels & Graydon in the amount of \$670.94 with respect to the return of funds regarding the Stillman matter. A copy of the Solicitor's cheque to Blake, Cassels & Graydon is contained at Tab 4 of the Document Book.
- (iii) Contained at Tab 5 is a copy of the Solicitor's Daily Journal from May 27, 1991 to June 20, 1991 evidencing appointments he made during the suspension period on May 27, 1991, May 31, 1991, June 3, 1991, June 4, 1991, June 5, 1991, June 6, 1991, June 10, 1991, June 14, 1991, June 25, 1991, and June 26, 1991.
- (iv) By letter dated June 14, 1991, the Solicitor forwarded to Canada Trust his final report regarding a mortgage on property municipally known as 167 Lippincott Street, Toronto. The Solicitor also explained to Canada Trust his delay in providing the same. A copy of the Solicitor's letter is contained at Tab 6 of the Document Book.

Complaint D205/92
Particulars 2(a) and (b)

8. A Notice of Default in Annual Filing, dated October 4, 1991 (Tab 7, Document Book), was forwarded to the Solicitor by the Law Society. The Notice advised the Solicitor that he had not filed since his call to the Bar.

9. By registered letter dated November 8, 1991 (Tab 8, Document Book), the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of The Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file.

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

11. To date, the Solicitor has not yet filed the required forms.

Complaint D52/93
Particular 2(b)
Practised law while his rights and privileges as a member were suspended from November 29, 1991 to August 20, 1992

12. On November 29, 1991, the member's rights and privileges were suspended as order by Convocation pursuant to section 26 of the Law Society Act for failure to pay his Errors and Omissions premiums. A copy of the Law Society's December 2, 1991 letter sent by registered mail advising the Solicitor of the same is contained at Tab 9, Document Book.

13. The following documentation from the Solicitor's clients' files, bank records and the Solicitor's Daily Journal evidences that the Solicitor practised law while his rights and privileges as a member were suspended from November 9, 1991 to August 20, 1992:

- (i) The Solicitor deposited the following amounts into his trust account:

On December 5, 1991, the sum of \$25,000.00
On January 10, 1992, the sum of \$20,000.00
On June 24, 1992, the sum of \$22,988.89
On June 30, 1992, the sum of \$1,550.00
On July 6, 1992, the sum of \$1,550.00

A copy of the Royal Bank of Canada Account Statements are contained at Tab 10 of the Document Book.

- (ii) The Solicitor wrote the following cheques on his trust account:

December 4, 1991, the sum of \$6,719.60 to Cash
January 10, 1992, the sum of \$4,030.00 to Cash
January 10, 1992, the sum of \$7,985.00 to Karam Garcha
January 10, 1992, the sum of \$7,985.00 to Joginder Garcha
June 24, 1992, a certified cheque in the sum of \$22,988.89 to Levstein, Bradshaw, Wolkowicz, in trust
June 30, 1992, the sum of \$375.00 to Peter Simons
July 6, 1992, the sum of \$375.00 to Peter Simons

A copy of the cancelled trust cheques are contained at Tab 11 of the Document Book.

- (iii) Contained at Tab 12 is a copy of the Solicitor's Daily Journal from November 29, 1991 to December 30, 1991 evidencing appointment he made during the suspension period on November 30, 1991, December 2, 1991, December 4, 1991, December 6, 1991, and December 30, 1991.

- (iv) Contained at Tab 13 is a copy of the Solicitor's Daily Journal from January 8, 1992 to August 18, 1992 evidencing appointments he made during the suspension period being:

every weekday from January 8, 1992 to February 3, 1992
every weekday from February 5, 1992 to February 18, 1992
every weekday from February 21, 1992 to April 7, 1992

April 9, 1992

every weekday from April 13, 1992 to April 16, 1992

every weekday from April 21, 1992 to May 15, 1992

every weekday from May 20, 1992 to June 25, 1992

every weekday from June 29, 1992 to July 17, 1992

every weekday from July 21, 1992 to August 7, 1992

August 12, 1992

August 14, 1992

August 18, 1992

The Solicitor rendered an account to Ruth Farrell, dated December 4, 1991 (Tab 14, Document Book) regarding Farrell v. Meier.

- (v) By letter dated December 11, 1991 (Tab 15, Document Book), the Solicitor wrote to Mr. and Mrs. Ramdin regarding their motor vehicle accident claim.
- (vi) By letters dated February 25, 1991 and March 4, 1992, (Tab 16, Document Book) the Solicitor wrote to Gluckstein, Neinstein regarding Bacchus ats Osstwouder, Court File: 92-CU-43041. In his letter of February 25, 1991, the Solicitor enclosed his client's Notice of Intent to Defend, dated February 24, 1991.
- (vii) By letter dated April 2, 1992 (Tab 17, Document Book), the Solicitor wrote to Vernon Bacchus regarding Bacchus ats Oostwouder.
- (viii) By letter dated March 11, 1992 (Tab 18, Document Book), the Solicitor wrote to Marathon Neon Sign & Display Co. Ltd. regarding Marathon Sign v. Heath & Co., about a construction lien matter.
- (ix) The Solicitor rendered an account to Legal Aid dated May 22, 1992 (Tab 19, Document Book) regarding Jeyaluxmy Maheswaran. The account entails the representation at a Referee Division Hearing and preparation from May 5, 1992 to May 14, 1992.
- (x) The Solicitor wrote to Ontario Legal Aid by letter dated May 28, 1992 (Tab 20, Document Book) regarding Violet Coughlin in which he provided his opinion of her matter.
- (xi) The Solicitor rendered an account to Legal Aid dated October 27, 1992 (Tab 21, Document Book) regarding Violet Coughlin which detailed the preparation of his opinion letter and follow-up, including meeting with Ms. Coughlin from March 27, 1992 to May 27, 1992.

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- (xii) The Solicitor rendered an account to Legal Aid dated June 3, 1992 (Tab 22, Document Book) regarding Jose Mansilla. The account detailed his representation of Mr. Mansilla at an Inquiry from May 12, 1991 to April 6, 1992.
- (xiii) By letter dated June 15, 1992 (Tab 23, Document Book), the Solicitor wrote to Legal Aid regarding Ahmad Daneshvar advising of his representation of Mr. Daneshvar.
- (xiv) The Solicitor rendered an account to Legal Aid dated April 28, 1992 (Tab 24, Document Book) regarding Ahmad Daneshvar. The account was with respect to the Solicitor representation of Mr. Daneshvar at a Full Hearing from April 9, 1992 to April 27, 1992.
- (xv) The Solicitor wrote to Employment & Immigration Canada by letter dated April 7, 1992 (Tab 25, Document Book), regarding Ahmad Daneshvar.
- (xvi) The Solicitor rendered accounts to Mary Coleburne dated June 30, 1992 and July 6, 1992 (Tab 26, Document Book) regarding her slip and fall claim.

Particular 2c)

Failure to co-operate with the Law Society during an Investigation of the Solicitor's books and records

14. An audit was commenced pursuant to Section 18 of Regulation 573 of the Law Society Act.

15. A Law Society Examiner attended at the Solicitor's office, unannounced, on July 15, 1992. The Solicitor advised the Examiner that he would produce his books and records for inspection the following day.

16. The Examiner attended at the Solicitor's office on July 16, 1992 to examine his books and records. The Solicitor did not have his books and records available. Co-signing controls were instituted on the member's trust account. The Examiner granted the Solicitor a one month extension to bring his books and records up-to-date.

17. The Examiner had scheduled an appointment with the Solicitor on August 28, 1992 at 9:30 a.m. to review his books and records. At 8:55 a.m. on August 28th, the Solicitor called the Examiner to cancel the appointment due to his illness.

18. The Examiner left a telephone message for the Solicitor at his office on September 17, 1992 requesting he return the call. The Solicitor did not return the call.

19. The Examiner called the Solicitor's office on September 24, 1992. The Solicitor was unable to speak with her. The Examiner scheduled an appointment to examine the books and records on September 28, 1992, with the Solicitor's secretary. The appointment was subsequently changed to October 9, 1992 at the Solicitor's request.

20. By facsimile transmission on October 8, 1992 (Tab 27, Document Book), the Solicitor advised the Examiner that he could not produce his books and records for examination on October 9, 1992. The Solicitor advised that he was receiving some assistance on the weekend in correcting the deficiencies in his books and records and should shortly, thereafter, have the records in an acceptable state.

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21. By letter dated October 9, 1992 (Tab 28, Document Book), the Examiner advised the Solicitor that he had been allowed sufficient time to produce his books and records. The Solicitor was advised that should he fail to produce the same within fifteen days of the date of this letter, the matter would be referred to the Discipline Committee.

22. By facsimile transmission on October 23, 1992 (Tab 29, Document Book), the Solicitor advised the Examiner that he was prepared to produce his books and records for examination on the morning of October 26, 1992. The Solicitor requested the Examiner confirm with his office as to whether this was satisfactory. The Examiner called the Solicitor's office and this meeting was rescheduled for October 29, 1992.

23. On October 29, 1992, the Examiner attended at the Solicitor's office to examine his books and records. No books and records were produced.

24. To date, the Solicitor has not produced his books and records to the Law Society for examination.

V. DISCIPLINE HISTORY

25. The Solicitor has no previous discipline record.

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

RECOMMENDATION AS TO PENALTY

The Committee recommends the joint submission on penalty which is as follows:

1. The Solicitor is to produce up-to-date books and records and make all outstanding filings with the Law Society by June 15th, 1993, to the satisfaction of the Law Society's audit and investigation department.
2. If the Solicitor produces up-to-date books and records and makes his outstanding filings as required, the Solicitor is to be suspended for a period of one year for the conduct described in Complaint D52/93.
3. If the Solicitor does not produce up-to-date books and records and make his outstanding filings as required, the Solicitor is to be disbarred.
4. The Solicitor is to pay the Law Society's costs in the amount of \$1,500.00 within 6 months of the termination of the Solicitor's suspension or forthwith following the Solicitor's disbarment.

REASONS FOR RECOMMENDATION

The Committee asked the Solicitor if he wished to reconsider his decision not to retain counsel. The Solicitor was firm in his admission that he did not disagree with any of the facts set out in the Agreed Statement of Facts and he further reiterated that he was in agreement that as a result of these facts he was guilty of professional misconduct. In his submissions, he stated that all of the particulars in both complaints were caused by the financial pressure under

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which the Solicitor operated his practice of law. He had arranged a line of credit with his bank about the time he established private practice early in 1990. From the outset, he experienced a great deal of financial pressure and he was unable or did not respond to the communications from the Law Society concerning his books and records as he had no funds to pay an accountant. Prior to his suspension in 1991, he found that upon making deposits in his general account the bank would debit his account for payments due to the bank. Thereafter the Solicitor managed to run his practice by dealing with another bank, by cashing cheques and paying accounts with cash. He was unable or did not maintain complete and accurate records of his financial transactions. It was his view that he had insufficient records to comply with the Law Society's rules regarding maintenance of books and records. He continued to practice after his suspension in May of 1991 until he had borrowed from friends or family sufficient funds to be reinstated on June 26th of 1991 and again from November 29th, 1991 to August 20th, 1992. Up to the date of hearing, he had not produced books and records in compliance with the Law Society's regulations and consequently he was unable to file declarations as prescribed by the rules pursuant to the regulations. At the hearings, he told the Committee that he had retained the services of an accountant and he was positive that he would be able to produce up-to-date books and records and make his necessary filings by June 15th, 1993. He agreed that if he did not do so, that he should be disbarred. The Committee recommended to the Solicitor that if at any time prior to June 15th, 1993 it became apparent to him that he would not have his books and records up-to-date and did not make the appropriate filings, he reconsider his decision not to retain counsel.

Peter Simons was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 31st day of March, 1989.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 27th day of May, 1993

Mary P. Weaver, Q.C.
Chair

It was moved by Ms. Lax, seconded by Mr. Hill that the Report be adopted.

There were no submissions by either counsel.

The Report was adopted.

Convocation was advised that the conditions set out in the recommended penalty had not been complied with.

It was moved by Mr. Brennan, seconded by Ms. Peters that the Recommendation as to Penalty that is, that the solicitor be disbarred and pay the Society's costs within 6 months, be adopted.

There were submissions by counsel for the Society in support of disbarment.

Counsel for the solicitor asked Convocation to permit the solicitor to resign.

Counsel, solicitor, the reporter and the public withdrew.

The main motion to disbar the solicitor was voted on and lost.

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It was moved by Ms. Lax, seconded by Ms. Bellamy that the solicitor be permitted to resign.

Carried

It was moved by Mr. Finkelstein, seconded by Ms. Curtis that the solicitor be suspended for the period that he practised while under suspension, a further 2 months suspension for failure to produce books and records plus 2 months for failing to file, the suspension to continue until his filings were up to date.

Not Put

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be permitted to resign.

Counsel retired.

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Re: IAN THOMAS MCEACHERN, Lindsay

The Secretary placed the matter before Convocation.

The reporter was sworn.

Mr. Strosberg, Mr. O'Connor and Ms. Graham withdrew.

Ms. Christina Budweth appeared for the Society. No one appeared for the solicitor who was not present.

Ms. Budweth advised Convocation that a letter had been received from the solicitor dated November 24, 1993 requesting a further adjournment. The Society opposed the adjournment.

Counsel, the reporter and the public withdrew.

It was moved by Ms. Curtis, seconded by Mr. Finkelstein that the matter be adjourned to the Special Convocation in January peremptory to the solicitor.

Lost

It was moved by Mr. Copeland, seconded by Ms. Sealy that the matter proceed.

Carried

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

Convocation had before it the Report of the Discipline Committee dated 10th September, 1993, together with an Affidavit of Service sworn 18th October, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd September, 1993 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

25th November, 1993

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby, Chair
Abraham Feinstein
Mrs. Netty Graham

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

Gavin MacKenzie and
Christina Budweth
for the Society

IAN THOMAS MCEACHERN
of the Town
of Lindsay
a barrister and solicitor

R. U. Boriss
for the solicitor

Heard: April 30, 1993
May 3, 1993
June 15, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 19, 1992, Complaint D167/92 was issued, on March 11, 1993, Complaint D27/93 was issued and replaced with Complaint D27a/93 issued on April 26, 1993, on November 10, 1992, Complaint D180/92 was issued, on November 19, 1992, Complaint D195/92 was issued, on March 26, 1993, Complaint D79/93 was issued and on April 21, 1993, Complaint D113/93 was issued against Ian Thomas McEachern alleging that he was guilty of professional misconduct and conduct unbecoming.

The matter was heard in public on April 30, 1993, May 3, 1993, May 20, 1993 and June 15, 1993 before this Committee composed of Clayton C. Ruby, Chair, Abraham Feinstein, Q.C. and Mrs. Netty Graham. R.U. Boriss appeared on behalf of the Solicitor on June 15, 1993. Gavin MacKenzie and Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D167/92

- 2.(d) Acting as the executor and solicitor of the estate of John Campbell:
i) he acted in a conflict of interest by loaning \$25,000 of estate funds to his cousin William McEachern;

ii) he violated the provisions of Section 14(7) of Regulation 573 under the Law Society Act and Rule 9 of the Rules of Professional Conduct by withdrawing both executors and legal fees from the estate without rendering fee billings; and

iii) he misappropriated \$72,000 from the estate by a series of four cheques in the amounts of \$6,550, \$25,000, \$25,000 and \$15,000.

- 2.(e) Acting as executor of and solicitor for the estate of Carl Campbell:
iii) he failed to conscientiously and diligently serve the estate and its beneficiaries by failing to respond to requests for an accounting of the affairs of the estate and by failing to resolve the issues necessary to allow a final distribution of the estate in a timely fashion.
- 2.(f) He misappropriated \$401.25 of funds provided to him by his client Ms. Brown to pay the account of Charles Roy Appraisals Ltd.
- 2.(g) He borrowed \$25,000 from his client Peggy Halligan contrary to the provisions of Rule 7 of the Rules of Professional Conduct.
- 2.(j) He misappropriated the sum of \$155,000, more or less, of client trust money.

Complaint D27a/93

- 2.(a) He misappropriated \$58,000 of mortgage funds advanced to him by the Canadian Imperial Bank of Commerce in trust intended to be paid to National Trust for the benefit of Mr. and Mrs. David Devaux.

Conduct Unbecoming - Complaint D27a/93

- 3.(a) Whereby he agreed to give first mortgage security on one property in consideration for the advance by Central Guaranty Trust of \$175,000 and he provided only second mortgage security on the property;
- (b) Whereby he agreed to give first mortgage security on one property in consideration for the advance by Central Guaranty Trust of \$143,000 and he provided only second mortgage security on the property; and
- (c) Whereby he agreed to give first mortgage security on one property in consideration for the advance by Central Guaranty Trust of \$195,000 and he provided only fourth mortgage security on the property.

Complaint D180/92

- 2.(a) He failed to satisfy a financial obligation to Property Valuers & Consultants Ltd., in the amount of \$15,006.02 incurred in connection with his practice.

Complaint D195/92

- 2.(a) He failed to provide a reply to the Law Society regarding a complaint by Vladimir Kavluk despite letters dated May 14, 1992, August 14, 1992 and September 18, 1992 and a telephone message left on September 10, 1992.

Complaint D79/93

- 2.(a) He failed to provide a reply to the Law Society regarding a complaint by Bruce Glass despite letters dated January 27, 1993 and February 15, 1993;
- (b) He failed to provide a reply to the Law Society regarding a complaint by Lois H. Brown despite letters dated January 28, 1993 and February 18, 1993.

Complaint D113/93

- 2.(a) He failed to provide a reply to the Law Society regarding a complaint by Cecil W. Budd despite letters dated February 22, 1992 and March 19, 1993 and telephone messages left on March 11, 1993 and March 16, 1993.
- (b) He failed to provide a reply to the Law Society regarding a complaint by J. William Evans despite letters dated January 25, 1993 and March 19, 1993 and telephone messages left on March 11, 1993 and March 16, 1993.
- (c) He failed to provide a reply to the Law Society regarding a complaint by Robert J. Walker despite letters dated January 12, 1993 and March 19, 1993 and telephone messages left on March 11, 1993 and March 16, 1993.

FINDINGS OF THE DISCIPLINE COMMITTEE

CREDIBILITY

A decision respecting the Solicitor's credibility was an important issue in determining some of the complaints in this case. The Solicitor's evidence was characterized by evasion, distortion, an astounding lack of memory for details of these complaints, and by convenient forgetfulness. He refused to answer any questions concerning the whereabouts of the money referred to in complaint D/167 particular 2 (j). Moreover, the manner in which he gave his evidence leads us to the conclusion that he ought not to be believed.

In addition, giving credence to an oath depends upon acceptance that the witness has a sense of morality and appreciates the moral qualities involved in lending his oath to his testimony. This Solicitor consistently maintained that, with respect to some of the complaints, he even today had the money to return to those clients from whom he had taken it, but had refused to do so. It had occurred to him that he ought to pay the money to the Law Society, so that it could be distributed in accordance with the appropriate rules for assessing trust losses by numerous clients but he has not done so. This discloses a serious lack of moral sense and a lack of appreciation of the effects of his actions upon others.

The Solicitor consistently blamed others for his predicament: the Law Society of Upper Canada's employees, his secretaries, his staff, Revenue Canada, the banks and other lawyers; indeed, other clients as well.

It is simply not possible to believe a word that he says.

In making our findings, we have, throughout, viewed the evidence as a whole and required that each complaint be proved beyond a reasonable doubt.

THE CHARGES

Reasons for Findings

Complaint D167/92

2 (d) (i)

The majority are of the view that the evidence disclosed an absence of compliance with the required rules respecting the disclosures that need to be made when a solicitor is acting for himself or for an estate on the one hand, and for his cousin, in this case, on the other, in a lending of \$25,000 of estate funds. The cousin is indeed a distant cousin. That is not the issue.

The requisite compliance with the Law Society rules was not effected. The Chairman, dissenting, was of the view that this count had not been established beyond a reasonable doubt on the evidence. The complaint is established.

2 (d) (ii)

The Solicitor testified that he did his billings first, before taking payment; but in explanation, he made it clear that he personally did not do the accounts, but merely assumed that they had been done by his staff. He himself virtually never dictated an account. He blamed his secretary for the fact that the violation, withdrawing both executors and legal fees from the estate without rendering fee billings, admittedly occurred. We do not. We are satisfied that the evidence proves this complaint beyond a reasonable doubt.

2 (d) (iii)

The Solicitor indicated that these were not loans made to him, but rather loans made through him, as a conduit, to other people. Those other people remain unnamed. He is not sure who those people are at this date. He points out that he loaned the money and got it back in each case. The returned cheques and any copies of them got lost and he cannot produce them today to substantiate that these were loans to other people. He testified, in passing, that there were more loans than this, but these are the only ones that the bank found. However, no documents showing these supposed loans to other people, or substantiating them, were brought forward. There was no apparent reason why the money could not have simply been paid directly to the beneficiary rather than going through him.

The Solicitor adverts to a practice in small towns whereby lender and borrower are kept secret from each other. We do not accept that any such practice exists in small towns in Ontario.

The Solicitor really has no knowledge today whether there was appropriate security for the loans. In this case, there is nothing to indicate monies going to third parties; all the evidence discloses is that the money was withdrawn and paid to the Solicitor.

Even if the Solicitor acted merely as a conduit, this would still amount to misappropriation from the estate in these circumstances. We are satisfied that the money was misappropriated and the complaint established beyond a reasonable doubt.

2 (e) iii

The evidence discloses that there were indeed requests for an accounting, certainly by the Law Society and by the co-executor, the Solicitor for the beneficiary and others. These requests could have been responded to and were not.

25th November, 1993

The Solicitor, in addition, on the evidence, did fail to resolve the issues necessary to allow a timely final distribution. The Solicitor's evidence on this point is not enhanced by his vagueness as to what each cheque that went out of this account was for. The complaint is established.

2 (f)

The Solicitor maintained that this was an error in the account rendered. He maintained there was some doubt about the amount. We are satisfied that the amount of money that he took without authority was \$401.25 and that, for a period of some three months, he kept it for his own use until he paid it to Charles Roy Appraisals Limited following a complaint by that company to the Law Society. This is misappropriation. The complaint is established.

2 (g)

The Solicitor maintains that this client wanted her money put out as loans and that he, in accordance with her instructions, loaned it to other clients. Again, the practice is invoked of keeping lenders and borrowers secret from each other in small towns, a practice which we do not believe exists.

The only document in connection with this transaction is a promissory note showing payment to him and an obligation from him. Miss Halligan's letter of complaint raises no suggestion that the money went to anybody but the Solicitor.

We are satisfied that the money went to him and we do not believe that it went further to other borrowers as indicated.

The Solicitor in this case was sued and the matter proceeded to judgment on February 24, 1992. At no time did the Solicitor suggest that the money was really owed by a third party and he did not move to add any third party to the law suit.

The Solicitor's evidence that "I am simply a conduit" is not accepted. We conclude on the evidence that he himself borrowed this money. He was under considerable financial pressure from a number of creditors. The complaint is established.

2 (j)

It is clear on the evidence that the Solicitor did indeed take the money from his trust account. His explanation for this is that the income tax department had, by order, seized his trust account earlier. As he put it, "that got me a little bit concerned about trust accounts and little bit confused about trust accounts...." He also said, "I got nervous." And so he decided that banks and trust companies were not a safe place for his trust account and that he could safeguard it better by taking personal control of the money.

We reject that explanation completely. He maintains he still has that money, with the exception of \$25,000 that was paid back to Miss Staples. There had originally been \$155,000 in that account which was owed to Miss Staples, Miss Linda Jackson (\$105,000), and the balance to Mr. Hamilton. Jackson and Hamilton have not been repaid.

We are satisfied by the coincidence of amounts and dates that the \$105,000 was taken from the trust account and used by the Solicitor to discharge a personal obligation he had incurred to pay executors' fees, Solicitor's fees and other monies back to the John Campbell estate; he had promised in writing to return money so taken to avoid being cited personally for contempt of court in respect of that matter.

He simply took money from clients to pay himself to avoid this pressing difficulty with a contempt of court charge.

The Solicitor maintained that he still has the trust monies and could repay Hamilton and Jackson. He has not done so. But, whether he had done so or not, this still amounts to a serious misappropriation. The Solicitor's explanation about his trust account dealings was not enhanced by his admission. "I was hiding money [from my creditors] by putting it in my trust account." In context, this act can be correctly characterized as being in the nature of a theft respecting the Jackson money and the Hamilton money. This complaint is established.

Complaint D27a/93

2 (a)

The Solicitor admits that he misappropriated this money. It was to be paid to the National Trust. He claims he has the money but acknowledges that he has not paid it in accordance with his trust and he understands that the Devaux', his clients, have suffered greatly as a result. This complaint is made out.

Those funds that had been advanced to him by the Canadian Imperial Bank of Commerce in trust were intended to pay an existing first mortgage on title in favour of National Trust. As a result of those funds not being paid to National Trust to discharge that existing first mortgage, the Devaux are, to this day, required to continue to pay on that National Trust mortgage as a result of this particular misappropriation.

The Solicitor adds that though he presently has this money, it "hasn't yet" found its way into the hands of National Trust.

3 (a), (b), (c)

The Solicitor (not in connection with his practice) agreed to give first mortgage security in consideration of advances by Central Guaranty Trust in excess of \$500,000 on three separate personal properties; a farm property, a four-plex house, and a cottage. The Solicitor was being pressed in relation to other financial obligations and a bank was demanding and taking money that he had not anticipated respecting his personal obligations. The Solicitor knew he had an obligation to the Trust Company to have independent counsel protect their interests to see that they in fact got first mortgages. He persuaded a friend and fellow solicitor to sign the relevant documents as if the fellow solicitor was providing independent legal services to protect the trust company's interest, when in reality, the signature was only a device; all of the work and all of the assurances were made by the Solicitor himself. In this context, this is conduct unbecoming a barrister and solicitor.

In the case of the farm property, to the extent of \$175,000, only a second mortgage was provided. In the case of the four-plex house to the extent of \$143,000, only a second mortgage was provided. In the case of the cottage, to the extent of \$195,000, only a fourth mortgage was provided.

The Solicitor's explanation that he had assumed that the existing subsequent mortgagees on title would postpone in favour of Central Guaranty Trust is not a reasonable explanation of how the status of the mortgages and their precedence then ended up. The Solicitor's explanation that he expected to get postponements of the subsequent mortgages is unacceptable as these postponements should have been obtained and registered at the time the Central Guaranty Trust mortgage was advanced. The Solicitor's evidence on this point does not raise a reasonable doubt. These complaints are established.

Complaint D180/92

2 (a)

The Solicitor, in his evidence, acknowledged his guilt on this count and we find it established based on the evidence called by the Law Society and the Solicitor's admission.

D195/92, D79/93 and D113/93

The Solicitor has admitted in his evidence that he failed to reply on each of these occasions, except that in the Kavluk case, he thought his secretary had sent out a reply. He also stressed that even at the date of the hearing, on May 3rd, 1993, he was carrying almost all of these letters of complaint, unopened, around in his brief case which he had left in his car. The failure to make any attempt even to open these letters from the Law Society is not mitigated by the Solicitor's assertion that he really knew what was in them and was planning on responding to them all.

The Solicitor clearly resented the idea that a time limit was given for reply. His evidence indicated that he has not the least respect for his obligation to the public to deal with complaints. Neither has he any sense of being bound by the usual rules in this respect. We proceed on the assumption that each and every complaint may well have been unfounded, but his consistent refusal to reply, shown by these examples, is grounds for finding professional misconduct. These complaints are established.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Ian Thomas McEachern be disbarred.

REASONS FOR RECOMMENDATION

The dishonesty involved in these complaints is serious. There has been severe loss to the public. The Solicitor shows no sign that he wants to conform to the requirements of the Law Society of Upper Canada. The Committee thinks it necessary that he be disbarred.

Ian Thomas McEachern was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 20th day of March, 1975.

ALL OF WHICH is respectfully submitted

DATED this 10th day of September, 1993

Clayton Ruby,
Chair

It was moved by Mr. Hill, seconded by Ms. Weaver that the Report be adopted.

Carried

It was moved by Mr. Hill, seconded by Ms. Weaver that the Recommendation as to Penalty, that is that the solicitor be disbarred, be adopted.

25th November, 1993

There were submissions by counsel for the Society in support of the recommended penalty.

Convocation adopted the motion to disbar the solicitor.

Counsel retired.

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Re: DAVID WILLIAM GOLDMAN, Toronto

The Secretary placed the matter before Convocation.

The reporter was sworn.

Messrs. Strosberg and Topp withdrew.

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

Convocation had before it the Report of the Discipline Committee dated 12th October, 1993, together with an Affidavit of Service sworn 16th November, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail (marked Exhibit 1). A letter received from Mr. Elliot Berlin, counsel for the solicitor was entered as Exhibit 2. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby, Chair
Robert C. Topp
Shirley O'Connor

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

Christina Budweth
for the Society

DAVID WILLIAM GOLDMAN
of the City
of Toronto
a barrister and solicitor

E. Berlin
for the solicitor

Heard: May 12, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 23, 1993, Complaint D60/93 was issued and on March 9, 1993, Complaint D62/93 was issued against David William Goldman alleging that he was guilty of professional misconduct.

The matter was heard in public on May 12, 1993 before this Committee composed of Clayton C. Ruby, Chair, Robert C. Topp and Shirley O'Connor. Mr. Goldman was not in attendance at the hearing. E. Berlin represented the Solicitor. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D60/93

2. (a) He has failed to provide a reply to the Society regarding a complaint by Arthur Logan despite letters dated October 26, November 25, 1992 and January 22, 1993.
- (b) He has failed to release files containing corporate minute books belonging to Arthur Logan.
- (c) He has failed to provide a reply to the Society regarding a complaint by Raymond Williams despite letters dated November 5, November 25, 1992 and January 22, 1993.
- (d) He has failed to communicate with his client Raymond Williams and respond to his requests for information.
- (e) He has failed to provide a reply to the Society regarding a complaint by Ms. C. Hall (Bank of Montreal) despite letters dated November 25, 1992 and January 22, 1993 and telephone requests on January 6 and January 7, 1993.
- (f) He has failed to report to his client, Ms. C. Hall (Bank of Montreal.)
- (g) He has failed to provide a reply to the Society regarding a complaint by Scott Magee despite letters dated November 25, 1992 and January 22, 1993.
- (h) He has failed to report to his client, Scott Magee.
- (i) He has failed to provide a reply to the Society regarding a complaint by Elaine Nesbitt (Kopas and Burritt Financial Agents Limited) despite letters dated January 7 and January 22, 1993.
- (j) He has failed to report to Elaine Nesbitt (Kopas and Burritt Financial Agents Limited.)
- (k) He has abandoned his practice of law thereby prejudicing the interests of his clients.

Complaint D62/93

2. (a) He failed to serve his client, Constantin Fantopoulos, in a conscientious, diligent and efficient manner by failing to respond to inquiries from Mr. Fantopoulos and to account to Mr. Fantopoulos regarding the sum of approximately \$7,000.00 received by the Solicitor and owing to the client.

FINDING

The Solicitor appeared by counsel, but did not appear personally and did not contest or challenge the evidence offered by the Law Society. That evidence, to put it simply, established each and every particular charge beyond any reasonable doubt.

REASONS FOR FINDING

The Law Society seems to have moved very quickly on this matter and we are very proud of them for doing so. I am particularly impressed by the thorough preparation Miss Budweth did and it shows very well. Mr. Berlin, Mr. Goldman's counsel was present. We are grateful. It is in the best tradition of the Bar to attend even when the client does not respond in order to assist the tribunal and, if possible, do some good for your client. Mr. Berlin has done his best to assist us.

We are of the opinion that the Solicitor is, in fact, ungovernable, that his practice has been abandoned and that he has shown an unexplained absence of responsibility to this profession and this community. The actions on their face are a disgrace.

With respect to the findings that the complaints are established, the evidence given by the Law Society was uncontradicted and established beyond doubt each and every particular of the complaint.

RECOMMENDATION AS TO PENALTY

The Committee recommends that David William Goldman be disbarred.

REASONS FOR RECOMMENDATION

The evidence establishes not merely a series of individual failures to pay attention to clients, but rather that, for unexplained reasons, the Solicitor has engaged in a pattern of activity, disclosed by the complaints, which shows that he has not the slightest interest in protecting his clients or the public whom he is supposed to serve.

We take into account that as recently as March of 1993 he was suspended by a panel of the Discipline Committee and that an undertaking given to co-operate with the Society in terms of the operation of his practice has been ignored.

No evidence was offered that would suggest that anything other than disbarment was the appropriate penalty and no submission was made by Mr. Berlin to suggest that we should do anything other than disbar the Solicitor. Indeed he was compelled to accept that a recommendation for disbarment was the inescapable inference from the state of the evidence.

In these circumstances, we find the recommendation for disbarment is the only penalty that will effectively protect the public.

25th November, 1993

David William Goldman was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1986.

ALL OF WHICH is respectfully submitted

DATED this 12th day of October, 1993

Clayton C. Ruby
Chair

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

There were brief submissions by Society's counsel and the Report was adopted.

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

Carried

Counsel retired.

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Re: JOHN MELVILLE HARTLEY, Toronto

The Secretary placed the matter before Convocation.

The reporter was sworn.

Messrs. Strosberg, Topp, Campbell and Finkelstein, Ms. Peters and Ms. Richardson withdrew.

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

Convocation had before it the Report of the Discipline Committee dated 6th October, 1993, together with an Affidavit of Service sworn 9th November, 1993 by David Munro that he had effected service on the solicitor personally on 4th November, 1993 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Patricia J. Peters, Q.C., Chair
Neil Finkelstein
Nora Richardson

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

Neil Perrier
for the Society

25th November, 1993

JOHN MELVILLE HARTLEY
of the City
of Toronto
a barrister and solicitor

Not Represented nor in attendance
for the solicitor

Heard: July 13, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On the 6th day of November, 1990, Complaint D203/90 was issued; on the 8th day of February, 1991, Complaint D24/91 was issued; on the 21st day of January, 1993, Complaint D30/93 was issued and on the 15th day of March, 1993, Complaint D73/93 was issued against John Melville Hartley alleging that he was guilty of professional misconduct.

The matter was heard in public on July 13, 1993, before this Committee composed of Patricia J. Peters, Q.C., Chair, Neil Finklestein and Nora Richardson. Mr. Hartley did not attend the hearing and was not represented by counsel. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

COMPLAINT D203/90

2. a) He failed to serve his clients, Seamus and Verna Beattie in a conscientious, diligent and efficient manner;

COMPLAINT D30/93

2. c) He failed to comply with his undertaking to the Law Society, dated November 7, 1989 by failing to reply promptly to written and oral communications from the Law Society on November 5, 1992, November 17, 1992, November 23, 1992, November 27, 1992, November 30, 1992 and December 8, 1992 regarding a complaint by Linda McLaughlin.
- d) He failed to serve his clients, Helen Sutton and Bob Sutton, in a conscientious, diligent and efficient manner, with respect to the estate of Eva Doris Murdoch by:
1. failing to answer letters from his clients dated June 9, 1992, August 11, 1992, September 17, 1992 and September 30, 1992 requesting information regarding the estate; and

2. failing to keep appointments with his clients on July 17, 1992, July 24, 1992, August 11, 1992, September 3, 1992, September 14, 1992, October 6, 1992, October 8, 1992, October 14, 1992 without explanation or apology.

- f) He failed to comply with his undertaking to the Law Society dated November 7, 1992 by failing to reply promptly to written and oral communications from the Law Society on October 30, 1992, November 30, 1992, November 17, 1992, November 27, 1992, and December 8, 1992.

COMPLAINT D73/93

- 2.c) He failed to comply with his undertaking to the Law Society dated November 7, 1989 by failing to promptly reply to letters from the Law Society dated July 17, 1992, August 17, 1992, November 9, 1992, and January 25, 1993, and telephone messages left on January 18, 1993 and January 20, 1993.

EVIDENCE

A summary of the evidence before the Committee is as follows:

COMPLAINT DD230/90 - PARTICULAR 2 a) - BEATTIE MATTER

1. The evidence of Verna and Seamus Beattie revealed that the solicitor was retained by them in the late fall of 1986 to commence an action regarding a motor vehicle accident in which Mrs. Beattie had been involved in July, 1986. The motor vehicle which she was driving was rear-ended by a vehicle driven by one, Ron McArthur. Notwithstanding numerous telephone calls and messages left for Mr. Hartley, the solicitor failed to respond to them regarding the status of Mrs. Beattie's law suit. Mrs. Beattie made at least six telephone calls between November, 1988 and January, 1989. Mr. Hartley testified that he made at least sixteen phone calls during that same time period. However Mr. Hartley failed to respond to them. Finally, on January 16, 1989, Mr. and Mrs. Beattie wrote a letter to the Law Society complaining of Mr. Hartley's handling of their file.

2. The Law Society wrote to Mr. Hartley on January 31, 1989 and did not receive a reply. On April 10, 1989, the Law Society again wrote to Mr. Hartley regarding this matter and by letter dated May 5, 1989, Mr. Hartley replied to the Law Society indicating that he had been in contact with his clients and had set the matter back on track to their satisfaction. Although there appeared to be some effort on the part of Mr. Hartley to deal with the Beattie file in the spring of 1989, Mr. and Mrs. Beattie testified that they were unable to get him to respond to them from March, 1989 to November, 1989 and they again wrote to the Law Society advising of their plight.

3. In early 1990, the Beattie's were able to meet with Mr. Hartley, following a two hour wait in his office. Mr. Hartley went over the same ground that he had covered earlier and did not seem to be making any progress with their file. Finally, they retained other counsel in the fall of 1990, both accident cases were resolved and they received approximately \$23,000.00 in damages in both actions.

COMPLAINT D30/93 - PARTICULAR 2 c) - LINDA McLAUGHLIN MATTER:

1. On the 7th day of November, 1989, John Melville Hartley executed an undertaking to the Law Society that in consideration of the Law Society's withdrawing Complaint D58/89 sworn against him on July 12, 1989, he undertook to reply to written and oral communications from the Law Society promptly.

2. By letter dated October 29, 1992, Linda McLaughlin wrote to the Law Society complaining about John Melville Hartley's handling of a condominium transaction for which she had retained him. By letter dated November 5, 1992, Christine Watt, Complaints Officer of the Law Society wrote to Mr. Hartley regarding the McLaughlin complaint and requested information. There was no response despite telephone calls placed to Mr. Hartley on November 17, 1992 and November 23, 1992 by Ms. Watt's secretary. Ms. Watt, on behalf of the Law Society, wrote to Michael S. Koch, Counsel to Mr. Hartley, with a copy to Mr. Hartley, indicating that she was diarizing her file ahead seven days and if no response was received by Mr. Hartley, she would refer the matter to the Chair of Discipline. This letter was sent to both Mr. Koch and Mr. Hartley by registered mail.

3. No response having been received despite a further attempt at communication with Mr. Hartley on December 8, 1992, the complaint with respect to this matter was issued on January 21, 1993. The panel heard evidence with respect to this matter from both Christine Watt and her secretary, Laurie Ormston, confirming the above.

COMPLAINT D30/93 - PARTICULAR 2 d) - THE SUTTON MATTER:

1. The evidence of Bob Sutton was that in the fall of 1991, he and his wife, Helen, wanted to change their wills and retained John Melville Hartley for that purpose. In February, 1992, Mrs. Sutton's mother died and the Suttons retained Mr. Hartley to represent them with respect to her estate. Despite numerous telephone calls and letters dated June 9, 1992, August 11, 1992, September 17, 1992 and September 30, 1992 requesting information regarding the estate, Mr. Hartley made no response. In addition, several appointments were booked with Mr. Hartley through his secretary, Linda, so that the Suttons could meet with Mr. Hartley on July 17, 1992, July 24, 1992, August 11, 1992, September 3, 1992, September 14, 1992, October 6, 1992, October 8, 1992 and October 14, 1992. All such appointments were either cancelled by Mr. Hartley, through his secretary, minutes before the appointed hour or the solicitor, Mr. Hartley, simply did not show up for the appointment. Finally, on October 19, 1992, Mr. and Mrs. Sutton complained to the Law Society with respect to this matter.

2. Mrs. Helen Sutton gave evidence before the panel that she had written the dates and times of the aforementioned appointments in her date book and confirmed that all of these appointments had either been cancelled by Mr. Hartley's secretary or Mr. Hartley had failed to show up for them.

COMPLAINT D30/93 - PARTICULAR 2 f)

1. By letter dated October 30, 1992, Christine Watt, Complaints Officer of the Law Society, wrote to John Melville Hartley regarding the complaint made by Bob and Helen Sutton and a copy of this letter was sent to Michael Koch, counsel to Mr. Hartley. On November 30, 1992, having received no reply from Mr. Hartley, Ms. Watt wrote to Michael Koch regarding the second complaint and sent a copy of the letter to John Hartley. She indicated in the letter that she was diarizing the matter ahead seven days and if no response had been received, she would be referring the matter to the Chair of Discipline for further instructions. The letters were sent by registered mail. In addition to the written communications mentioned above, attempts were made by Ms. Watt's secretary, Laurie Ormston, to speak to Mr. Hartley on October 30, 1992, November 17, 1992, November 23, 1992, November 30, 1992 and December 8, 1992 and no response was made by Mr. Hartley. Laurie Ormston also testified to these facts.

25th November, 1993

2. Evidence before the panel revealed that John Melville Hartley signed an undertaking on the 7th day of November, 1989 that he would reply to written and oral communications from the Law Society promptly and he has failed to comply with such undertaking.

COMPLAINT D73/93 - PARTICULAR 2 c) - WADE MATTER:

3. By letter dated March 25, 1992, the Law Society wrote to John Melville Hartley regarding a complaint to them by Paul Wade dated the 13th of March, 1992. A request for information was made of Mr. Hartley and, following correspondence with counsel for Mr. Hartley, Mr. Hartley responded to the Law Society on May 6, 1992 indicating that he would be rendering his account to Mr. Wade shortly and would release the file to him upon payment thereof.

4. By letter dated July 17, 1992 to Mr. Hartley, Christine Watt requested Mr. Hartley to confirm to her that he had rendered his account to Mr. Wade. No response was forthcoming and Ms. Watt again wrote to Mr. Hartley on August 17, 1992 asking him to forward his account to Mr. Wade with a copy to her. By fax received on October 5, 1992 by Ms. Watt, a letter was sent by Mr. Hartley, dated April 28, 1993 which was substantially the same letter that Mr. Hartley had sent to the Law Society dated May 6, 1992. On November 9, 1992, Ms. Watt wrote to Mr. Hartley's counsel, Michael Koch with a copy to Mr. Hartley, requesting a response from Mr. Hartley within seven days. On January 18 and 20, 1993, Ms. Watt's secretary, Laurie Ormston, left messages on Mr. Hartley's answering machine asking him when a response could be expected to the November 9, 1992 letter but no response was made. Finally, on January 25, 1993, a registered letter was sent to Mr. Hartley requesting a response within seven days. No response was received.

5. Mr. Hartley had signed an undertaking to the Law Society on November 7, 1989 that he would reply promptly to written and oral communication from the Law Society.

DISCIPLINE HISTORY

The solicitor has no previous discipline record.

RECOMMENDATION AS TO PENALTY

The committee recommends that John Melville Hartley be suspended for a period of three months, such suspension to come into effect on the later of the date of the order of Convocation or the date upon which the current administrative suspension for non-payment of the Errors and Omissions levy has been lifted. Such suspension shall continue until such time as the following conditions have been met to the satisfaction of Discipline Counsel:

- a) That the solicitor respond to Particular 2 c) of Complaint D73/93;
- b) That the solicitor respond to Particular 2 f) of Complaint D30/93;
- c) That the solicitor pay the sum of \$5,000.00 to the Law Society for costs.

REASONS FOR RECOMMENDATION

In view of the fact that these matters have taken place over a number of years and there are a number of different instances, the question of governability arises.

25th November, 1993

The solicitor is currently under suspension for non-payment of his Errors and Omissions levy from June 1, 1993. Notwithstanding that the solicitor was notified of the hearing of the complaints against him, he failed to attend the hearing either personally or by counsel. As Mr. Hartley did not attend the hearing, no explanation was forthcoming for his actions as set out above.

Because of the need for both specific and general deterrence for failure to respond to the Law Society and also in view of the failure of Mr. Hartley to respond to his clients, Mr. and Mrs. Beattie and Mr. and Mrs. Sutton, the panel feels that a period of suspension is required. In view of the fact that this is the first time Mr. Hartley has been found guilty of professional misconduct, a period of three months is considered an appropriate period of suspension provided that Mr. Hartley provides a response to the outstanding complaints as indicated above. In addition, the committee finds that this is an appropriate case for costs to be paid by Mr. Hartley in the amount of \$5,000.00 which is the amount estimated by the Law Society to compensate for the time of Law Society staff and counsel.

John Melville Hartley was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 13th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED at Ottawa, Ontario, this 6th day of October, 1993

Patricia J. Peters, Q.C.
Chair

It was moved by Ms. Sealy, seconded by Mr. Brennan that the Report be adopted.

Mr. Perrier asked that the Report be amended on page 3, paragraph 1., by deleting the name "Mr. Hartley" and replacing it with "Mr. Beattie" so that the sentence would then read: "Mr. Beattie testified that he made at least sixteen phone calls during the same period."

The Report as amended was adopted.

It was moved by Mr. Hill, seconded by Mr. Copeland that the Recommendation as to Penalty that is, that the solicitor be suspended for a period of 3 months with the conditions set out in the Report, be adopted.

Carried

Counsel retired.

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Re: HENRY PETER STEPONAITIS, Toronto

The Secretary placed the matter before Convocation.

The reporter was sworn.

Messrs. Strosberg, Topp and Thom, Ms. Peters, Ms. Weaver and Ms. Mohideen withdrew.

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

25th November, 1993

Convocation had before it the Report of the Discipline Committee dated 12th October, 1993, together with an Affidavit of Service sworn 16th November, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd October, 1993 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on 2nd November, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Mary P. Weaver, Q.C., Chair
Stuart Thom, Q.C.
Fatima Mohideen

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

Christina Budweth
for the Society

HENRY PETER STEPONAITIS
of the City
of Toronto
a barrister and solicitor

Paul French
for the solicitor

Heard: June 29, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 11th, 1991 Complaint D180/91 was issued, on December 4th, 1991 Complaint D202/91 was issued, on June 1st, 1992 Complaint D97/92 was issued and on August 17th, 1992 Complaint D137/92 was issued. Complaint D137/92 was withdrawn and replaced with Complaint D137a/92 issued on June 25th, 1993 against Henry Peter Steponaitis alleging he was guilty of professional misconduct.

The matter was heard in public on June 29th, 1993 before this Committee composed of Mary Weaver, Q.C., Chair, Stuart Thom, Q.C. and Fatima Mohideen. Mr. Steponaitis attended the hearing and was represented by Paul French. Christina Budweth appeared on behalf of the Law Society.

DECISION

The following particulars alleging professional misconduct were found to be established:

Complaint D180/91

1. He misappropriated \$16,000.00 more or less and misapplied \$30,690.97 more or less of investment funds from his client, Ann Stropus, after depositing \$46,822.19 which represented repayment of a mortgage in favour of Ms. Stropus into his personal bank account.
2. He breached his duty to his clients and contravened Rule 2 of the Rules of Professional Conduct by:
 - a. failing to obtain appraisals of property (344-344A Wallace Avenue, 342-342A Wallace Avenue, 242 Perth Avenue and 651 Lansdowne Avenue) being mortgaged to his clients to determine that the mortgages given to the clients were adequate security for the investments being made during a period when the Solicitor was aware of declining real estate values;
 - b. selling an interest in his personal mortgage as security to his clients Ann and Edward Stropus when the same mortgage had previously been assigned to Parama Lithuanian Credit Union as collateral security for the Solicitor's indebtedness to the credit union;
 - c. inducing his lender clients Ann Stropus, Antanas Basalykas and Monika Jasionyte to invest in properties owned by another client, George Buttler, by advising the clients that he would personally guarantee their investments so that they would not lose their investments; and
 - d. inducing Antanas Basalykas and Izadorius Antanaitis to invest in properties held by the Solicitor in trust for George Buttler without disclosing that George Buttler had: a poor credit rating; been convicted of criminal drug charges; fled the county to avoid being sentenced on those drug charges; that he, the Solicitor, was managing George Buttler's properties in his absence by virtue of a power of attorney; and, finally, that the proceeds of the clients investments were being used to pay other mortgages on George Buttler's properties some of which were in arrears.
3. In numerous instances during the period 1988-1990 he acted in conflict of interest, contrary to Rule 5 of the Rules of Professional Conduct, by acting for both borrower and lender in mortgage transactions and by selling personal investments to his clients without insuring that the clients received independent legal advice or representation.
4. He prepared a false notice of sale under mortgage respecting a property known municipally as 354 Wallace Avenue, Toronto, which stated the mortgage held by Antanas Basalykas was in arrears when the Solicitor knew the mortgage was not in arrears because he had been personally been making the payments on the mortgage.
5. He made false representations to Richard Rusak, solicitor, who signed the notice of sale under mortgage referred to in paragraph 4 above by advising Mr. Rusak that the mortgage payments had not been made to Antanas Basalykas and that the mortgage was in arrears.

6. He knowingly commissioned a false Land Transfer Tax Affidavit and prepared a false Transfer/Deed of Land document by stating on the documents that the consideration for the sale of 358 Wallace Avenue in Toronto was \$180,000 having himself negotiated and structured the sale at \$230,000.
7. He breached Rule 7 of the Rules of Professional Conduct by borrowing \$24,000 from his client Juozas Dvilaitis in December, 1989.
8. He breached a trust agreement with his client Roma Cameron by selling a property known municipally as 360 Wallace Avenue, Toronto, which he held in trust for Roma Cameron, without her knowledge or consent.
9. He failed to deposit trust funds received from his clients Ann and Edward Stropus and Mary Wengel, into his trust account, contrary to Section 14 of the Regulation 573.
10. He breached Section 14(1) of Regulation 573 of the Law Society Act by maintaining two trust accounts at the Parama Lithuanian Credit Union for his client George Buttler.
11. He breached Section 15 of Regulation 573 of the Law Society Act by not maintaining the required books and records for the two trust bank accounts maintained at the Parama Lithuanian Credit Union for his client George Buttler.
12. The Solicitor breached Section 15 of Regulation 573 of the Law Society Act in failing to enter cash receipts received for providing legal advice to immigration clients in his books and records.
13. He failed to send his clients Ann and Edward Stropus a reporting letter in respect of \$50,000 given to the Solicitor to invest on their behalf.
14. He failed to send a reporting letter to Mary Wengel in respect of her \$50,000 mortgage investment in 358 Wallace Avenue, Toronto.

Complaint D202/91

- 2.(a) He failed to file with the Society within six months of the termination of his fiscal year ending August 31, 1990 a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the regulation made pursuant to the Law Society Act.

Complaint D97/92

- 2.(a) When placed in the position of a stakeholder over funds paid to him in connection with the administration of the Estate of John Masionis, he failed to take the appropriate steps to determine how the funds should be properly distributed.

Complaint D137a/92

- 2.(a) During the period October, 1990 to March, 1992 he misappropriated \$16,675.00 more or less, from the estate of Mikas Vidziunas;
- (b) In or about February, 1990, he misapplied funds received from Jose and Fatima Rocha due to his client, Aloyzas Viskontas;

25th November, 1993

- (c) In or about February, 1988, he acted in a conflict of interest by acting for Jose and Fatima Rocha in the negotiation and placement of a \$13,000 mortgage in favour of himself and by then acting for his client, Aloyzas Viskontas, on the assignment of the \$13,000 mortgage from himself to Mr. Viskontas; and
- (d) He withdrew \$12,000, more or less, in fees from the estate of Mikas Vidziunas without rendering a fee billing contrary to the provisions of Regulation 573, Section 14(8)(c).

Evidence

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

Complaint D180/91

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

- 1. The Solicitor admits service of Complaint D180/91 and is prepared to proceed with a hearing of this matter on June 29, 1993.

II. IN PUBLIC/IN CAMERA

- 2. The Solicitor intends to request that materials filed in respect of his personal circumstances, including all medical reports, be received by the committee in camera. Subject to the committee's ruling on that request, the parties agree that the hearing of this complaint should be held in public.

III. ADMISSIONS

- 3. The Solicitor has reviewed Complaint D180/91 and this agreed statement of facts with his counsel, Paul French, and admits the particulars contained in the complaint. The Solicitor also admits that the particulars in the complaint supported by the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

- 4. The Solicitor was called to the bar on March 26, 1971. On November 14, 1992, he undertook to refrain from practising law until the completion of the investigations and proceedings of the Law Society. The Solicitor has been suspended for failure to pay his late filing levy regarding his failure to file for the fiscal year ended August 31, 1991 since September 24, 1992.

BACKGROUND

George Buttler

- 5. During the years 1985 to 1989, George Buttler ("Buttler"), purchased 12 properties in the Bloor/Ossington area in Toronto. The Solicitor acted for Buttler on the purchase of 8 of the 12 properties. The properties were registered either in the name of George Buttler or in the name of George Buttler Investments Limited, a company of which he was the president and sole shareholder.

- 6. The Solicitor also acted for Buttler in locating and arranging secondary financing for some of these properties.

7. By the autumn of 1989, most of Buttler's properties were encumbered with between three and five mortgages each. The Solicitor was not responsible for the accumulation of multiple mortgages. Buttler decided to refinance the existing mortgages with replacement financing at more attractive interest rates.

8. Buttler requested that the Solicitor take title to the properties in his own name and apply for first mortgage financing sufficient to pay out the existing mortgages. This arrangement was to enable the properties to be refinanced at an advantageous interest rate. The Solicitor agreed to this request and took title to 10 of the 12 properties in his name or in the name of a corporation of which he is the sole shareholder and president, 857603 Ontario Limited, in trust for Buttler.

9. The Solicitor obtained replacement mortgage financing from financial institutions on the 10 properties. The previous mortgages were paid out. In these transactions the financial institutions were independently represented.

10. In or about the same period of time, Buttler gave the Solicitor a Power of Attorney over his affairs, a copy of which is attached as Exhibit 1 to this agreed statement of facts.

11. In December, 1989, the Solicitor received, unsubstantiated, information that Buttler was involved in drug related activities.

12. On January 9, 1990, Buttler fled the county to avoid sentencing on drug related charges of which he had been found guilty. The Solicitor has maintained the position that initially he understood Buttler was leaving the country to vacation in Jamaica for several weeks.

13. The Solicitor agrees that by early March, 1990 he knew the real reason why Buttler had fled to Jamaica.

14. In the period shortly following Butler's departure from Canada, the Solicitor discovered that most of the tenants in the Buttler properties, which he was managing by default, had vacated the properties or that they were failing to meet their rent commitments.

Particulars 2(1), 2(2)(b), 2(2)(c), 2(3), 2(9) and 2(13) - Ann Stropus

Background (Relates also to the allegations as set out on page 17 and following)

15. Ann Stropus and her family were clients of the Solicitor's for a number of years. The Solicitor had also acted for her late father.

16. In the summer of 1989, Mrs. Stropus contacted the Solicitor for advice about the purchase of some industrial land in Welland. He advised her that he had a client named George Buttler who was in the process of assembling a block of older properties that he was planning to sell as a redevelopment parcel. He told her that, in the meantime, Buttler was renovating, repairing and renting the houses until such time as redevelopment took place. He did not advise her that he, the Solicitor, held title to the properties in trust.

17. The Solicitor provided Mrs. Stropus with financial information regarding the properties including existing appraisals.

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18. In September, 1989, Mrs. Stropus attended at the Solicitor's office to discuss the investment matter further. The Solicitor repeated his advice that her best investment opportunity would be an investment in mortgages on properties located in Toronto. The Solicitor suggested that Mrs. Stropus view the properties before making her final decision. The Solicitor assured Mrs. Stropus that her investment would be safe. He guaranteed the investment by telling her "I guarantee it" on a number of occasions.

St. Clair Investments

19. Mrs. Stropus invested in a number of mortgages through the Solicitor one being a mortgage in the amount of \$50,000.

20. Mrs. Stropus gave the Solicitor four cheques totalling \$50,000. He deposited two of the cheques, one dated December 20, 1989 for \$25,000 and another dated February 7, 1990 to bank account #2421 maintained at the Parama Lithuanian Credit Union. This is a personal bank account, it is not a trust account.

21. Mrs. Stropus' \$50,000 was invested by the Solicitor in the manner described in the succeeding paragraphs.

22. The Solicitor held a second mortgage in the amount of \$100,000 on property at 2914-2916 St. Clair Avenue East, Toronto, registered as Instrument #549710. A copy of the mortgage is attached as Exhibit 2 to this agreed statement of facts. This mortgage was assigned to Parama Lithuanian Credit Union (PLCU) in October, 1988, as collateral security for a \$60,000 personal loan which the Solicitor obtained from the PLCU in 1986, a copy of the Assignment of Mortgage is attached as Exhibit 3 to this agreed statement of facts.

23. When the Solicitor received Mrs. Stropus' \$50,000, the principal balance due on the PLCU loan was about \$56,000.

24. The Solicitor gave Mrs. Stropus an interest in the \$100,000 St. Clair Avenue East second mortgage as security for her \$50,000 investment.

25. The Solicitor prepared a written acknowledgement stating that he released a 64% interest in the St. Clair Avenue East mortgage to Mrs. Stropus. The acknowledgement also stated that he would pay her \$50,000 from the amounts received in repayment of the mortgage. A copy of the Solicitor's unexecuted "Acknowledgement and Release" to Mrs. Stropus is attached as Exhibit 4 to this agreed statement of facts.

26. In conjunction with the written acknowledgement the Solicitor prepared a reporting letter to Mrs. Stropus in which he discussed only \$35,000 of her investment, neither the letter nor any of the enclosures referred to therein were delivered to Mrs. Stropus. A copy of the Solicitor's March 15, 1990 report to Mrs. Stropus is attached as Exhibit 5 to this agreed statement of facts.

27. The Solicitor would testify that it was his intention to re-establish a \$20,000.00 line of credit at the PLCU. This line of credit would be applied against his existing personal loan resulting in a balance of \$36,000.00. It was from this calculation that the Solicitor felt capable of granting Mrs. Stropus a 64% interest in the existing mortgage.

28. The Solicitor completed the acknowledgement before being informed by PLCU that his request, that the previously existing line of credit be reactivated, was refused.

25th November, 1993

29. The \$100,000 mortgage was paid out in December of 1990 by way of a bank draft in the amount of \$102,370.54. The bank draft was made payable to the PLCU which applied \$55,100 to the principal amount owing on Mr. Steponaitis' loan and \$448.35 to interest due on the loan. On December 28, 1990, the Solicitor deposited the remaining \$46,822.19 to his personal bank account, #2421, at PLCU.

30. The Solicitor did not pay Mrs. Stropus the remaining \$46,822. Without consulting her, he misapplied \$30,690.97 of the money to make payments on mortgages which Mrs. Stropus, and other clients, had received as security for their investments in properties involving Buttler, referenced in paragraphs 5 to 14. The Solicitor describes the application of funds as an attempt to secure the value of all the properties and thereby to ensure that all of his investors' were repaid. The use of the Stropus funds in this manner was not authorized by Ann Stropus. The Solicitor's explanation for this conduct is that he had assured her that he would protect her interests in the Wallace Avenue properties and applied the St. Clair mortgage funds in an attempt to do so.

31. The Solicitor misappropriated approximately \$16,000.00 of the Stropus funds for his personal expenses. The Solicitor's explanation for this is that the use of the money in this manner was based on his having made payments out of his own pocket with respect to the mortgages on the Buttler properties and is consistent with his belief that Ann Stropus would recover her investment when the package of Buttler properties were sold. The Society examiner was able to confirm that the Solicitor did inject some of his own funds into the Buttler properties.

32. The Solicitor did not advise Mrs. Stropus to obtain independent legal advice or representation in respect of any aspects of this transaction.

Particular 2(8) - Roma Cameron - Purchase of 360 Wallace Avenue

33. In 1987, the Solicitor acted for Roma Cameron on the purchase of 360 Wallace Avenue. Ms. Cameron purchased the property for \$150,000. She obtained mortgage financing in the amount of \$112,500.

34. The Solicitor took all steps necessary to assist Ms. Cameron in the closing of the purchase and reported to her by letter dated January 8, 1988. A copy of which is attached as Exhibit 6 to this agreed statement of facts.

35. In 1989, Buttler advised Ms. Cameron that she should transfer title to 360 Wallace Avenue to the Solicitor. The reason given by Buttler was that if Ms. Cameron should ever become ill or anything should happen to her the Solicitor could manage the property for her. Ms. Cameron agreed to the transfer and the Solicitor transferred title to 360 Wallace Avenue from Ms. Cameron to his company, 857603 Ontario Limited.

36. In conjunction with the transfer, an agreement was executed between Ms. Cameron and 857603 which provided that 857603 would not deal with the property in any manner without the consent of Ms. Cameron. A copy of the agreement dated October 20, 1989 is attached as Exhibit 7 to this agreed statement of facts. A copy of the Solicitor's report to Ms. Cameron regarding this transaction, dated October 23, 1989, is attached as Exhibit 8 to this agreed statement of facts.

37. On January 8, 1990, Ms. Cameron had executed an acknowledgment which purported to transfer her interests in 360 Wallace Avenue to the control of George Buttler in exchange for her receiving a 49% interest in a premises known as 632 Vaughan Road. A copy of this acknowledgment is attached as Exhibit #9 to this agreed statement of fact.

38. The transfer of the properties between Ms. Cameron and Mr. Buttler did not taken place as Ms. Cameron refused to pay the land transfer tax that was attracted by the "swap".

39. The mortgages on 360 Wallace Avenue fell into arrears although she continued to occupy the property. When the Solicitor was provided with an opportunity to dispose of the property at the full mortgaged value, despite the declining real estate market, he did so.

40. In October, 1990, after the Law Society audit had commenced, the Solicitor transferred title of 360 Wallace Avenue from his company to Ann Wallen for \$195,000. The transfer price was the principal amount of the two outstanding mortgages registered on title. There was no cash paid on the transfer. Attached as Exhibits 10 and 11, respectively, to this agreed statement of facts are copies of the transfer/deed of land to Ann Wallen and a reporting letter to Ann Wallen from the Solicitor dated November 20, 1990.

41. Ms. Cameron did not authorize the transfer of 360 Wallace Avenue to Ms. Wallen and that she had no knowledge of the transfer prior to it being disclosed to her by the Law Society.

42. In all matters detailed above the Solicitor failed to suggest to Ms. Cameron that she seek independent legal advice.

43. During a meeting between the Solicitor and the Society's examiner on Tuesday, January 22, 1991, the Society's examiner questioned the Solicitor about the 360 Wallace Avenue transaction. The Solicitor stated that he had forgotten about the trust agreement between himself and Ms. Cameron due to the acknowledgment releasing her interest in the property.

44. The Solicitor and the Society's examiner discussed Ms. Cameron's acknowledgment, dated January 8, 1990, and agreed that the acknowledgment was not an effective release of the trust agreement as the consideration for the release was never completed.

Particular 2(12) - Breach of Regulation 573, Section 15

45. For a period of approximately 10 years the Solicitor has attended at the Pearson International Airport on most Saturday mornings to meet with Canadian, holiday travellers. He has notarized affidavits without dispensing any legal advice to these individuals. He received cash fees for his services. The Solicitor did not enter the fees or cash receipts in the books and records of his practice; rather, he deposited the monies into his personal bank account at the Bank of Montreal Private Banking Centre, Bay Street branch.

46. The Solicitor did report the fees on his income tax returns. The maximum earned by the Solicitor in any one year for this type of service totalled \$10,000.

47. The Solicitor's explanation for failure to enter the fees in his law firm's books and records was that he did not believe that these services constituted legal services and, therefore, they were not proper entries for his practice records. The Solicitor admits that he was at least willfully blind to the fact that he should have been recording this income in his practice records and admits that his failure to do so constitutes a violation of the regulation and professional misconduct.

Particular 2 (2d) & Particular 2(23)

48. In November, 1989, a property at 632 Vaughan Road was owned by George Buttler Investments Ltd. In November, 1989, the Solicitor's wife, Dalia Beliunas, advanced \$20,000 to the company and received a \$20,000 third mortgage on 632 Vaughan Road as security for the investment.

49. In March, 1990, the Solicitor's wife assigned the mortgage to Antanas Basalykas. The Solicitor acted for both his wife and Mr. Basalykas on the transfer.

50. The \$20,000 proceeds were deposited into a bank account at the Parama Lithuanian Credit Union used for making mortgage payments on the Buttler properties previously referenced.

51. At the time of the transfer the Solicitor was aware of the circumstances of Buttler's departure from the country. He did not advise Mr. Basalykas of these circumstances. The Solicitor was also aware of a general decline in the real estate market.

52. Mr. Basalykas has received partial repayment in the amount of \$13,000.00 which funds were misapplied from funds owing to Mr. Viskontas as set out in complaint and agreed statement of facts D137/92. Mr. Viskontas was eventually also repaid.

Particular 2(7) - Borrowing from Client

53. The Solicitor and his wife were the joint owners of 1613 Bloor Street West in Toronto.

54. In December, 1989, they obtained a mortgage loan from Juozas Dvilaitis. The Solicitor had acted for Mr. Dvilaitis for approximately 15 to 20 years. Mr. Dvilaitis was given a mortgage against title to 1613 Bloor Street West as security for the loan. Mr. Dvilaitis did receive independent legal advice regarding this transaction.

55. The Solicitor did make full repayment to Mr. Dvilaitis and the mortgage was discharged.

Particular 2(6) - False Land Transfer Tax Affidavit

Particular 2(14) - Failure to Report to Mary Wengel

Particular 2(3) - Conflict of Interest

Particular 2(9) - Breach of Section 14, Regulation 573

56. In September, 1989, title to 358 Wallace Avenue was transferred from George Buttler's company to the Solicitor. The Solicitor arranged for a first mortgage of \$180,000 from Focus National Mortgage Corporation and a second mortgage in the amount of \$25,000 from 408009 Ontario Limited. Both Focus National Mortgage Corporation and 408009 were independently represented in this transaction. The mortgage advances were used to pay out existing mortgages on the property.

57. The Solicitor managed the property under the general power of attorney, exhibit 1, until October, 1990, when he sold the property to Gems Skeete.

58. The Solicitor acted for both Mr. Skeete and himself on the transfer of the property. No agreement of purchase and sale was prepared. No deposit was provided. The consideration on the deed and the land transfer tax affidavit prepared by the Solicitor and commissioned by the Solicitor was \$180,000. The land transfer tax payment of \$1,525 was computed on a \$180,000 consideration. The Solicitor paid the land transfer tax from his general bank account and included the payment as a disbursement on his fee billing to Mr. Skeete. Copies of the registered deed and land transfer tax affidavit are attached collectively as Exhibit 12 to this agreed statement of facts.

59. The Solicitor reported the transfer transaction to Mr. Skeete by letter dated November 12, 1990, a copy of which is attached as Exhibit 13 to this agreed statement of facts. The Solicitor reported the sale price to be \$230,000.

60. In August and September, 1990, the Solicitor received \$50,000 from his client Mary Wengel, for investment.

61. The Solicitor arranged for Ms. Wengel's \$50,000 to be invested in a second mortgage on 358 Wallace Avenue. A copy of the mortgage is attached as Exhibit 14 to this agreed statement of facts. The face amount of the mortgage is \$85,000.

62. A copy of the abstract of title of 358 Wallace Avenue is attached as Exhibit 15 to this agreed statement of facts. The transfer from the Solicitor to Mr. Skeete was registered on the same day as the mortgage in favour of Ms. Wengel.

63. The Solicitor would give evidence that the \$85,000 was to be applied as consideration in respect of all the Buttler properties to be transferred to Mr. Skeete. He admits that this was not done.

64. Mary Wengel's \$50,000 was deposited into the Solicitor's personal bank account at Parama Lithuanian Credit Union.

65. Mary Wengel has in all likelihood lost her \$50,000 investment. Ms. Wengel received mortgage payments on time until January 19, 1991. The January 19, 1991 payment was returned NSF. She received the February payment but the March and April payments were also returned NSF. She later received replacement cheques. At this time the June and one half of the May, 1991 payments have not been made.

66. The Solicitor never reported to Ms. Wengel regarding her \$50,000 investment.

67. The Solicitor did not advise Ms. Wengel of the fact that the property in which she was investing had been purchased by Mr. Skeete from Mr. Buttler. Ms. Wengel is aware of Mr. Buttler's identity and would not have invested in the property in which he had any involvement.

Particular 2(2a) - Failure to Adequately Secure Mortgages 344-344A Wallace Avenue

68. In April, 1990, the Solicitor held title to 344-344A Wallace Avenue in the name of 857603 Ontario Limited in trust for George Buttler. 857603 Ontario Limited is a corporation of which the Solicitor was the sole shareholder and directing mind. In April, 1990, the Solicitor transferred 344-344A Wallace Avenue from 857603 to Dahlia Investments Limited, another corporation of which he was the sole shareholder and directing mind. A transfer price was established at \$271,000. There is no agreement of purchase and sale in existence regarding this transaction. The land transfer tax was paid but no other monies exchanged hands.

69. At the time, a first mortgage was held by Financial Trust in the amount of \$196,875.00. The Solicitor then arranged for his clients Antanas Basalykas and Izadorius Antanaitis to also invest in mortgages on this property. Mr. Basalykas received a second mortgage of \$35,000.00 and Mr. Antanaitis received a third mortgage of \$30,000.00 representing a previous advance of \$45,000.00 and a later advance of \$15,000.00 toward financing on 342-342A Wallace Avenue described below. In result Mr. Antanaitis received two third mortgages, one on each property, each in the amount of \$30,000.00 for total advances by him of \$60,000.00. The total of mortgages at this time on 344-344A Wallace Avenue was \$261,875.00.

70. The Solicitor assured both Mr. Basalykas and Mr. Antanaitis that the investments they were making in this property would be secure ones. The Solicitor advised Mr. Basalykas he would guarantee his investment.

71. The Solicitor did not obtain an up-to-date appraisal at the time of the transfer or the mortgage advances; however, an appraisal of 344-344A Wallace Avenue was prepared on October 25, 1989, valuing the land and buildings at \$280,000.00. A copy of the said appraisal is attached to this agreed statement of facts as Exhibit 16.

72. The Solicitor would testify that he relied on the appraisal and commitment in his valuation of the property. The Society could not offer any evidence to contradict the Solicitor's state of mind.

73. At the request of the Law Society Auditor, an appraisal of the property value as of April 6, 1990, was made on February 1, 1991. This retrospective appraisal determined a value of \$220,000.00. A copy of the said appraisal is attached to this agreed statement of facts as Exhibit 17.

74. Mr. Basalykas' mortgage was due in April, 1991. It is in default. Mr. Antanaitis' mortgage went into default in June, 1990.

75. The Solicitor transferred the property to another client, Gems Skeete, in October, 1990. The Solicitor personally made all mortgage payments to Messrs. Basalykas and Antanaitis. No mortgage payments have been made since the transfer. The first mortgagee has commenced power of sale proceedings. It is likely that both Mr. Basalykas and Mr. Antanaitis have lost their investment.

342-342A Wallace Avenue

76. In April, 1990, the Solicitor held title to 342-342A Wallace Avenue his name in trust for George Buttler. On April 6, 1990, the property was transferred to Bromat Investments Inc., a corporation of which the Solicitor was the sole shareholder and directing mind, for \$271,100.00. Again, there is no agreement of purchase and sale regarding this transfer but the Solicitor did pay the land transfer tax.

77. At the time of the transfer, the property was subject to a first mortgage encumbrance by Finance Trust in the amount of \$196,875.00. In or about this time, the Solicitor arranged for his clients Anatanas Basalykas and Izadorius Antanaitis to make investments in this property. Mr. Basalykas received a second mortgage of \$35,000.00 for a \$35,000.00 advance. Mr. Antanaitis had previously had a \$45,000.00 third mortgage on the property. It was discharged when Mr. Antanaitis advanced \$15,000.00 and received in return a \$30,000.00 third mortgage. The total value of the mortgage financing at that time was \$261,875.00.

78. The Solicitor did not obtain an up-too-date appraisal at the time; however, an appraisal of 342-342A Wallace Avenue was prepared on October 25, 1989, valuing the land and buildings at \$280,000.00. A copy of the said appraisal is attached to this agreed statement of facts as Exhibit 18.

79. The Solicitor would testify that he relied on the appraisal and commitment in his valuation of the property. The Society could not offer any evidence to contradict the Solicitor's state of mind.

80. At the request of the Law Society Auditor, an appraisal of the property value as of April 6, 1990, was made on February 1, 1991. This retrospective appraisal determined a value of \$220,000.00. A copy of the said appraisal is attached to this agreed statement of facts as Exhibit 19.

81. The Solicitor made all mortgage payments on the mortgages to October, 1990 when the property was transferred to Gems Skeete under the same arrangement as described regarding the transfer of 344-344A Wallace Avenue. No payments have been made since the date of the transfer. It appears that Messrs. Basalykas and Antanaitis have lost the remainder of their investment.

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242 Perth Avenue

82. In February, 1989, George Buttler purchased 242 Perth Avenue for \$270,000.00. The Solicitor acted on the purchase.

83. A first mortgage was held by Home Savings and Loan Company in the amount of \$191,250.00. The vendor took back a \$50,000.00 second mortgage and the Solicitor received a \$30,000.00 third mortgage. One month later, the Solicitor assigned the third mortgage to Mr. Viskontas. The total value of mortgages was \$271,250.00.

84. The Solicitor acknowledges that insufficient investigations were made to determine the level of security at the time the mortgages were put on the property.

85. The property was sold by the first mortgagee under power of sale of \$180,000.00. There were no sale proceeds available for Mr. Viskontas.

651 Lansdowne Avenue

86. In September, 1989, title to 651 Lansdowne Avenue and 352 Wallace Avenue was transferred by the Solicitor from George Buttler to the Solicitor in trust for George Buttler. Title to 346 Wallace Avenue was transferred from George Buttler to 857603 Ontario Limited.

87. In September, 1989, Ann Stropus advanced to the Solicitor \$150,000.00 to invest in a second mortgage. The Solicitor arranged a second mortgage to be registered against 651 Lansdowne Avenue. Second mortgages representing collateral security were placed on 346 Wallace Avenue and 352 Wallace Avenue.

88. At the time of the registration of the mortgages, the properties were appraised and mortgages as follows:

	<u>Appraisal</u>	<u>Mortgage</u>
651 Lansdowne Avenue		\$187,500.00 (Focus Nov. 89) 1st Mortgage
	\$270,000.00 (Sep.15/89)	\$150,000.00
352 Wallace	\$305,000.00 (March 28/89)	\$210,000.00 (Focus - Nov. 89) 1st Mortgage
346 Wallace	\$225,000.00 (March 28/89)	\$183,750.00 (Focus - Nov. 89) 1st Mortgage
		\$30,000.00 (3rd) (Unrelated Party)

A copy of the above referenced appraisals are attached to this agreed statement of facts as Exhibit 20. Two weeks after the registration of the mortgages the appraised values of the property were as follows: All mortgages remained on title:

Appraisal

651 Lansdowne	\$250,000.00 (oct 25/89)
352 Wallace	\$280,000.00 (Oct/89)
346 Wallace	\$245,000.00 (Oct 25/89)

A copy of the above referenced appraisals is attached as Exhibit 21 to this agreed statement of facts.

89. The total amount of mortgages at October, 1989 (including the \$150,000.00 investment of the Stropus') was \$731,250.00.

90. The appraised equity of the property demonstrates an existing equity of \$63,750.00 in excess of the mortgaged amounts resulting in the properties being mortgaged to approximately 92% of their appraised value.

91. The Solicitor sold 352 Wallace Avenue in March, 1990. Ann Stropus was paid \$32,000.00 out of the sale proceeds. She discharged her second mortgage. At this time there was \$118,000.00 more or less due on her mortgages.

92. The Solicitor was making the mortgage payments on 651 Lansdowne Avenue and 346 Wallace Avenue. He stopped making those payments in either December 1990 or January 1991.

Particular 2(2)(c), 2(4) and 2(5) - 354 Wallace Avenue/Rusak

93. This property was purchased by George Buttler in 1985. By 1988, there were five mortgages on title. In November, 1988, the property was refinanced with a first mortgage of approximately \$146,000 to Household Trust Company and a second mortgage of \$30,000 to the Solicitor. All previous mortgages were paid out and discharged. In December, 1988, the Solicitor assigned his \$30,000 mortgage to his client Monika Jasionyte. In January, 1989, the Solicitor arranged a \$37,000 third mortgage in favour of his client Mr. Basalykas. The Solicitor acted for both Ms. Jasionyte and Mr. Basalykas in the placement of their mortgages.

94. Mr. Jasionyte was induced to invest in the property by the Solicitor's statements that it was a safe investment and that he guaranteed she would not lose her investment.

95. In September, 1990, the Solicitor completed a Notice of Sale under Mortgage in respect of third mortgage on 354 Wallace Avenue.

96. The mortgagor was not making any payments towards the mortgage, instead it was the Solicitor who made the appropriate payments in an attempt to keep the property afloat. In light of the non-payment of the mortgagor the Solicitor commenced Power of Sales proceedings.

97. The Solicitor approached Richard Rusak with the completed documents and asked that he sign as solicitor.

Particulars 10 and 11 - Breach of Regulation 573 (Trust Accounts)

98. The Solicitor's banking arrangements were inappropriate and in violation of sections 14 and 15 of Regulation 573 of the Law Society Act.

25th November, 1993

V. DISPOSITION

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

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

Complaint D202/91

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D202/91 and is prepared to proceed with a hearing of this matter on June 29, 1993.

II. IN PUBLIC/IN CAMERA

2. The Solicitor intends to request that materials filed in respect of his personal circumstances, including all medical reports, be received by the committee in camera. Subject to the committee's ruling on that request, the parties agree that the hearing of this complaint should be held in public.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D202/91 and this agreed statement of facts with his counsel, Paul French, and admits the particular contained in the complaint. The Solicitor also admits that the particular in the complaint supported by the facts as hereinafter set out constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on March 26, 1971. On November 14, 1992, he undertook to refrain from practising law until the completion of the investigations and proceedings of the Law Society. The Solicitor has been suspended for failure to pay his late filing levy regarding his failure to file for the fiscal year ended August 31, 1991 since September 24, 1992.

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

6. As the Solicitor did not file his Form 2 or Form 3, he was subject to a late filing levy of \$10/day. When this levy amounts to \$1,500 the Solicitor would be subject to suspension pursuant to Section 36 of the Law Society Act.

7. The Solicitor was advised of his failure to file by way of a Notice of Default in Annual Filings dated March 6, 1991. The Society communicated further with the Solicitor by letter dated April 5, 1991 in which the Solicitor was advised of the late filing fee applicable to filings made after their due dates. The Solicitor was further advised that the filing fee would begin to accrue on April 22, 1991.

8. The Society next corresponded with the Solicitor on August 15, 1991 by way of letter attached as Exhibit 1 to this agreed statement of facts. In this letter the Solicitor was advised of his pending suspension for failure to pay the late filing levy.

25th November, 1993

9. The Society corresponded again with the Solicitor by letter dated September 17, 1991 in which he was reminded that his rights and privileges would be suspended September 27, 1991 failing remittance of the late filing fee to the Society. The Solicitor made telephone contact with the Society and paid an amount of \$750 towards his fees. On the basis of this payment the Solicitor's name was not offered for suspension before Convocation.

10. The Society corresponded with the Solicitor again on October 11, 1991, again, the Solicitor was advised of the Society's intention to place his name before Convocation for failure to make his annual filings and remit the late filing fee. This letter was followed by a letter of October 24, 1991, a copy of which is attached as Exhibit 2 to this agreed statement of facts.

11. Following the Society's October 24, 1991 letter the Solicitor delivered a cheque in the amount of \$300 to the Society and, again, his name was removed from the list of solicitors being presented to Convocation for suspension.

12. It was necessary for the Society to correspond with the Solicitor again on November 15, 1991 further reminding him that his name would be put before Convocation should payments not be made by November 22, 1991.

13. Under cover of letter dated November 27, 1991 the Solicitor delivered the final \$450 in late filing fees applicable to his 1990 filing and accordingly was not suspended.

14. To date, the Solicitor has not yet delivered the requisite filings to the Society.

15. Due to non payment of accounts the Solicitor's accountant stopped updating the Solicitor's practice account books in August, 1989. The Solicitor has not been in a financial position which would allow for the timely completion of his filing. Further, the Solicitor, as a result of personal circumstances, has had considerable difficulty in maintaining an accurate record of fee due dates and payments.

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

Complaint D97/92

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D97/92 and is prepared to proceed with a hearing of this matter on June 29, 1993.

II. IN PUBLIC/IN CAMERA

2. The Solicitor intends to request that materials filed in respect of his personal circumstances, including all medical reports, be received by the committee in camera. Subject to the committee's ruling on that request, the parties agreed that the hearing of this complaint should be held in public.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D97/92 and this agreed statement of facts with his counsel, Paul French, and admits the particular contained in the complaint. The Solicitor also admits that the particular in the complaint supported by the facts as hereinafter set out constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on March 26, 1971. On November 14, 1992, he undertook to refrain from practising law until the completion of the investigations and proceedings of the Law Society. The Solicitor has been suspended for failure to pay his late filing levy regarding his failure to file for the fiscal year ended August 31, 1991 since September 24, 1992.

5. During the period 1984 to 1987 the planning and development firm of McNair & Marshall were retained to act for John Masionis to perform planning and consulting work in respect of land owned by Mr. Masionis. Subsequent to the commencement of their retainer, Mr. Masionis' property was expropriated by the province of Ontario. Christopher Tzekas of the firm of Weir & Foulds was retained to act for John Masionis on an expropriation matter in 1987.

6. On September 27, 1984, Mr. Masionis executed an irrevocable direction instructing his solicitor, Mr. C.J. Tzekas of Weir & Foulds, to pay the account of McNair & Marshall out of proceeds of the expropriation. A copy of the irrevocable direction is attached as Exhibit 1 to this agreed statement of facts.

7. Mr. Masionis died on March 5, 1986.

8. On August 20, 1987, McNair & Marshall rendered an account to Weir & Foulds in the amount of \$1,612.75 for services performed on behalf of Mr. Masionis. A copy of the McNair & Marshall invoice of August 20, 1987 is attached as Exhibit 2 to this agreed statement of facts.

9. When the expropriation was settled an amount specifically designated as costs to satisfy the accounts of a number of consultants who acted in the matter, including the McNair & Marshall firm, was included in the amount awarded to Mr. Masionis' estate.

10. By notice, pursuant to the Trustee Act, the Solicitor advertised for creditors' claims. While claims were made, and properly paid, no such claim was made, within the limitation period, by McNair & Marshall.

11. Under cover of letter dated April 17, 1989, Mr. Tzekas forwarded to the Solicitor a cheque in the amount of \$7,026.45, being funds due the estate on account of costs recovered in the expropriation proceedings. He noted that the account of McNair & Marshall was still in dispute and that he would not be forwarding the balance of the funds awarded in costs until the amount of those accounts had been settled. A copy of Mr. Tzekas' letter of April 17, 1989 is attached as Exhibit 3 to this agreed statement of facts.

12. Under cover of letter dated August 15, 1990, Mr. Tzekas forwarded to the Solicitor a cheque in the amount of \$3,531.84 representing the balance of the cost award being held in trust by the firm in 1989. The letter specifically stated:

These funds are being sent to you on the condition that they be used to satisfy the outstanding account of Allen P. McNair and any account that my (sic) be owing to Mr. Hacker. If you are not prepared to accept this condition, then please return the cheque to our offices.

A copy of Mr. Tzekas' August 15, 1990 letter is attached as Exhibit 4 to this agreed statement of facts.

13. By letter dated September 12, 1990, McNair & Marshall wrote to the Solicitor inquiring as to the delay in payment of their account. A copy of the McNair & Marshall letter is attached as Exhibit 5 to this agreed statement of facts.

14. The Solicitor responded by letter dated September 19, 1990 in which he advised that the executors of the estate had provided him with authority to offer to settle the McNair & Marshall account for \$2,500. A copy of the Solicitor's September 19, 1990 letter is attached as Exhibit 6 to this agreed statement of facts.

15. By letter dated September 26, 1990, Mr. McNair advised the Solicitor that the total of his account was only \$1,612.75 and that he would be prepared to accept this lower amount in full settlement of the firm's claim. A copy of Mr. McNair's September 26, 1990 letter is attached as Exhibit 7 to this agreed statement of facts.

16. Mr. McNair did not receive a response to his September 26 letter and after the placement of various telephone calls to the Solicitor and his staff complained to the Law Society regarding the Solicitor's failure to honour the account by letter dated March 4, 1991, a copy of which is attached as Exhibit 8 to this agreed statement of facts.

17. The Society forwarded Mr. McNair's letter to the Solicitor under cover of letter dated April 3, 1991 requesting his comments.

18. The Solicitor responded by letter dated April 25, 1991 in which he took the position that McNair & Marshall had failed to submit their proof of claim to the Masionis estate within the requisite period of time and the claim was therefore no longer a valid one. A copy of the Solicitor's April 25, 1991 letter is attached as Exhibit 9 to this agreed statement of facts.

19. Mr. McNair provided comments on the Solicitor's letter to the Society in a letter dated July 27, 1991 which was forwarded to the Solicitor on December 2, 1991. A copy of the Society's December 2 letter complete with enclosure is attached as Exhibit 10 to this agreed statement of facts.

20. The Solicitor responded with a letter dated December 19, 1991 in which he enclosed a copy of Exhibit 3. The Solicitor continued in his position that the McNair & Marshall claim was made out of time. A copy of the Solicitor's December 19, 1991 letter is attached as Exhibit 11 to this agreed statement of facts.

21. The Society responded to the Solicitor by letter dated February 13, 1992, a copy of which is attached as Exhibit 12 to this agreed statement of facts. The Society requested that in view of the Solicitor's position he commence interpleader proceedings immediately and confirm same with the Society within three weeks of the date of the letter.

22. The Solicitor was admitted to the North York General Hospital on March 24, 1992, subsequently transferred to the Bellwood Health Services Centre and discharged on April 25, 1992.

23. On March 31, 1992, the Society wrote to the Solicitor again confirming telephone conversations which had taken place on March 5 and March 16, 1992 during which the Solicitor assured the writer that appropriate steps regarding the interpleader motion were being taken. The Solicitor was advised that if the Society did not receive confirmation that the monies in dispute had been paid into court within ten days, the instructions of the chair and vice-chairs of discipline would be sought. A copy of the Society's March 31, 1992 letter is attached as Exhibit 13 to this agreed statement of facts.

25th November, 1993

24. The disputed account claimed by McNair & Marshall was paid, in full, by way of a cheque dated August 13, 1992. A copy of the relevant letter and cheque are attached as Exhibit 14 to this statement of fact.

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

Complaint D137a/92

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

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

II. IN PUBLIC/IN CAMERA

2. The Solicitor intends to request that materials filed in respect of his personal circumstances, including all medical reports, be received by the committee in camera. Subject to the committee's ruling on that request, the parties agree that the hearing of this complaint should be held in public.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D137a/92 and this agreed statement of facts with his counsel, Paul French, and admits the particulars contained in the complaint. The Solicitor also admits that the particulars in the complaint supported by the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on March 26, 1971. On November 14, 1992, he undertook to refrain from practising law until the completion of the investigations and proceedings of the Law Society. The Solicitor has been suspended for failure to pay his late filing levy regarding his failure to file for the fiscal year ended August 31, 1991 since September 24, 1992.

Particular 2(a) - Misappropriation - Estate of Mikas Vidziunas

5. The Solicitor replaced Gerard Balciunas as solicitor for the estate of Mikas Vidziunas in April, 1980. The beneficiaries of Mr. Vidziunas' estate were his wife and two sons who reside in Lithuania. Mrs. Vidziunas was to have use of the income earned by the estate and so much of the capital as was necessary for her to live until the tenth anniversary of her husband's death (July 26, 1985) at which time the balance of the estate was to be paid to her. The will stipulated that if Mrs. Vidziunas died within the ten year period the two sons would share equally in the residue of the estate.

6. Mr. Vidziunas' will named Edmundas Miliuskas and Anticetas Zizys as executors. Mr. Miliuskas died in October, 1985. In August, 1986, at the request of Mr. Zizys and with the consent of Mrs. Vidziunas, the Solicitor applied to the court to appoint the Solicitor and one Giedre Budreckis, a distant relative of the deceased, resident in the United States, as executors. The Application was granted.

7. The Solicitor could not be certain of the date of death of Mrs. Vidziunas, however, the Law Society's auditor was able to determine that interim payments of \$28,000 were made.

25th November, 1993

8. By letter dated March 31, 1988, the Solicitor advised the Parama Lithuanian Credit Union, the financial institution for the Estate, that he had signing authority on the estate account #3961. At that time the account contained \$70,426.42. A copy of the Solicitor's March 31, 1988 letter is attached as Exhibit 1 to this agreed statement of facts.

9. The Law Society's investigator determined that the Solicitor did render several interim accounts to the estate and that an interim accounting, to October 1, 1990, was sent to the co-executor for review and approval. The estates assets were properly accounted for to October 1, 1990.

10. The Solicitor would give evidence that while acting as Executor of the Vidziunas estate he did not submit accounts for all services rendered. The Solicitor would testify that on October 26 and November 16, 1990 and February 12, 1991, he deducted fees from the Estate account for past services rendered. The Society would not offer any evidence to contradict the Solicitor's evidence in this regard. The Solicitor's admits that his actions in this regard constitute professional misconduct as being a violation of Regulation 573, Section 14(8)(c) as he failed to render fee billings to the estate for the amounts so withdrawn.

11. On May 7, 1991, the Solicitor presented himself at the Parama Lithuanian Credit Union and made enquiries as to which of his accounts held a positive balance. The Solicitor was informed of a substantial balance in account #4961.

12. During the period May 7, 1991 to March 18, 1992, the Solicitor withdrew \$16,675.00 from the Estate account. The following chart accurately sets out the dates and amounts of payments to the Solicitor:

<u>Date of Cheque</u>	<u>Amount of Cheque</u>
May 7, 1991	4,000.00
May 8, 1991	2,000.00
May 8, 1991	4,000.00
May 9, 1991	6,600.00
March 18, 1992 (cash)	75.00
TOTAL	\$16,675.00

13. In March, 1992, the Solicitor was undergoing treatment at the Bellwood Centre. During this period the shortfall in the Vidziunas Estate account was brought to his attention.

14. The Solicitor immediately made an effort to make restitution to the estate and forwarded \$2,500.00 to the beneficiaries of the Estate as a first installment. A copy of the letter acknowledging receipt, and the interpreted text, are attached as Exhibit 2 to this agreed statement of fact.

Particular 2(c) - Conflict of Interest

15. In February, 1988, the Solicitor acted for Mr. and Mrs. J. Rocha in their purchase of a property known municipally as 59 Hatherley Road. The Rocha's granted the Solicitor a second mortgage on their home to secure an advance of funds from him. The Solicitor immediately assigned the mortgage to his client Aloyzas Viskontas.

16. The Solicitor failed to disclose his conflict of interest in the matter to the Rochas. The Solicitor did not seek the Rocha's authority to transfer the mortgage. Further, the Solicitor did not advise either party to seek independent legal advice or representation in respect of the transaction.

Particular 2(b) - \$13,000 Misapplication Aloyzas Viskontas

17. The assignment of the mortgage referenced in paragraphs 16 and 17 was registered in March, 1988. The Solicitor reported to the Rocha's by letter dated May 31, 1988, a copy of which is attached as Exhibit 2 to this agreed statement of facts. Under the terms of the mortgage the Rocha's were required to make payments of \$152.61 on account of principal plus interest until February 15, 1990, when the mortgage matured.

18. For two years the Solicitor received the monthly mortgage payments from the Rocha's and paid these amounts to Mr. Viskontas. When the mortgage matured in February, 1990, the Rocha's paid the principal amount of \$13,000 to the Solicitor by way of a cheque.

19. The Solicitor endorsed the cheque to Antanas Basalykas, an unrelated party. It is not disputed that the Solicitor did not endorse the cheque to Mr. Viskontas.

20. On February 21, 1990, the Solicitor sent a reporting letter to Mr. Viskontas stating that he was enclosing a cheque for \$13,000 on a discharge of mortgage which he asked Mr. Viskontas to sign. The cheque referenced was not enclosed with the letter. A copy of the Solicitor's February 21, 1990 letter, complete with a the unregistered discharge, are attached as Exhibit 3 to this agreed statement of facts.

21. Mr. Viskontas telephoned the Solicitor and questioned him about the absence of the cheque. The Solicitor advised him he did not have the funds to pay him but asked him to sign the discharge anyway and assured him that he, the Solicitor, would provide the proceeds of the mortgage as soon as possible.

22. In July, 1990, the Solicitor forwarded a cheque in the amount of \$13,000 drawn on his personal account at the Parama Lithuanian Credit Union. Mr. Viskontas attempted to negotiate the cheque but was unable to do so because the account contained insufficient funds. A copy of the July 2, 1990 cheque is attached as Exhibit 4 to this agreed statement of facts.

23. In September 1990, the Solicitor assigned a partial interest in an existing mortgage on a property in Barrie to Mr. Viskontas. This assignment was in lieu of a cash payment of the outstanding \$13,000.00 obtained from the Rocha's. A copy of the assignment is attached as Exhibit 5 to this agreed statement of fact.

24. At the time of the payout of the mortgage securing Mr. Viskontas' loan, the Solicitor instructed counsel for the subject property owner to make all cheques payable to the investors directly. A copy of the Solicitor's direction is attached as Exhibit 6 to this agreed statement of fact.

25. By cheque dated July 18, 1991 Mr. Viskontas received \$14,000.00 in full satisfaction of his investment. A copy of the noted cheque is attached as Exhibit 7 to this agreed statement of fact.

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

RECOMMENDATION AS TO PENALTY

The Committee recommends that the solicitor be given permission to resign. The evidence before the Committee consisted of four agreed statements of fact. In the agreed statement of facts for complaint D180/91, he admitted amongst other admissions, to the misappropriation of \$16,000 more or less and the misapplication of \$30,690 of funds he had received in trust for a client. In complaint D137/92, amongst other admissions, the solicitor admitted to the misappropriation of \$16,675 and further admitted to the misapplication of the sum of \$13,000 from funds he had received in trust on behalf of a client. The solicitor repaid this client some seventeen months later the sum of \$14,000 in full satisfaction of the client's investment. The other particulars which the solicitor admitted vary in their degree of culpability, nonetheless there were a number of clients who had trusted the solicitor completely and accepted his advice as to the investment of their money and his representation that the funds he invested on their behalf were safe and profitable. A number of these clients lost all or substantially all of their money.

The evidence before the Committee would inevitably lead to a penalty of disbarment unless there are circumstances that are compelling and which fall into that class of cases where mitigating circumstances are such that the appropriate penalty is to permit the solicitor to resign.

Counsel for the Law Society and counsel for the solicitor made a joint submission that this solicitor be given permission to resign. The Committee received a total of fifteen medical reports and records covering the period from April 9th, 1987 November 5th, 1992. There were nine reports and records of admissions to the North York General Hospital, one admission to St. Michaels Hospital, an assessment and report from Bellwood Health Services Inc. and records from the Renaissance Centre. The psychiatric and addiction history of the solicitor was contained in a report dated June 24th, 1993 from Dr. Adam M. Stein. Dr. Stein is a staff psychiatrist at North York General Hospital and was the psychiatrist who first saw the solicitor in April of 1987 and continued to see him throughout the period. Dr. Stein is of the opinion that the Solicitor suffers from a combination of a bipolar affective disorder (perhaps better known as manic depressive illness) and chronic alcoholism. Over the period covered by Dr. Stein's report, the solicitor apparently had periods when his mental health was such that he was able to satisfactorily conduct his practice. However, in his report, Dr. Stein states

"I think it is fair to say that during the period of the complaints, his judgment was so impaired that he did not fully appreciate all of the ramifications of his activity. His sense of grandiosity and power made him feel that he could personally cover his debts and he felt that it was his moral duty to invest his clients' money as productively as possible. I do not believe that he fully appreciated the requirements of the rules of professional conduct."

The report further states that

"Since his admission to the Renaissance Treatment Centre last year, he has been dry, has developed excellent insight into his illness and even into his rather paranoid style of earlier years. His thinking is now constantly clear, logical and acute. He has managed to maintain his recovery and follow-up in spite of the fact that he has lost everything that he had devoted his life to building - his home, his family, his practice, and his reputation."

25th November, 1993

The report goes on to state that he is attending AA meetings regularly and goes to mass. There were also five letters of support from persons who knew him well, including one Mr. George Malo, a solicitor, and John Campbell, a solicitor now dedicated to assisting solicitors who have become addicted to alcohol. One of the letters came from a former client who states that if Mr. Steponaitis was given a chance to return to the practice, he would continue to be an asset to the community as he always was for most of his life.

The Committee considered the cases presented in a book of authorities prepared by counsel for the Law Society. One of the cases referred to was the matter of Dennis Patrick Lynch who was diagnosed as a manic depressive and after a series of misappropriations was given permission to resign. In another case, Gordon Carmen Demarco was diagnosed as a compulsive gambler and was given permission to resign. In the case of Farouk Mallal, the solicitor was addicted to cannabis and cocaine and was also given permission to resign.

Both counsel submitted that the solicitor had cooperated fully in the investigation of this matter and in the preparation of the agreed statement of facts. The solicitor readily acknowledged his guilt and appears to be determined to make a new start to his life. The Committee finds that the facts and circumstances of this case bring it within the class of cases where the appropriate penalty is permission to resign and we so recommend.

ALL OF WHICH is respectfully submitted

DATED this 12th day of October, 1993

Mary P. Weaver, Q.C.
Chair

It was moved by Mr. Hill, seconded by Ms. Sealy that the Report be adopted.

Ms. Budweth asked that the Report be amended on page 148, paragraph 12 by deleting the word "county" in the first line and replacing it with "country" so that the sentence would then read: "On January 9, 1990, Buttler fled the country to avoid sentencing....".

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

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

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

A letter from Dr. Adam Stein dated November 11, 1993 was before Convocation.

The recommended penalty was adopted.

Counsel retired.

.....

25th November, 1993

ADMISSIONS COMMITTEE

Re: MICHAEL JOHN SPICER - APPLICATION FOR ADMISSION

The Deputy Secretary placed the Report of the Admissions Committee before Convocation which was marked as Exhibit 1.

The reporter was sworn.

Mr. Thomas Lockwood appeared on behalf of the Society and the applicant appeared on his own behalf.

THE LAW SOCIETY OF UPPER CANADA

REPORT OF THE COMMITTEE OF BENCHERS appointed pursuant to
Section 27(4) of The Law Society Act, R.S.O. 1980, c. 233,

IN RESPECT OF THE APPLICATION OF MICHAEL JOHN SPICER
for admission to the Law Society of Upper Canada
as a Barrister and Solicitor

COMMITTEE: Colin D. McKinnon, Q.C., Chair
Gordon T. Farquharson, Q.C., Member
Daniel J. Murphy, Q.C., Member

APPEARANCES: Thomas J. Lockwood, Q.C. and
Patricia Virc
for the Society

John L. Agro, Q.C. and
The Applicant
for the Applicant

HEARD: April 9, 10, 11, 20, 27
May 8 and June 17, 1991

DECISION RELEASED: October 3, 1991

THIS APPLICATION is brought by Michael John Spicer ("Spicer") for admission to the Law Society of Upper Canada ("Society") pursuant to Section 27 of The Law Society Act, R.S.O. 1980 c. 233 ("Act") which provides as follows:

"ADMISSION OF MEMBERS

Form of applications

27(1) Every application for admission to the Society shall be on the prescribed form and be accompanied by the prescribed fees.

Good character

(2) An applicant for admission to the Society shall be of good character.

Where no refusal

(4) No application for admission to the Society shall be refused until the applicant has been given an opportunity to appear in person before a committee of benchers.

Statement of reasons

(5) Where an applicant for admission to the Society is refused admission, he is entitled to a statement of the reasons for the refusal.

Subsequent applications

(6) Where an application for admission to the Society has been refused, another application based on new evidence may be made at any time. R.S.O. 1970, c. 238, s. 27."

A quorum of the Admissions Committee was appointed to hear the application and to consider whether or not the applicant is now "of good character". The hearing was heard in public over seven days. The Committee heard viva voce evidence from 13 witnesses, 6 called by Spicer, 7 called by the Society. It received a total of 62 exhibits including transcripts of previous proceedings, the total of which exceeded 2,500 pages in length. The Committee considered 250 pages of written argument filed by the parties.

At the commencement of the hearing, both parties acknowledged that the applicant had the onus of establishing on a balance of probabilities that he is of good character at the present time and should be admitted to the Society. In written argument following the hearing, counsel for the applicant appeared to resile from this position, advancing an argument that no onus rested on Spicer, rather that the onus was on the Society to show that Spicer was not of good character. The Committee rejects this submission and relies on the decision of the Law Society in the Pal case (released September 8, 1989) as expressing the proper test to be applied.

The applicant applied for admission to the Society on May 15, 1989. There was some problem with this application, not the fault of the applicant, and a new application was filed on August 11, 1989. It is reproduced as Schedule "A" to these reasons. The applicant was required to complete ten questions under the heading "good character". Each question required disclosure of past conduct or sanctions which might reveal questions as to character. If an applicant answered "yes" to any question, full particulars were to be provided. Spicer answered two questions with "yes" and attached a statement entitled "Particulars of questions regarding good character", also reproduced as part of Schedule "A". Spicer revealed that while employed as a teacher in Saskatchewan he had been charged with sexual assault but before being tried and acquitted he had been dismissed from his teaching job for gross misconduct. He stated that he had never previously been dismissed from any position. He disclosed that he had been disciplined by the Saskatchewan Teachers' Federation (STF) for "conduct unbecoming to a teacher in connection with the complaint" and had received a suspension of his teaching certificate for three days. Spicer stated:

"I have never otherwise been suspended, disqualified, censured or disciplined by any professional organization..."

He concluded his statement with the following words:

"In a spirit of complete disclosure I offer this explanation to the Law Society as part of my application."
(Exhibit 2)

The Secretary of the Law Society wrote to Spicer on November 15, 1989, requesting further information. Spicer replied on November 30, 1989, providing the information requested and confirming his "wish to assist the Law Society as much as possible" in the investigation of character. The Society undertook an investigation as a result of which the present hearing was convened pursuant to Section 27(4) of the Act.

Evidentiary Considerations:

Considerable argument was advanced respecting the Committee's consideration of the facts relating to the charge of sexual assault brought in Saskatchewan in 1983. The Committee determined that Section 27(2) of the Act created a positive requirement that an applicant for admission to the Society be of good character and that there was a duty on the Society to investigate allegations that an applicant lacks good character. As was stated by Mr. Justice Steele in Calvert et al. v. Law Society of Upper Canada (1981) 32 O.R. (2d) 176 (H.C.J.) at p. 180:

"If the Benchers are aware of allegations of lack of good character on the part of an applicant that they consider serious enough to be considered, then I am of the opinion that there is a duty upon them to investigate them."

The Committee was also mindful of the following statement made by Mr. Justice Qua of the Supreme Court of Massachusetts:

"The right to practice law is not one of the inherent rights of every citizen, as is the right to carry on an ordinary trade or business. It is a peculiar privilege granted and continued only to those who demonstrate special fitness in intellectual attainment and in moral character."

(In Re Keenan, (1943), 50 N.E. (2d) 785 at pp. 786-787)

The Committee felt bound to consider the facts giving rise to the charge of sexual assault and the subsequent acquittal of the accused, and determined that the fact of the previous acquittal is not a bar to its consideration. We adopt the reasoning of Campbell, J., in Re: Gillen and College of Physicians & Surgeons of Ontario (1990) 68 O.R. (2d) 278 (Div. Ct.) wherein he stated:

"It is true that the criminal trial and the discipline proceedings share an identical issue of fact; that is, did the doctor sexually assault the patient or did he not?

"The standard of proof in the criminal trial, however, was proof beyond a reasonable doubt. It was on that basis, on all the evidence from the Crown and the defence including conflicting evidence from the complainant and the doctor, that the doctor was acquitted...

"The stringent criminal standard of proof beyond a reasonable doubt which secured the applicant's acquittal in the criminal trial in the fact of all the evidence against him does not apply at a discipline hearing where the applicable standard set out in cases such as Re Bernstein and College of Physicians & Surgeons of Ontario (1977), 15 O.O. (2d) 447, 76 D.L.R. (3d) 38 (Div. Ct.), and Re Coates and Registrar of Motor Vehicle Dealers and Salesmen (1988), 65 O.R. (2d) 526, 52 D.L.R. (4th) 272, 34 Admin. L.R. 70 (Div. Ct.) at pp 535-7 is significantly lower than that in a criminal case and could therefore yield a different result. The evidence will not necessarily be the same at both hearings. It is clear from the Health Disciplines Act, R.S.O. 1980, c. 196, that the strictures of criminal evidence do not apply at the discipline hearings where the civil rules will apply.

"Because the standard of proof is different, and the rules of evidence different there is here no issue estoppel or res judicata and no issue arises of abuse of process.

"There is no authority or logic for the proposition that a criminal acquittal is in disciplinary proceedings prima facie evidence or proof that the gravamen of the criminal charge was unfounded or untrue. There is no novel point in this case. The significant differences between criminal and disciplinary proceedings have been dealt with on many occasions in cases such as Re Imrie and Institute of Chartered Accountants of Ontario, [1972] 3 O.R. 275, 28 D.L.R (3d) 53 (H.C.J.) ..."

In respect to the evidence relating to the allegation of sexual assault, this Committee is guided by the decision of the Divisional Court in Re Bernstein and College of Physicians and Surgeons wherein Mr. Justice O'Leary stated:

"In all cases, before reaching a conclusion of fact, the tribunal must be reasonably satisfied that the fact occurred, and whether the tribunal is so satisfied will depend on the totality of the circumstances including the nature and consequences of the fact or facts to be proved, the seriousness of an allegation made, and the gravity of the consequences that will flow from a particular finding.

"The grave charge against Dr. Bernstein could not be established to the reasonable satisfaction of the Committee by fragile or suspect testimony. The evidence to establish the charge had to be of such quality and quantity as to lead the Committee acting with care and caution to the fair and reasonable conclusion that he was guilty of the charge. In this case where Dr. Bernstein, a man of good reputation swore that no impropriety occurred between himself and Jo-Ann Johnston it would take very strong evidence to destroy his defence of his reputation."

This Committee is very conscious of the stringent requirements of proof set out in Re Bernstein. This Committee takes the view that the evidence of sexual assault must be clear and convincing before it will find the applicant guilty of the allegations. We reject the submission of the Society that we need only be satisfied that the allegations are true on a balance of probabilities. At the same time we reject the submission of the applicant that the proof must be beyond a reasonable doubt for the simple reason that this is not a criminal trial but rather an inquiry into good character, the proof of which lies upon the applicant on a balance of probabilities.

Background of the Applicant:

The applicant was born on May 27, 1953 at Hamilton, Ontario. He is married with three children. He obtained a B.A. from St. Jerome's College, University of Waterloo in 1975, a Master of Divinity in 1978 from King's College, University of Western Ontario, a Bachelor of Education in 1979 from Ontario Teacher's College, Hamilton, a Diploma in Administration in 1984 from the Faculty of Graduate Studies at the University of Regina. In 1989, he obtained his LLB from the University of Saskatchewan and is at present fulfilling a continuing function as a student-at-law with the firm of Dempster, Dermody & Riley, Hamilton, Ontario.

Spicer had graduated from Cathedral Boys' High School in 1971 and his Bachelor of Arts degree was obtained in General Religious Studies. He believed he had a calling to the priesthood and entered the Seminary in 1971 as a candidate for the priesthood for the Diocese of Hamilton. In 1976, he was told he was unsuited for priesthood and was asked to leave the Seminary by its Rector, Father Carrigan. He continued his studies at St. Peter's Seminary as a non-seminarian and completed Theological Studies in 1978 when he received his Master's degree from Western.

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In 1979-80 he had a contract with the Archdiocese of Regina as a religious consultant. The circumstances surrounding his departure from the Archdiocese are not altogether clear and the Society's request for a release of information from the Archdiocese was refused by Spicer, on the advice of counsel. The evidence does clearly establish, however, that a claim for wage loss was made by Spicer following the termination of his employment, which was ultimately settled. Spicer denied before this Committee that he either sued or threatened to sue the Archdiocese with respect to the termination of his employment, although in an action for damages arising out of an automobile accident arising at the same time as his departure from the archdiocese (Spicer v Butts), the memorandum of law filed by Spicer, through his counsel, stated:

"...Mr. Spicer then threatened to commence an action for wrongful dismissal. Mr. Spicer's claim was settled by having the Archiepiscopal Corporation pay him a sum equivalent to one month's salary..."

The release executed by Spicer in relation to his settlement with the Archdiocese refers to:

"...the breach as alleged by me (but denied by the Archiepiscopal Corporation of Regina) of a certain contract of employment between us."

Had the Committee the benefit of complete information from the Archdiocese, it might be in a better position to finally determine the issue as to whether Spicer was in fact dismissed by the Archdiocese. The information before us might suggest he was, but we are not prepared to find as a fact that he was because of the absence of determinative information.

During 1980-81 Spicer enjoyed a one year contract with Borderland School Division as a teacher of grades 7 - 8, 10 and 11 at Willowbunch High School, Saskatchewan. During 1981-82 he spent approximately one year as the religious education co-ordinator for Camrose Roman Catholic School Division in Camrose, Alberta and then in 1982-83, he was given a one year contract as teacher and vice-principal with Moose Jaw Roman Catholic Separate School Division. He was suspended from that position following charges of sexual assault in early 1983 and finally dismissed following a hearing effective 30 June, 1983.

Mr. Spicer met his wife in 1979 in Regina while employed by the Archdiocese. They were married in Willowbunch in 1980 while he was teaching for the Borderland School Division. At the time Spicer was charged with sexual assault, Mrs. Spicer was pregnant with her second child.

In the action previously noted (Spicer v Butts), Spicer claimed against the Saskatchewan Government Insurance for lost wages. He had completed a form by claiming lost earnings in the amount of \$1,500.00 per month. His actual salary was \$1,090.00 per month. His explanation at trial and repeated before this Committee was that he believed that certain expenses, including car expenses (mileage claims) raised his monthly earnings to approximately \$1,500.00 per month. In the trial judgment, Mr. Justice Malone made the following finding:

"...I observed the plaintiff carefully as he gave his evidence and noted that while being examined in chief he responded to the questions with precision and clarity. However, upon cross-examination, he became vague and evasive and on numerous occasions gave long, rambling responses to questions put to him counsel when a short answer would have sufficed. He also repeatedly asked defence counsel to restate questions that were put to him. Furthermore, counsel established that the plaintiff had, in completing a Preliminary Proof of Claim form for the Saskatchewan Government Insurance Office, stated that his monthly earnings were \$1,500.00 per month. The plaintiff admitted that his earnings were only \$1,000.00 per month plus reimbursement for certain expenses properly incurred by him in carrying out the terms of his employment. He sought to

explain the discrepancy by stating that he thought he was entitled to the sum of \$1,500.00 per month from Saskatchewan Government Insurance because it was this sum that he received each month from his employer.

"I do not accept this explanation.

"The plaintiff testified at length as to his educational background and to the numerous degrees which he holds. These include a Bachelor of Education, a Master's degree in Theology, a Master's degree in Theology and Sacred Scripture, and a Bachelor's degree in Religious Studies. With the benefit of this educational background he certainly should have appreciated the difference between earnings and expenses and, as well, to have been able to answer the questions of defence counsel on cross-examination without difficulty and in a straightforward manner...

"...Although I have no doubt that the plaintiff sustained personal injuries as a result of the accident, I have great difficulty in accepting his evidence as to the nature and extent thereof for the same reasons that I could not not accept his evidence as to the cause of the accident..."

This Committee does not consider itself bound by the findings as to the credibility of the applicant made by Mr. Justice Malone. We are prepared to say, however, that when this issue arose before us, we found difficulty in accepting Spicer's explanation that recoverable expenses could be characterized as "earnings" as claimed on his proof of loss. However, in all the circumstances, we are not prepared to find that Spicer deliberately set out to deceive the Saskatchewan Government in his claim for loss of earnings. Nonetheless, we would likely have rejected his claim for loss of earnings for similar reasons cited by Mr. Justice Malone.

Time at the Seminary:

Much viva voce and documentary evidence was presented with respect to the time the applicant spent in the Seminary and the circumstances surrounding the request that he leave and subsequent disputes between himself and the Seminary officials in respect of certain examination results.

Evidence of Father Patrick Fuerth:

Father Patrick Fuerth appeared as a witness before the Committee. He is the Rector and Dean of Theology of St. Peter's Seminary at the University of Western Ontario. The applicant was in Father Fuerth's group in 1974. Father Fuerth observed the applicant through 1977. He testified that Spicer had been asked to leave the Seminary because of his consistent difficulties in relationships with peers and figures of authority. The Seminary had recommended professional counselling for Spicer. Father Fuerth testified that the concerns were "basic human concerns" relating to Spicer's "treatment of people".

Father Fuerth formed doubts about Spicer's honesty and integrity arising from certain incidents, including one where Spicer advised the Seminary officials that he would be away for a particular weekend as he wished to visit his father who was ill. Father Fuerth was suspicious about Spicer's absence and contacted Spicer's father who advised Father Fuerth not only that he was not ill but also that he had not heard from Spicer in a long time. Father Fuerth confronted Spicer upon his return to the Seminary. Spicer's reaction was one of anger at Father Fuerth for not trusting him.

During the summer of 1975 the applicant spent time at a camp in Nelson Diocese, British Columbia. A report by Father Wayne Pfliger to St. Peter's Seminary was filed with the Committee. In this report, Father Pfliger noted that:

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"...I find Mr. Spicer to be a very difficult person to report on. This is primarily because he comes across almost as two quite different people. At times, probably the greater portion of the time, he is very considerate, concerned and conscientious. At these times he is an extremely impressive person. He is obviously intelligent, witty and in possession of very sound Christian ideals. When Mr. Spicer is encountered in this state and over a brief period of time, people generally like him and tend to think that he will make a fine priest. This was the first reaction of many of the staff at the camp.

"However, there was another side to Mr. Spicer that seemed to appear after he had been around for some time. At times he would become very self-centered and selfish. He would be extremely inconsiderate of the needs and feelings of others. His actions at these times would be quite irresponsible, and often irrational, a couple of times to the point of endangering the safety of some of the children. He would not do his share of the work, and seemed like he was just going to do what he wanted. By the time that the Camp was half over, most of the full time staff had told me that they would not return next summer if he was there...I would have to say that on the whole he gave a very poor picture of himself as a mature person, or a mature Christian for that matter. He also gave an extremely poor witness of a person in training for the celibate life. Besides Mr. Molloy, the only other two people in the Camp that he related well to were reasonably attractive young ladies. Morally speaking, his relationship with these girls was questionable even for any unmarried Christian man, and a complete embarrassment for one training for a celibate priesthood, or any priesthood for that matter."

"It is therefor my opinion that Mr. Spicer, in his present frame of mind, is not a good candidate for the priesthood. I think that he has a great deal of potential, and possibly someday he might make a fine priest, but right now he has many problems that are too severe and too dominant in his personality to allow him to be a good Christian leader, or even a good Christian witness. I feel that if he is ordained in his present state that he would be a misery to his pastor and a scandal to the people...He gives me the impression that he sees no fault in his personality or his actions, and is quick to condemn others for their negative reactions to him..."

When asked about this letter by Mr. Lockwood Mr. Spicer testified as follows:

"...I was working there and there were a couple of very beautiful young ladies also worked there and that during the summer, and I think the thing Father Pfliger thought was horrible for a guy studying to be a priest, was, you know, we had - some times would go out. We would leave the camp sometimes and go down the road a bit for some beer. I didn't drink that many but I would have one, I never drink a lot but we would have a beer, the girls liked that. So I guess you might even say I went on dates with those girls during the summer.

"Q: How old were they, sir?

"A: Well, I'm trying to remember their names. Swimming - the lifeguard was 18 or 19. I was 21, I think, then. The lifeguard was 18 or 19 and the other young lady was, I think, a year older, I'm not exactly - they were close to my age. They were very attractive, very nice."

In a letter to Ms. Virc dated April 25, 1991, Father Pfliger recollected further about his observations of the applicant during his time at the camp in Nelson. In this letter Father Pfliger states:

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"...In my letter I mention actions which endangered the children. Two examples which come to mind include a time when he (the applicant) became angry with a child on the dock and threw him as far as he could out into the lake. The child could not swim and had to be rescued by another staff member. The other time was when he constructed a bonfire that was so large it endangered the camp during the fire hazard season.

"The other area of concern mentioned in my letter is in relationship to the young females on staff. There appeared to be almost constant physical contact between Mr. Spicer and certain staff members which consisted of leaning on one another, arms drooped over each other, head resting on another's stomach and sitting on one's knee. No incident in itself was questionable, but the constancy of it became a problem. One of the female staff members became quite emotionally upset from her relationship with Mr. Spicer and had some difficulties at the end of the Camp. I encountered her mother a year later and she informed me that her daughter was still very troubled from her experience of the previous summer and mentioned Mr. Spicer by name and hoped that he would not be at the Camp again..."

(Exhibit 35)

Father Fuerth testified that during his time at the Seminary, one of the more mature students approached Father Fuerth with a complaint that the students were concerned about Mr. Spicer because he was "putting them on edge so much", that he "argued about everything", that he "did crazy things."

As a result, based upon an "accumulation of factors", Michael Spicer was asked to leave the Seminary. Father Fuerth testified that it was unusual for the faculty to request a student to withdraw. Only five Seminarians out of seventy-five have been requested to withdraw over the last five years. The faculty voted five to one that Michael Spicer be asked to withdraw.

Father Fuerth testified that Michael Spicer was permitted to continue studies as a non-seminarian student on the understanding that he was sponsored by the Bishop of Hamilton. In a letter to Father Fuerth dated December 21, 1977 Spicer stated:

"...Should you believe that your negative assessment of my suitability for the priesthood can prevent my studies, think again. It is not for you to decide fitness, only to advise the bishop. And after consultation with the Bishop of Hamilton, I was advised and encouraged to attend St. Peter's for the 4th year course as part of my preparation for ordination. The bishop sends me to study at St. Peter's with his blessing and encouragement..."

"...If permission from the bishop of the Diocese is required, be advised that Bishop Reding has supplied it. If (as has been the case recently, to my chagrin) you do not see fit to believe me, contact him personally. But do not wait overlong, as January comes soon."

(Exhibit 24)

In a letter to the Senate of the University of Western Ontario dated December 31, 1977, copies of which were sent to 15 University officials, including the Ombudsman, Spicer stated:

"...Should "permission of a bishop" be required to register in the 4th year courses, this is not mentioned in the Calendar but I have the permission of the Most Rev. P. F. Reding, Bishop of Hamilton, to complete my studies by taking the 4th year courses listed above."

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In a letter to Father Carrigan, the Rector of St. Peter's Seminary, dated January 17, 1978, Bishop Reding stated as follows:

"...I can see where on page 4 of his document that he has not been honest in his presentation, because in no way did he seek or ask my permission to enter the fourth year courses. As I indicated in my letter which I referred to above, in the course of the rather lengthy conversation we had on December 7th, he indicated that he was returning to the Seminary as an off-campus student to complete his studies for a degree. I was not asked to give my permission, nor did I give my permission. It was simply a statement of fact that he gave to me."
(Exhibit 24)

In a letter from the Bishop to Father Carrigan on the next day, January 18, 1978, the Bishop expanded his remarks as follows:

"...(a) I told Michael Spicer during a long conversation I had with him on Wednesday, December 7th, that I would not re-accept him as a student studying for the priesthood for this Diocese of Hamilton...

"...(d) Michael told me in conversation that he was returning to St. Peter's Seminary to finish his theology course, so that he could obtain his degree. I did not ask how he was going to do this. I took it for granted that the groundwork for this return had been agreed upon by himself and the Seminary authorities and that he would live outside the Seminary. It was simply a statement of fact not challenged by me and in no way supported by me.

"Michael called again last week to see me without asking for an appointment. I again told him that, while I would still fulfill my promise, I had strong doubts as to any benevolent consideration that now could be given by any Canadian Bishop. His recent action was in the most charitable way described by me as imprudent...

"I trust this letter makes my position amply clear. When I mentioned to Michael that I felt he had compromised me and this Diocese in his letter to Father Fuerth, he denied this and indicated that he has never been unaware of my position as I have made it clear to him..."

Much evidence was led in relation to Michael Spicer's appeal of certain marks granted to him by the Seminary, which marks reflected a penalty reduction by virtue of his papers being received late. Spicer maintained that he had mailed the papers to the University in April of 1977 although there was no record of their receipt. Based upon his "solemn assurance" that the papers had in fact been mailed, he was permitted to submit the papers which were corrected with the penalty marks for late arrival. Spicer did not accept the penalty and appealed to the Senate in the letter earlier referred to with copies sent to approximately 15 senior officials, including the University Ombudsman.

This letter upset the St. Peter's Seminary officials. This Committee is not convinced that Spicer's appeal of his marks, which in fact was successful, is relevant to his character. This Committee regards as relevant only the representations in the letter relating to the sponsorship of Bishop Reding and his right to continue in the fourth year of studies.

In concluding his testimony, Father Fuerth characterized Michael Spicer as:

"...socially inept and manipulative. He knew how to work the system. And he did it successfully."

When asked about his honesty and integrity he commented that:

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"I knew on a number of occasions that he was not honest. For example, Bishop Reding's sponsorship. Also, the visit to his father's home."

When asked whether he would be comfortable with Michael Spicer as a lawyer her replied:

"Only if I wanted a man to manipulate a system for something I was after and should not have."

The Applicant's Conduct While Teaching in 1982-83

In the fall of 1982, the applicant commenced teaching with the Moose Jaw Roman Catholic Separate School Division at St. Margaret's School. He taught grades 3, 4 and 5 in one classroom and also took some classes for the Principal, Mr. Arthur Landry, who taught grades 6, 7 and 8. Spicer was appointed Vice Principal of the school.

Spicer's previous teaching experience had been at Willowbunch School during 1980-81 teaching grades 7 and 8 English, 9 and 10 Christian Ethics and grade 11 Physics. His Principal, Guy Tetrault, viewed him as:

"...very competent and conscientious in his teaching assignments. He has displayed many good professional qualities that a teacher requires. He has shown a genuine interest in the education of our students by giving freely of his time for extra-curricular activities in our school. Michael gives Judo lessons twice a week, he has organized a science club and is in the process of organizing a Unit wide science fair..."
(Exhibit 7, Tab 5)

The Director of Education, Alex Postnikoff believed that:

"...a more relaxed atmosphere in the classroom would be desirable. Rigid discipline is commendable and desirable, yet pupils in junior high should be considered as young adults."

He generally believed that Spicer:

"...should have a bright future in the teaching profession."
(Exhibit 7, Tab 5)

Following his experience in Willowbunch he was recommended for permanent certification and was granted such. The applicant moved to Camrose Roman Catholic Separate School District for the school year 1981-82 where he was hired as a consultant in the area of Religious Studies. The Superintendent of Schools, F.X. Bischoff found Spicer to be:

"...very knowledgeable in his area and shared his expertise with the inherent populations, parents, staff and students...a presentable young man, well spoken, dedicated to his profession. He was observed as being a devoted family man, loyal to his community."
(Exhibit 7, Tab 6)

Thus, he carried positive recommendations to St. Margaret's School.

St. Margaret's was a small school, employing only three teachers.

As the fall term progressed, Spicer initiated "Reality Therapy" for the students which involved embracing and hugging children. Spicer maintained before the Committee that these hugs and embraces were completely innocent in intention and that this approach was agreed to by the Principal, Arthur Landry.

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Complaint of Judy Middelhoek:

Being a small school, noon hour supervision was sometimes assisted by volunteers, being the parents of some of the students. One such volunteer was Mrs. Judy Middelhoek who observed the applicant embracing one Helen Thibault in a manner that she found to be shocking and sexual in nature. Mrs. Middelhoek complained by letter to the school which culminated in a visit by the Superintendent of the Schools and Spicer was ordered to stop the application of "Reality Therapy." Spicer maintains that he stopped, others maintain that he did not.

Mrs. Middelhoek subsequently gave testimony at a hearing before the Saskatchewan Teacher's Federation following charges of professional misconduct being brought against the applicant.

Dealing with the particular incident which she witnessed, in her letter dated December 3, 1982, to the School Board to the attention of Mr. Whittman, the Director of Education and Mr. Dixon, the Chairman of the Board, she stated:

"...I noticed Mr. Spicer standing by Mr. Landry's classroom door. There were a few students beside him.

"I turned to leave, when I saw Miss Helen Thibault approach him. The manner in which she approached him caught my attention, so I remained where I was. Miss Thibault walked up to Mr. Spicer, slowly slid her hands, in what appeared to be very seductive, from his chest to around his back ending up in a very tight embrace. Mr. Spicer's arms went around her and she then buried her head in his chest. I was so shocked, I just stood there and stared. Mr. Spicer then noticed me there and smiled at me making no attempt to (illegible) himself. Miss Thibault looked a little shocked, but did not move. I estimate the time I stood there as being between 4 - 5 minutes. I turned and left, leaving them still in this tight embrace.

"I returned home feeling very confused, upset and sick over the whole matter.

"I talked it over with my husband but I could not rationalize what I saw, no matter how I tried. It just appeared to be too lengthy and too intimate..."

(Exhibit 3 (b) Tab 3)

Mrs. Middelhoek repeated these observations under oath at the Saskatchewan Teachers' Federation discipline hearing held September 16, 1983.

(Exhibit 3 (a) Tab 2)

Evidence of Helen Hansen:

Helen Hansen was one of the teachers at St. Margaret's School and was a witness to the embracing and hugging employed by the applicant at St. Margaret's School.

Mrs. Hansen gave testimony before the Committee. She is at present employed as a secondary school teacher in the Province of Ontario, teaching History, Law and Geography. She holds teaching certificates from the provinces of Saskatchewan, Alberta and Ontario, has a Bachelor of Arts degree from Brock University with majors in Political Science and History. She has a Bachelor of Education degree from Brock and is currently completing her Master of Education degree. She is qualified to teach in primary, junior, intermediate and senior levels, which the Committee learned was a rare qualification. She is a Specialist in gifted education and has written articles and developed models with

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respect to the education of gifted children. She is the co-author of the Grade 13 law textbook. Her husband was with the Military and stationed in Moose Jaw which occasioned her teaching at St. Margaret's School in 1982-83.

When contacted by Ms. Vic to testify before this Committee, she sought counsel because:

"...my previous experience with Mr. Spicer and a lot of the actions Mr. Spicer is capable of doing, has matured me in my understanding and I wanted - I wanted to be absolutely sure that no repercussions would be brought against me if I was forced to come here by supoena."

Mrs. Hansen confirmed that St. Margaret's was a small school with approximately 55 to 60 students with only three full time teachers. Mrs. Hansen was teaching grades 1 and 2 and kindergarten. She testified that initially Mr. Spicer's relationship with the students was "extremely proper" but then "...it definitely changed". She stated that:

"...There was a considerable amount of hugging and an attempt to make - there would be no embarrassment in displays of affection and in openness and acceptance, if you will, and this was how it was started and this is how Michael presented it. It was with the senior students -

"Q. Was it with both male and female?

"A. No, no. It was with females.

"Q. Females?

"A. Yes.

"Q. Any particular females?

"A. Yes. In particular there were a few girls but in particular there was Helen Thibault and a girl called Kathy Miller and there was another girl at the very beginning and her name was Erin Robinson...

"...he would be out on supervision or walk down the hall and one of the senior girls would be walking with him and they would have their hand in his pant pocket as he was walking down the hall. Their arms would be interlinked and that was, for Michael, okay.

"Q. Did you ever discuss this with Michael?

"A. Yes. It came to loggerheads after one of the parents had registered a complaint...

"Q. Do you know the name of that parent?

"A. It was Mrs. Judy Middelhoek"

When asked if she had discussed this matter with the applicant Mrs. Hansen confirmed that she had and stated that he had telephoned her at home, that he was upset and outraged. Mrs. Hansen testified that:

"...Michael had an expression and the expression was, Jesus said, 'let the little children come to me.' And he believed that he could show this affection and he could hug and caress and do that because he wasn't, in Michael's mind, doing anything that was improper.

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"It became, after this letter, it became almost an issue for Michael to prove Michael wasn't doing anything wrong. That he could continue to do what he wanted to do in spite of the principal saying no..."

Mrs. Hansen witnessed other incidents including one where she had been walking by the classroom and Helen Thibault was sitting on Spicer's desk while he was sitting in his chair:

"...and Helen was sitting so she was leaning back and her legs were slightly spread, she was in a very relaxed position. She was talking to Michael and Michael was sitting directly in front of her and I asked Helen to get down and to leave.

"This action was something that could be misinterpreted. That she wasn't doing Mr. Spicer a favour."

She talked to Spicer about the incident and stated:

"...I mentioned to him that there had already been the complaint, that there was talk about the hugging, that this could be bad if somebody were to be walking by. he was leaving himself in an open position and he told me to 'prove it'...That was an expression Michael liked to use a lot with anyone and certainly he used it with me on numerous occasions.

"Michael is very charming and he is very convincing and he is very good but if you abuse him, or you argue with him, then he tells you to 'prove it'. 'I'll sue.'

"...If you are doing what he wants or you can serve a purpose, oh, yes. But if you oppose that purpose then - again I stress this is my own opinion - he is dangerous. He is dangerous."

Mrs. Hansen testified that following the complaint of Mrs. Middelhoek,

"...This is when Michael's show of affection campaign became absolutely he could do whatever he wanted. It was ridiculous and it just kept going and going."

She testified that on one occasion Michael asked to relieve her in school year duty during the winter. Hansen testified that she was delighted at the offer, but then was shocked to learn way:

"...Michael was sitting on the teacher's couch and I half turned and he was leaning back against the couch and he said he had been holding Heather on his lap and he needed the fresh air, if I knew what he meant."

Hansen testified that she was disgusted, that the connotation was sexual in its overtones and inappropriate. Heather was 12 or 13 at the time.

Shortly before Christmas of 1982, Hansen testified that Spicer told her that:

"...he had been talking to Erin about the fact she had been sucking on a candy cane and - was trying to explain to her that it was the way - the manner in which she was doing this was similar to oral sex. So that she should learn how to - I guess, suck on a candy cane properly."

When confronted by Mr. Agro on this point, Hansen stated:

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"When someone says to me this girl is sucking on a candy cane and it is in the manner suggestive of oral sex and that he is explaining to her that it is like oral sex, then I guess that is exactly what he means and that there is a right and wrong way to suck on a candy cane."

Hansen testified that she had opposed Michael on the strapping of a student. The student was Helen Thibault. Hansen had been requested to be the witness to the strapping and believed that the strapping was excessive:

"...When we got to the door, Michael told me that, 'There, they say I love her, I'll strap her', very close to that. It has been eight years but the context is there. I tell you, that really bothered me, that really disgusted me. He told me 'Prove it, prove it, I'll sue. I am the vice-principal, I have the legal right to do this'."

Mrs. Hansen testified that Spicer's hugging was reserved for senior girls, that:

"...He wasn't hugging the little kids, he wasn't showing the little kids the same affection and concern and understanding...It was targeted at the senior girls."

On January 7th Spicer was charged with sexual assault involving Helen Thibault and suspended immediately from his teaching position at St. Margaret's School. The principal, Arthur Landry, requested that Helen Hansen apply for the job of vice principal which she agreed to do subject to Spicer's re-appointment. She testified that Spicer never forgave her for applying and being appointed to the job of vice principal. She stated that following the charge of sexual assault, Spicer visited her at her home and acted in a threatening manner.

Spicer's recognizance disallowed him from having any contact or communication whatsoever, directly or indirectly with Helen Thibault, Erin Robinson or Cathy Miller (Exhibit 23). Spicer had retained Mr. Clifford Wheatley as his lawyer and told Hansen to report to him everything she learned about Kathy, Helen, Erin, Art Landry or Mr. Wittman concerning this situation.

While so directing her, he:

"...asked me how Sarah was. (Hansen's six month old daughter)

"...I started to interpret that as Sarah was at threat, or at least, I was at threat.

"He walked around the kitchen...He walked through there and he was very, very upset and he was speaking very lowly, very lowly, and he ran his hand over my new piano. I had just bought that piano on December 31st, and ran his hand across my piano and said it would be a shame to see it destroyed, did I know what he meant.

"...He finally left, he went to the door and said everyone was going to pay, everyone, the Thibaults, the Board, anybody and everybody, we were all going to pay."

He wished to know who had replaced him as teacher. Hansen explained that it was a young man whose name she did not recall.

"...He said he wanted to know the car he drove because he would like to slash the tires.

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"...He said he had done some units for curriculum, science material, lab material and the substitute wasn't going to get this material. He wanted this material back, he wasn't going to leave it, he was going to go and get this material. So when I went to school the next day, I told the principal about that.

"The material had been removed, the curriculum was gone for the students and the principal called the police..."

Subsequently, a complaint of professional misconduct was lodged by Michael Spicer against Helen Hansen who was suspended from her position as teacher so that the charge of misconduct could be investigated. Spicer also laid a charge of threatening against Hansen's husband. That charge was dismissed by the Court, and the allegation of professional misconduct brought against Hansen by Spicer was found to be without merit by the Teachers' Federation.

Other forms of harassment dogged Hansen. Donald Muntean was a senior student at St. Margaret's and accused Hansen of having evil vibes coming from her body, and,

"...that he and Michael had discussed this and serious harm would come to me..."

On arriving at school one morning Hansen's parking space was painted with the words "Satan loves you."

On another occasion Muntean confronted Hansen with his face painted, wearing an amulet representing the occult and he read an incantation. Hansen laughed. Muntean ran away.

She testified that during the preliminary inquiry Spicer sat down beside herself and Judy Middelhoek and that:

"...he put his hand on my knee, on the upper part of my thigh and said that he was going to be a rich man when all this was over."

When asked whether Spicer should be admitted to the Bar of Ontario, her answer was this:

"This would be my own personal opinion. I have not seen Michael Spicer since I left Moose Jaw. During my time and my experience with Michael Spicer, I found it to be one of the most devastating and emotionally trying periods of my life.

"I found that because I was going to testify against him, because I didn't play his game that I, my family, professionally I was threatened. It is a very dear price.

"As Mr. Fournie asked me initially, do you think he should be admitted to the Bar? My answer to you is this: I have seen Michael Spicer manipulate the system. If he becomes a lawyer, you are going to grant to him the tools to continue to manipulate the legal system and I wouldn't have him as a lawyer for myself, my family or anyone I held dear."

Evidence of Donald Muntean

Donald Muntean, now 23 years of age, testified before the Committee and informed the Committee that he had observed Spicer hugging Helen Thibault and Erin Robinson. He testified that he observed that the girls' hands would be in Spicer's pocket. He observed Spicer's hand on Helen's buttocks.

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Following Spicer's suspension from the school and the charge of sexual assault being brought against him, Spicer befriended Muntean. They would meet frequently. Spicer would pick him up in his car or telephone him. Spicer co-signed a contract with the telephone company to ensure Muntean's phone service would continue. Spicer wanted to know about everything that went on in the school, particularly relating to Helen. He testified that Spicer had a grudge against Hansen because she had replaced him in his position. He stated that Spicer would drive on Helen's street, that he wished to see Helen, and that on one occasion Helen was sitting on a fence in front of her house, that she observed Muntean and Spicer and ran away.

Muntean testified that he was fascinated by mystic philosophy and read many books concerning the subject. He discussed this with Spicer and was influenced to make a voodoo doll of Helen. He stated that the intention of making the voodoo doll was:

"...through sympathetic magic to inflict a genital disease upon the victim."

He testified that Spicer said:

"Wouldn't it be nice if she came down with genital herpes and I don't have it. It would clear me."

Muntean testified that the incantation used against Hansen was written at Spicer's home over supper on a Sunday. He testified that he wrote it in front of Spicer and Spicer's wife and child. He confirmed Hansen's evidence that when he confronted Hansen with the incantation she laughed and he ran away. He testified that on a number of occasions he went to the Harwood Hotel with Spicer and Spicer's wife, that they would rent a room and go swimming. He testified that at first he liked Spicer but subsequently realized that he was being used. During cross-examination, he confirmed that he believed in reincarnation and that souls came from other planets.

During her testimony, Hansen testified that she had seen a voodoo doll and because it was so bizarre she caused a photograph to be taken of it (Exhibit 46). Muntean testified before the Committee that the photograph was in fact a photograph of the voodoo doll he had made of Helen Thibault. The incantations that were composed were also made Exhibits.
(Nos. 52 and 53)

Observations of Arthur Landry:

Arthur Landry was the principal of St. Margaret's School at the time in question. In response to a request for information from Ms. Virc, Mr. Landry wrote on April 4, 1991:

"...Other teachers had expressed concern to Mr. Spicer in regard to the frequency and nature of the physical contact between Spicer and the female students, and in particular Helen Thibault...The Director of Education of the Moose Jaw Roman Catholic Separate School Division, Mr. B.A. Wittman, came to St. Margaret's School for a meeting with Mr. Spicer and myself as a result of this complaint. Mr. Spicer was told by Mr. Wittman that he should refrain from physical contact with the students and that embracing children was not an acceptable practice. I suggested to Mr. Spicer that Helen Thibault appeared to be infatuated with him and that he should not encourage her. In light of these circumstances, I feel that it was extremely inappropriate and showed very bad judgment for Mr. Spicer to have had Ms. Thibault alone with him at his home on January 7, from approximately 5:30 p.m. until 8:30 p.m.

"Furthermore, I feel that Mr. Spicer showed disregard for the interests of the students by:

- (a) continuing to associate with some of the students at the school subsequent to his suspension; and
- (b) coming to St. Margaret's School when he had been advised by the School Board that he was expected to stay off the school premises, and when he had entered into a recognizance as a term of his bail which required him to have no contact with three female students at the school.

I feel that Mr. Spicer is prone to using legal niceties to his own advantage. Although his recognizance required that he not contact, directly or indirectly, the three students who attended St. Margaret's School, Mr. Spicer felt that he was free to come to the school for other purposes, such as to pick up a student. Mr. Spicer's ongoing association with some of the students after his suspension had a detrimental effect on all the students because it polarized them into groups and aggravated an already turbulent situation at the school.

Earlier in the school year, an incident occurred between Mr. Spicer and the School Board which I feel demonstrated a lack of integrity on the part of Mr. Spicer. A noon-hour supervision issue had arisen between the teachers and the School Board. The teachers were attempting to go on "strike" by not performing their scheduled noon-hour duty as required by the School Board. The School Board took action against these teachers by applying a one day suspension to teachers who refused to do their scheduled noon-hour duty. Like all teachers Michael Spicer was notified by the School Board that he would be receiving a one day suspension for failure to perform his scheduled duty. Mr. Wittman came to the school to speak to Mr. Spicer about his suspension. Before Mr. Wittman arrived Mr. Spicer asked me not to tell Mr. Wittman that he had not done his supervision. Regretfully, when Mr. Wittman arrived, I told him that I did not know if Mr. Spicer had done his supervision, although I knew that he had not. I feel that Mr. Spicer's treatment of Mr. Wittman in relation to this matter was extremely unfair because Mr. Spicer used the fact that Mr. Wittman could not prove that he had not done his supervision to embarrass Mr. Wittman and force him to sign a legalistic note that Mr. Spicer wrote out before he would return the suspension notice that Mr. Wittman had given to him. Having gotten out of the suspension by this legal nicety Mr. Spicer seemed to take pride in the fact that he was able to breach the rules without suffering a penalty, by bragging about it at a teachers' meeting.

"I have serious concerns about Spicer's integrity, his honesty, his judgment and his ability to deal with others in a relationship of trust. I am uncomfortable with the prospect of Mr. Spicer becoming a lawyer, and I would not recommend him for admission to the Ontario Bar."

Findings of Misconduct by the Saskatchewan Teachers' Federation:

On June 16, 1983, Spicer was charged under the Teachers' Federation Act with professional misconduct. A lengthy hearing was held. On October 1, 1983, the four members of the Discipline Committee unanimously decided that Spicer was guilty of the following complaints:

(Exhibit 3 (b) Tab 4)

- (1) He harassed a fellow teacher: in particular that he demanded the resignation of a teacher, Helen Pat Hansen, without just cause; and that he continued to harass her and used students to that purpose.

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- (2) He acted in such a manner that brought dishonour to the teaching profession: in particular, he made improper and inappropriate physical contacts (hugging and embracing) with one female student, Helen Thibault. Furthermore, he used students for the purpose of disrupting St. Margaret's School following his suspension from that school.
- (3) He improperly criticized colleagues: one instance of which was when he presented criticism of a colleague, Helen Pat Hansen, to inappropriate persons, namely, students taught by her.

The Committee unanimously recommended that Spicer's teaching certificate be suspended for a period of not less than 12 months. In fact, the Federation suspended his certificate until June 30, 1985.

(Exhibit 3(b) Tab 5)

Spicer appealed the finding and the suspension. That appeal was heard January 16, 1986. The appeal was unanimously dismissed by three members of the Court of Appeal for Saskatchewan comprised of Chief Justice Bayda, Mr. Justice Cameron and Madam Justice Gerwing.

(Exhibit 3(b) Tab 9)

On February 19, 1986, Spicer was informed that his certificate was suspended until June 30, 1987. Spicer was given until March 12th to make further submissions. On February 27th Spicer appealed this decision to the Court of Appeal for Saskatchewan. This appeal was again unanimously dismissed by the Court of appeal comprised of Mr. Justice Tallis, Mr. Justice Vancise and Mr. Justice Wakeling on April 9th, 1987.

(Exhibit 3(b), Tab 12)

On June 26, 1987, the suspension effective until June 30, 1987, was confirmed.

(Exhibit 6)

In all the circumstances, this Committee is unanimous in its view that the suggestion made by Spicer and his counsel that the suspension for misconduct was a "three day suspension" is misleading in the circumstances. Spicer was originally suspended effective June 30, 1983. The Discipline Committee recommended suspension until June 30, 1985. The suspension was extended to June 30, 1987, a suspension lasting four years in length, not three days.

Allegation of Sexual Assault with Thibault: Evidence of Helen Thibault

The Committee heard the evidence of Helen Thibault viva voce on April 30, 1991. Born April 15, 1970, Helen Thibault is now 21 years of age. She continues to reside in Moose Jaw, Saskatchewan and met the applicant when she was 12 years old, while attending grade 7 at St. Margaret's School. At the time her mother was 56 years of age and her father 64. She recollects that Spicer taught French, Science and Phys Ed to her class and that he was teaching grades 3, 4 and 5. She testified that at first Spicer was disliked, that people thought him "strange or different" but that he then changed the attitudes of the students. He formed a rocket club, judo class and took people to museums. "They all started to like him much more".

"...Eventually he started hugging me and other girls...he was very understanding. If you had a problem you could go and talk to him, so it didn't seem that strange.

She testified that he was also hugging other girls and that he started holding students hands "mostly the girls".

"He would hold your hand inside of his pocket.

"Q: Do you know why or why he would put your hands inside his pocket?

"A: I'm not sure."

She testified that eventually he started fondling her on school property and also at his house. She did not object. At school it occurred in the science room. It then led to kissing, to which she did not object. She recollected going to school on Sundays for projects but could not recollect why. She babysat for Mr. Spicer and testified that on every occasion that she babysat Mr. Spicer was present but that his wife was not. She testified that "I believe that his wife didn't know at all that I was there." She recalled that on one occasion:

"...we were sitting on the couch and he was sitting in the middle and his daughter was sitting on one side of him and I was sitting on the other side of him and he had his arms around both of us and he was feeling my breasts as he was reading his daughter the story.

"I believe I was starting to become infatuated with him."

She noticed on another occasion that he was rubbing Erin Robinson's legs and "telling her what nice legs she had", while Erin Robinson was sitting on his desk:

"Q: And if she was on his desk, where was he, to your recollection?

"A: He would be sitting on the chair right in front of her."

On another occasion she remembers Heather Young rubbing Spicer's hand or arm and Spicer:

"...told me that he really liked that affection, that made him feel good".

She testified that she had sexual intercourse with Spicer in his home on an occasion prior to January 7, 1983, and that she remembered that red eyeliner makeup fell out of her pocket and went under the bed and that a day or two later Spicer came to her and told her that she:

"...shouldn't leave this lying around, his wife might find it."

She testified that she had sexual intercourse with Spicer at least four or five times.

She told the Committee that on December 21, 1982, Spicer took her to the Harwood Hotel, that he went to the front desk and signed something. They went into a room where he pulled a pink teddy out of his pocket and asked her to put it on. He informed her that the pink teddy belonged to his wife. The attendance at the Harwood Hotel was pre-arranged and she knew that she was "going probably to have sex."

She testified that she put on the teddy, got into bed and had sexual intercourse. She was in the room for approximately one or two hours.

"...I can remember being there because after we had sex, we got out of bed and there was blood on the sheet and I had gotten my period."

Following sexual intercourse they left the Harwood and went to the mall:

"...to go shopping for his wife for Christmas presents."

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"Q: Do you remember what you purchased?

"A: We bought his wife some jewellery.

"Q: Did he buy you anything?

"A: Yes, he did. He bought me a silver chain with a silver cross.

"Q: Any recollection about how much it cost?

"A: I believe it cost \$14.95."

She testified that she did not tell anyone about her relationship with Mr. Spicer, that it was a secret and she wished to protect him.

She confirmed that she had been given the strap by Spicer a few weeks before she attended the Harwood Hotel with him. She recollected that Helen Hansen witnessed the strapping:

"...He had called her down there to witness and he started strapping me and Mrs. Hansen had started yelling at him to stop because he seemed like he was getting pleasure out of it..."

"Finally he stopped, Mrs. Hansen was really upset, she walked out of the door and threw the door open, just about broke it and he walked down the hall behind me and he turned to me and he said, 'There, I'm strapping you, that shows I don't favour you.'"

She testified that the other students believed that he was favouring her. She told the Committee that Spicer intended to speak to her father and mother about her I.Q. level and also tell them that he thought she had a crush on him. She testified that her mother told her that Spicer had visited her.

The day before January 7th, she testified that Spicer called her house and asked if she would babysit. Her mother was aware of this. She did not believe she was going to babysit:

"...I thought we were going to be at his house to have sex."

After school he took her to his house and he motioned her to the bedroom. She testified that he began to get undressed and go into bed and told her to get into bed with him. He was wearing blue underwear. She was leaning against the headboard and he started to undo her pants. She was wearing jeans and an undershirt. He undid the pants but could not get them off, so she took her own jeans off. Spicer was kissing her and feeling her breasts and then he took off her panties and undid her bra. He left her shirt on and was kissing her and they were "rolling around on the bed". She rolled onto her stomach and he lifted up her shirt, took a jar of vaseline and rubbed it on her back and vagina. He then started to have sexual intercourse with her while she was lying on her stomach. She stated that he then retrieved a condom from the night table and continued sexual intercourse. The phone rang a few times but was not answered. Thereafter, Spicer asked her whether she would like to shower or bath and she chose a shower. They went to the bathroom and got into the shower together. She believed that she had started to put on underclothes prior to getting into the shower. In the shower Spicer washed his hair and rubbed soap over her body. They got out of the shower and dried off and went into the bedroom. He asked her who might be calling, who knew that she was babysitting and she told him that Erin Robinson might have known. Spicer suggested she call Erin Robinson and then she went into the kitchen and while calling Erin, he got a drink out of the fridge.

"...Then he came over to me and I sat down on the chair and he spread my legs and started licking my vagina while I was talking on the phone."

Thereafter they went back to the bedroom and:

"...he started telling me about other girls he had sex with and he told me the only one he got pregnant was Cindy, so he had to marry her.

"Q: Who was Cindy, to your knowledge?

"A: His wife."

Thereafter he laid her on his chest between his legs.

"...Then he pushed my shoulders down so my head was right by his penis and he told me to suck on it.

"Q: Had you ever done that before?

"A: No.

"Q: Did you do it?

"A: Yes, I did.

"After that he went around to the bottom of the bed and started licking my vagina"

They had sexual intercourse again. She recollected she was kneeling up against the headboard. The phone rang. Spicer answered the phone and told her that it was his wife who was in Regina. Thereafter Spicer asked her if she was hungry. She said she was. They dressed, went to an A & W, got a hamburger and he then took her home.

She testified that when she got home her mother was "yelling and screaming" because she had phoned three or four times and not gotten an answer. She told her mother that Spicer had told her not to answer the phone. Her mother found this explanation ridiculous. Eventually she confessed the facts to her mother who then phoned the principal of the school, the police department and hospital. She testified that she did not wish to tell about these things and that she didn't want anything to happen nor any charges laid against Spicer. She testified that she said that "it was just that one night". She says she told her mother that it was only one night:

"...because I was 13 and I was scared and I wanted to protect Mr. Spicer. I didn't want to go through anything that I went through. My mother was also sick, so was my father. I couldn't talk to them really about what was going on. I didn't want to bother them any more than what I already had bothered them and I was basically scared.

"Q: Why are you coming forward now and saying it occurred on other occasions?

"A: Because I am older, I know what happened was wrong and I want to clear my conscience of hiding a secret for all these years. My mother isn't here today.

"Q: What happened to your mother?

"A: She died of cancer.

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"Q: Did you know that when you were testifying at that first trial, that you weren't telling the truth about previous occasions of sex with Mr. Spicer?

"A: Yes, I did understand I was not telling the truth."

She testified that following the charge Spicer was bound by a recognizance that forbade him to come near her but that he did. She testified that he drove up beside her and asked her to come and get into the car and talk to him and she ran away. She testified that she did not wish to testify at the second trial. She told the Committee:

"I am just finally starting to get on with my life now. You know, basically forget and realize that I wasn't the person in the wrong, that I wasn't the person at fault."

She stated further:

"I would just like to say that I know I had lied in the past trials and that today I am coming forth to tell the truth because I don't believe that I was wrong and it was all my fault."

In cross-examination she told Mr. Agro that she did not remember a lot of the things that went on clearly but that:

"...I know we had sexual intercourse, I know I sucked on his penis, I know he licked my vagina and I know we took a shower together."

It was confirmed that Spicer had been convicted by the jury at his first trial and sentenced to 18 months imprisonment and that he had appealed that verdict. At his second trial he was acquitted.

Mr. Agro established that at trial Thibault had testified that she was a virgin prior to the incident on January 7th and he asked her:

"Q: I want to know, please, when you made that answer, you now admit it was untrue, that you lied under oath; was that answer given under oath that way for the purpose of helping yourself or helping Mr. Spicer or feeling sorry for your mother; which of the three?

"A: All three.

"Q: All three? Well, did it mean nothing to you at all when the court had asked you about the oath and the taking of the oath and you swore on the Bible, did that mean nothing to you at all?

"A: Mr. Agro, I was 13. I was scared.

"Q: But you were old enough to know, you were old enough to know that going to a bedroom with a man might be dangerous, might be problems; weren't you?

"A: I was also old enough to know the man was 30 years old, my teacher and I trusted him.

"Q: Now, before you left, before you put your clothes on - you put your clothes on while you still had the vaseline on you, did you not?

"A: I don't remember. I believe I started to put my clothes on and we got into the shower and he washed my body, so the vaseline wouldn't have been on my body."

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The Committee noted that Thibault's evidence was consistent with her initial statement given to the Moose Jaw Police on January 8th, 1983, between 0050 hours and 0130 hours (Exhibit 30), and to Dr. Chan at 2315 hours (Exhibit 31).

Evidence of Michael Spicer

Spicer testified that he engaged in hugging and embracing mostly when in groups and that he did not discriminate between boys and girls, that he hugged both boys and girls.

He testified that Mrs. Middelhoek objected strongly to certain embraces which she had observed and her complaint resulted in the Director of Education, Mr. Wittman calling a halt to the conduct. With respect to whether the hugging continued after the meeting with Mr. Wittman, Spicer testified that:

"...He said, you know, there's no problem with the younger kids but I think Mrs. Middelhoek was really alarmed that an older student, he used the expression, a teenager, was giving hugs.

"Q: Did this continue as far as you were concerned?

"A: Yes. After Mr. Landry and I met with Mr. Wittman we also discussed it among the two of us and certain things were done at the school. Do you want me to go through those?

"Q: No. It's all right. As far as you were concerned there was no more hugging and embracing of these children?

"A: No. I didn't say that. As far as the students that were in Mr. Landry's class, they were the teenagers, the older kids."

He testified that thereafter things deteriorated and a complaint was made.

He confirmed that he had spoken to Helen Thibault's parents. He said that she had been acting very badly at school. He said:

"...The other students told me that she was starting rumours, this was while I was teaching at the school, she had been saying thing to them like Mr. Spicer is - we had been studying about Tahiti and she said 'Mr. Spicer is going to leave his wife. He and I are going to go to Tahiti'.

"Also, she had been coming for hugs, you know, like, it's okay as a pedagogical technique I think if it's controlled and for her she became unreasonable in the demands and I tried to talk - I talked to her to try and have her control it. I talked to her boyfriend Stanley and said, talk to Helen about it but it didn't seem to have any effect.

"Finally, I went to her parents to speak about, first, the way she was behaving at school and what I wanted was a teacher/student relationship..."

He testified that he told her parents that they should encourage Helen to work harder so that she could go to university because she had the potential. He admitted that he had strapped Helen within a couple of days after speaking to her parents. He testified thereafter that Helen seemed "very withdrawn and unhappy and solemn."

"I didn't want her to think that I was like mad at her or anything. She I think felt that I was mad at her and had gone to her parents and ratted on her or something.

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"So I spoke to her parents. I think it was her dad that I spoke to, and I said now she's being very withdrawn and I spoke to my wife and I said do you think it would be a good idea if for Friday when we're going out we have Helen do the babysitting.

"Our regular babysitter who was Kathryn Conak said she wasn't available and so some of the girls were there and Helen had offered but I thought I'd speak with her father and mother first."

He testified that she attended on January 7th.

In cross-examination he confirmed that Helen Thibault was 12 years old at the time but that she looked a little older than 12 years old. She looked like a teenager.

"...She was very immature but physically she looked more like a teenager than a little girl."

He denied commenting on Helen's attributes to other students. He confirmed that the hugging of Helen occurred two or three times a day. He denied that he touched her buttocks. He confirmed that she babysat "at least a couple of times" at his house. He denied that he was present while Helen was babysitting.

He recollected strapping Helen but could not recollect whether Helen Hansen was present. He denied making any comment with respect to the necessity of strapping Helen in order to avoid talk about a relationship between them. He denied that the female students would put their hands in his pockets. He denied being at the Harwood Hotel on December 21st and he denied registering at the Harwood Hotel on that day under a pseudonym, although he confirmed owning a 1981 Datsun with licence MGR899. He readily admitted certain registrations for the Harwood Hotel in his own name showing ownership of a 1981 Datsun licence No. MGR899. When shown Exhibit 47, a Harwood Hotel registration card in the name "M. Ivers", 420 High Street, Regina, Saskatchewan, Datsun MGR899 for December 21, 1982, Spicer denied that this was his registration. He denied having any idea to who "M. Ivers" was.

It is apparent to the Committee that one Kirk Ivers was a student in Spicer's grade three class who resided on High Street in Moose Jaw (Exhibit 16). Spicer testified that he did not recollect a student named Kirk Ivers.

Spicer denied ever employing a private investigator named Mr. Carnie. Spicer recollected meeting Carnie, however, and being shown certain documents by him relating to the Harwood Hotel but he could not recollect any of the details.

Q" Do you remember Mr. Carnie, sir, showing you these hotel receipts?

"A: Well, he came to me and showed me some things but I don't remember what he showed me but it had to do with the Harwood Hotel and probably with cards and then he also went to my solicitor and showed them to him but I don't recall anything more - any details.

"A: But there's no doubt, we're not quibbling over phrases or terminology. Mr. Carnie was not employed directly or indirectly by you?

"A" No."

Mr. Lockwood confronted Spicer with Thibault's testimony as to what occurred on December 21, 1982 at the Harwood hotel and the registration in the name of M. Ivers with Spicer's licence no. upon it:

"Q: Does any of this assist you, sir, because I am going to suggest to you that on December 21, 1982, that you and Helen Thibault went to the Harwood and on that occasion had sexual intercourse?

"A: Look, the answer is no.

"Q: I am going to suggest to you, sir, as I must, so that you have every chance to dispute the evidence that will be called, is that on that occasion you brought your wife's pink teddy with you?

"A: My wife's what?

"Q: Pink teddy, T E D D Y. It's a garment sir.

"A: Oh, like a - underneath?

"Q: Correct.

"A: No I didn't.

"Q: I am going to suggest to you, sir, that after you and Helen Thibault were at the Harwood that you took her and went Christmas shopping for your wife?

"A: With Helen?

"Q: With Helen.

"A: No."

Dealing with the allegation of sexual intercourse on January 7th, Mr. Lockwood asked:

"Q: I'm just asking you if in fact on January 7th, '83 you had sexual relations or sexual intercourse with Helen Thibault?

"A: I deny it."

Spicer testified that on January 7th his wife was pregnant with their son Andrew, born June, 1983, and had made arrangements to be in Regina for a medical checkup. He taught in the afternoon and it was arranged that they would go out for supper at 5:30. He said that he had arranged for Helen Thibault to babysit because she had been "so quiet and unhappy" after he had spoke to her parents. He testified that Helen Thibault's father had said she could babysit and that his wife thought it was okay. He said that he was driving two other boys home. Thereafter his plan was to drop Helen off at his house to clean up, then pick up his wife at the bus depot, drop the child off with Helen at the house and then go for dinner. He testified that he dropped Helen off at the house and then went to the bus depot but when he got there:

"...The bus station is deserted, no wife. I looked around, no Cindy, no baby."

He returned to the house and put the car in the garage. He said that Helen was just sitting in the living room and hadn't picked anything up. He testified that they put the toys away in the baby's room and thereafter he sat Helen down to explain why he had visited her parents, that:

"...what I had wanted was a nice relationship, student/teacher relationship, not this lots of hugging and telling stories and not again this thing I had the last couple of days with the real solemn.

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"She was just very quiet when I was talking and I tried to explain..."

He testified that it was now 6:30 p.m., that his wife had not phoned, so he phoned Regina and his wife answered. He testified:

"...Look, Helen and I are here. The arrangements are made. How come you didn't come on the bus?

"My wife said to me, look - she doesn't say that. My wife said to me, 'We went on the bus to Regina at noon. The baby was crabby or something, cranky or something, and I intended to come back on the bus but I didn't.' I think because of that she had her appointment, whatever it was, I think that she said, 'I wasn't coming back on the bus under the same circumstances that I went', I think something like that.

"And I said, 'But Helen is here.' And she said, 'Well, look, you come to Regina and get me and just give Helen some money.' I don't know, pay her I guess for having come to babysit, 'take her to get something to eat and you get something to eat.' Because I had said to her, 'Look, the arrangements were made. Helen is here. We are going to go out for dinner.' She said, 'I ate already at my mother's.' I think she said she ate at her mother's house, 'So we're not going out for dinner. So you come to Regina. Just get Helen something to eat and you pick up something to eat.' And that's it, boy, like, when your wife tells you, what can you do.

"So I was mad at her, disappointed that we weren't going out for dinner but anyway I said, okay. I hung up the phone. I turned around to say to Helen, well, I intend to repeat things when I'm on the phone. I turned around to say, 'Helen, well, I guess I can take you for something to eat if you're hungry and then I'm going to take you home' and Helen wasn't there.

"When I started to call, Helen had been in the livingroom. I've been talking with her. I go up, went to the kitchen, it's all open area, went to the kitchen, used the phone which is in the kitchen hanging on the wall. When I hung it up and turned around Helen wasn't in the livingroom.

"So it's not a big house. So where can she be. The door to the bedroom was open a little bit. I found her in the bedroom, in my bedroom, in my bed.

"Now, this kid had been kind of unhappy and solemn looking when I'm talking to her. It's like, you have to be a teacher to appreciate this, nothing is going in, when you're trying to talk to a rebellious kid who doesn't want to believe what you're saying. She was kind of unhappy and solemn. Now, she's in the bed. She's got a nice smile on her face and all I can see is the door wasn't opened very much and then there were some clothes but I can't recall, there were some clothes at the side of the bed, I'm sorry, Mr. Agro, I'll try and keep it short. There were some clothes there. Helen's in the bed, covers up to about the shoulder thing, so you can see a cameo, Miss Relax she seemed like to me.

"She said, 'I'll never forget this, 'I heard what you said to your wife on the phone,' she said to me, 'and if we have time to go and get something to eat, we have time to have fun'.

"That was like the dropping of the atomic bomb on me, let me tell you. I realized then that what I had to do was get her out of my bed and get her home. Get her out of the house, get her home and then once I did that, some time over the weekend I could do some drastics, do something about this girl.

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"So I was stunned, completely stunned. I sat down on the bed. She's in the bed under the covers or blanket, or whatever was there, I can't recall now, and head on the pillows, kind of on her side a bit and I sat down. I was completely flabbergasted and I sat down and I put my head in my hands. She was talking but I don't remember what she was saying. I don't think I paid any attention at the time even. I said I had my head in my hands. I was trying to come up with some idea to try and get her out of the house. The phone rang. I didn't answer it but it gave me an idea. And I said, 'why don't you phone your parents and tell them that you're coming home because,' well, she said, 'They're not home. They're probably at the union hall,' or whatever.

"So I said, 'Who knows that you're here?' I'm talking about girls that are in Arthur Landry's class that I also teach Helen's class, 'Well, Erin Robinson knows that I'm here, and I said, 'Why don't you give her a call then. I got to go to the bathroom.' And she said, 'I know the number' and I said fine then.

"So she phoned. I would have dialed it for her to get her out. She phoned and I went to the bathroom and then I came out and she was still on the phone. I think I got a drink. I drove her home. No. I drove her to some restaurant, a little drive-in at McDonalds or something, and then I took her home.

"Now, driving from Pascoe Crescent where I live to Regina you go right down High Street where many, is it High Street, the street that she lived on, and I dropped her off. It was about - it was before 8 o'clock, little before 8:00 and then I drove to Regina. Got to my parent's house. The roads were kind of slippery and I had to stop once to rest my eyes because I was tired but it was only for a few minutes.

"I got to Regina. I don't recall when it was. I saw my wife. I drove - I picked her up and drove her home after. I rested a little while, slept for a little while, and then I drove home. We got home about midnight I guess or something. I slept in the car. I didn't even drive home. Cindy drove home and that's what happened.

"Q: You've described to the best of your recollection today, sir, is that correct?

"A: Yes.

"Q: Is it correct, sir, that you were shortly thereafter charged?

"A: Well, yes. The police came to my house the same night I think.

"Mr. Agro: January 9th -

"Mr. Spicer: No. The same night the police came to -

"Mr. Agro: January.

"Mr. Spicer: January the 7th. Well, it was after midnight.

"Mr. Lockwood:

"Q: Probably January the 8th.

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"A: Early in the morning. The police came to the house. They came in and they ransacked my house. Me and my wife in bed and they - I don't remember when I was charged though. They didn't arrest me right away and take me away.

Q" Did you appear, sir, in court on January the 11th or thereabouts?

"A: I think so. Oh, yes. I don't remember the dates.

"Q: Prior to appearing in court, sir, did you retain a solicitor to represent you?

"A: Well, when the police came, yes, yes.

"Q: Was that, sir, Mr. Clifford Wheatley?

"A: Yes."

The Attendance of Clifford Wheatley:

The Society subpoenaed Mr. Wheatley to appear and give evidence. His anticipated testimony would relate to the communications passing between himself and Spicer at the time of his retainer. Spicer opposed the calling of Wheatley and refused to waive privilege with respect to their communications. The Society asked the Committee to require Wheatley to give testimony by virtue of Spicer's waiver of privilege in the documents filed by him with the Law Society, wherein he requested the Society to undertake an investigation of his good character. The Committee was not inclined to require Wheatley to testify for the reasons given orally and attached as Schedule "B" to this decision.

This ruling was subject to the following comment by the Committee, however:

"The Chairman:...I think I would be remiss if I did not inform you, Mr. Spicer and Mr. Agro, that the onus rests on Mr. Spicer to prove good character to the Committee. The Committee views the circumstances surrounding the sexual assault as germane to that determination. All the circumstances are relevant and it will be up to you to determine what evidence you bring on that point and the Committee will be left in a situation where, if there is a want of evidence in any area, it may be then a difficult matter to decide in favour of the applicant."

Shortly after the alleged assault on January 7, 1983, Helen Thibault was examined by Dr. Chan who filed a report marked as Exhibit 31. In this report Dr. Chan indicates that:

"She also told me that an almost similar situation happened on December 21, 1982 at the Harwood Hotel."

Dr. Chan found evidence of recent intercourse and that it would have occurred within a few hours of his examination.
(Exhibit 31)

In the early morning hours of January 8th, the police executed a search warrant at Spicer's home and found a number of items, including a condom obtained from a waste basket. There was fluid in the condom. The testing of fluid was inconclusive. They seized the bed covers and sheets from Spicer's bed. They were not tested at that time.

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Following the first trial Spicer requested that the sweater, panties and bra worn by Thibault be analyzed for the presence of vaseline. No vaseline was found. Samples of head and pubic hair were taken from the sheets and sent to a laboratory to be compared with hair taken from Thibault. No hair found was established to be that of Thibault's. The bed sheets were not analyzed for vaseline.

Evidence of Donald Carnie

Donald Carnie gave evidence before the Committee. He testified that he was a private investigator in the Province of Saskatchewan and that he was also a teacher having obtained a Bachelor of Education degree at the University of Regina.

He testified that he was retained by Spicer following the laying of the charge of sexual assault in 1983 and asked to carry out surveillance on Helen Thibault and Kathy Miller. He stated that he had attended at the Harwood Hotel and obtained certain registration cards, one of which was the card dated December 21, 1982, in the name "M. Ivers". He stated that when this card was shown to Spicer, Spicer denied that it was in his handwriting. Carnie did not believe him. He was fired from the case.

Carnie testified that he had offered the cards to the Moose Jaw Police but that they were not interested. He stated that this was done following the first trial and just prior to the appeal. The Moose Jaw Police had used photocopies at the first trial obtained from the Harwood Hotel. He stated that he thereafter gave the cards to the Crown Attorney, Mr. Wall, who subsequently mailed them to the Committee. Carnie found Spicer to be highly intelligent but intimidating. He stated that he would not like to see him practicing a professional occupation.

In cross-examination an affidavit of one Donald Andrew Todd, a barrister in the Province of Saskatchewan was tendered. In this affidavit Todd indicates that Carnie and a colleague attended at his office in November, 1983, and

"...suggested that if we retained them as investigators on a fee for service basis that they would turn the registration cards over to use, otherwise, they would turn them over to Moose Jaw City Police. I advised Mr. Carnie that his suggestion may well amount to a criminal offence and that we wanted nothing to do with him, then asked he and his colleague to leave the office."

Carnie vigorously denied this suggestion. This Committee finds that the suggestion alleged by Mr. Wall in his affidavit might well have occurred, but it does not in any way diminish the reality of the registration documents obtained from the Harwood Hotel by Carnie. They constitute real evidence which the Committee is bound to consider.

Evidence of Diane Anderson and the Harwood Hotel Registration:

Ms. Diane Anderson is a full time document examiner who has been qualified as an expert in Court on 28 previous occasions. She analyzed certain specimen documents and compared them to questioned documents. In particular, Exhibit 47, the registration card for the Harwood Hotel in the name "M. Ivers" was a questioned document. Her conclusion was that it was "highly probable" that Michael Spicer executed the writing contained in Exhibit 47. She said:

"...Personally, it is the strongest opinion I give. The possibility of error always exists. I never use the words 'positive' or 'absolutely' unless I actually view the signature."

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She reviewed in detail the very distinctive features of Spicer's handwriting.

Unanimously, the Committee was struck by the very distinctive features of Spicer's handwriting and the writing found in the Harwood Hotel registration card for December 21st, 1982.

Ms. Anderson was cross-examined at length by Michael Spicer. This cross-examination exhibited a great deal of preparation by Mr. Spicer and a significant knowledge of the field of handwriting analysis. The cross-examination was exhaustive. The opinion of Ms. Anderson was unshaken. Indeed, the cross-examination elicited much information which the Committee found buttressed the opinion of Ms. Anderson.

Spicer had previously given testimony with respect to Exhibit 47:

"Q: Can we then turn, sir, to December 21st, 1982 and I'm showing to you, sir, an additional card from the Harwood Hotel. Do you recognize the writing on that card, sir?

"A: No."

"The Chairman: Sorry. We have December 21?

"Lockwood: December 21.

"The Chairman: 1982

"Q: Are you saying, sir, that that is not in your handwriting?

"A: Yes. That's what I'm saying.

"Q: Is there any doubt, sir, in your mind that that's not in your handwriting?

"A: No doubt at all."

When Spicer was being questioned in relation to the events of December 21, 1982, the following exchange took place:

"Q: Can we then, sir, go back to December of 1982. What kind of motor vehicle did you have?

"A: I drove a gray -

"Lockwood: Datsun?

"Spicer: I'm just trying to think of the year. It was new.

"Lockwood: 1981 Datsun?

"A: I drove a silver and gray beautiful, new Datsun 200 SX car.

"Q: At that time, sir, you were living in Moose Jaw, correct?

"A: In November of '82?

"Q: Right.

"A: Yes.

"Q: And presumably that car was then registered in Saskatchewan.

"A: I don't know the date that the plates were changed. I had come from Camrose, Alberta to Moose Jaw in September and I think I kept the plates for as long as I could because the insurance rates were good, etcetera, and then I changed them over around November the 15th or so or 20th, somewhere around there, of 1982 from Alberta plates which I think were yellow to Saskatchewan plates."

The Committee's Findings as to Credibility

The Committee found Spicer's testimony in relation to the car registration to be evasive. Considering all the evidence, the Committee is clearly convinced that it was Spicer who executed the writing on the Harwood Hotel registration card dated December 21st, 1982. This particular finding has assisted the Committee in assessing the credibility of Spicer generally in relation to his testimony as to what occurred on December 21, 1982 and on January 7, 1983. The Committee was able to closely observe the demeanor of the applicant during the course of the hearing, and in particular while he gave testimony under oath and was cross-examined. We have unanimously concluded that his evidence as to the events occurring at St. Margaret's School cannot be relied upon.

The Committee has unanimously concluded that Spicer's testimony in relation to the events of December 21st and January 7th is untrue. The Committee is clearly convinced of the truth of the evidence of Helen Thibault. The Committee believes that Helen Thibault had sexual intercourse with Michael Spicer on December 21st and on January 7th. We observed carefully the manner in which Helen Thibault gave her evidence. The Committee was impressed with the demeanor and forthrightness of the witness. She had nothing to gain by coming to Toronto from Moose Jaw to appear before this Committee almost nine years after the acts in issue. The Committee detected no hint of a vengeful motive or attitude in this witness. While testifying to the events of January 7th, 1983, the Committee observed that the witness seemed to be truly reliving the events, and not merely recounting them.

The Committee considered in intricate detail the distinctions in the evidence between Helen Thibault and Michael Spicer. We find that Helen Thibault's recounting of the events to be not only clearly convincing but her story also had the ring of truth, while the Committee found Michael Spicer's testimony was selective, convenient, rambling and evasive. In sum, it begged credulity.

With respect to Helen Hansen, the Committee found her to be a credible witness. We cannot accept the submission of Mr. Agro that Helen Hansen had imagined her observations and was motivated by revenge. We believe her evidence that Spicer was fondling the older girls and particularly Helen Thibault in an inappropriate manner and we believe her evidence that she was subject to a campaign of intimidation on the part of Michael Spicer. The Committee was struck by the psychological scar the events at St. Margaret's School and her dealings with the applicant have left upon her. Helen Hansen did not appear happy to be testifying at this hearing. Her testimony revealed profound pain in reliving the events to which she testified and the Committee rejects outright the suggestion that she was concocting a story in an effort to destroy Michael Spicer.

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Respecting the evidence of Muntean, we find that his testimony must be approached with caution but, when all is said and done, the Committee unanimously found him to be credible. Because of Muntean's fascination with the occult, Spicer recognized in him a convenient and vulnerable disciple in his campaign to undermine those that would dare make a case against him. We believe Muntean when he testified that Spicer encouraged the creation of a voodoo doll and occult incantations. The Committee is bound to state that the use of Muntean, being vulnerable as he was, constituted a particularly distasteful exercise of power and authority by Michael Spicer.

The Committee is moved to comment that it is unable to discern any possible motive for the witnesses called by the Law Society to perjure themselves as is alleged by the applicant. Conversely, the Committee is mindful of the obvious benefits which would flow to the applicant should the Committee find that all the Society's witnesses were untruthful.

Believing as we do the fact that Spicer had sexual intercourse on more than one occasion with Helen Thibault, a 12 year old girl and a student at the time, we find this to have constituted a massive breach of trust which impacts determinatively on Michael Spicer's character.

As was stated by the Discipline Committee in the case of Sidney Cwinn, which statement was approved by the Divisional Court in Re Cwinn and Law Society of Upper Canada 28 O.R. (2d) 61, at p. 69:

"The law has always considered a young person, especially young girls, as being entitled to protection from worldly adults who are of a mind to debauch them. This is especially so when they are placed by an adult in a relationship of dependence or subservience as these girls were. Considering that the solicitor took these young girls away on trips sometimes lasting for weeks at a time and at long distances from their homes, he was in a real sense 'in loco parentis'. Mr. Cwinn as solicitor should have appreciated his legal duty, if not his moral duty, to conduct himself towards these young girls in accordance with his duty to protect them. It is difficult to see how a solicitor who has so grossly breached the trust which he had assumed with these girls could be trusted to maintain the many other trusts which a solicitor is expected to maintain..."

In that we have concluded that Helen Thibault, Helen Hansen and Donald Muntean have told the truth, we must inevitably conclude that Michael Spicer was not telling the truth when he testified under oath before the Committee. That finding necessarily impacts on the issue whether Spicer is of good character at the present time.

Subsequent Criminal Proceedings:

Following his conviction for sexual assault in 1983, Spicer appealed the conviction to the Court of Appeal. The Appeal is reported as R. v Spicer, 36 Saskatchewan Reports, 235. The decision reveals that evidence had been admitted at the trial relating to the fondling and embracing of female students at the school; secondly, that evidence was permitted that Helen Hansen observed the appellant and the complainant embracing each other on frequent occasions; about an episode when the appellant allegedly administered the strap to the complainant by way of discipline; and an episode when the appellant was allegedly excited by another female student; and that the appellant had threatened to do harm to Helen Hansen's daughter and made other threats to her. A separate ground of appeal was that Spicer had been cross-examined with respect to registering at the Harwood Hotel in Moose Jaw using a false name on December 21, 1982; and that he had been cross-examined on the basis that when confronted with the charges he had remained silent.

The Court of Appeal ordered a new trial on the basis that the evidence of hugging and fondling and strapping did not meet the test of Makin v A.G. for New South Wales (1984) A.C., 57, in respect of "similar fact evidence" and should not have been admitted at the criminal trial. Secondly, the Court of Appeal found that evidence in relation to registering at the Harwood Hotel on December 21st was prejudicial to the accused in that it had nothing to do with the offence charged in respect of January 7th. Finally, that the accused was entitled to remain silent and that no adverse inference should flow.

Suffice to say, the Committee agrees with the finding of the Court of Appeal as constituting a proper application of the criminal law at the time, but this Committee has felt bound to consider all the evidence surrounding the relationship between Helen Thibault and Michael Spicer and is unconstrained by the rules of admissibility relating to criminal indictments. The Committee notes in passing that some of the evidence found inadmissible by the Court of Appeal through the application of the rule in Makin might well be admissible today following the decision of the Supreme Court of Canada in R v B. (C.R.), 1990, 1 S.C.R., 717.

Conduct of the Applicant since 1985: Evidence of Good Character:

There was much material filed with the Committee to show that the applicant has been of good conduct since 1983. The Committee heard testimony from William Dermody, the applicant's present employer, who spoke of Spicer's very positive qualities and abilities. He testified that the applicant did "high quality work", that he was "extremely able", an individual "with great knowledge of law who prepares cases very well". Alexander Mouriopoulos testified that he had worked with the Dempster, Dermody firm and that in all his personal dealings with Michael Spicer he found that he was extremely competent and professional and "his name is held in high esteem".

Rory Cornalie testified that he was acquainted with Spicer and had known him at St. Patrick's Elementary School, that he was friend, knew him through high school and they had now re-established their friendship because Cornalie is an Associate with the Dempster, Dermody firm sharing space with them. He testified that Spicer had assisted him on cases and that he was "of tremendous assistance". He found him to be "conscientious, honest and sincere" enjoying an "excellent reputation". He testified that Spicer had told him about his conviction, appeal and subsequent acquittal of the charge of sexual assault. He found that this "showed a strength of character in that he had not been destroyed by this experience but had been strengthened by it".

Frederick Lorne Dunbar appeared before the Committee and testified that he had represented Spicer as his counsel in the appeals from the finding of the Saskatchewan Teachers' Federation Discipline Committee and had also appeared for Spicer with respect to certain litigation arising out of his dispute with the School Board. He found Spicer to be a person of good character, "much stronger than most, who would have broken under pressure". The Committee was very impressed with the character and sincerity of Frederick Dunbar, who exhibited honesty and integrity in all his dealings with the applicant and in his appearance before the Committee.

Evidence of Dr. James Gordon:

The Committee considered numerous letters filed on behalf of the applicant testifying as to his good character. It considered an affidavit from Dr. James Gordon, a professional psychologist from the Province of Saskatchewan who has worked as a teacher and principal for 14 years in the Regina school system and was employed as an Associate Professor in the Faculty of Education in the University of Regina. In 1985 he retired from the University of Regina and has

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since then practiced privately as an employment assistance counsellor. He taught the applicant commencing in January, 1983 until he left Regina in 1985. Dr. Gordon gained certain strong impressions about Spicer including the fact that he is:

"...idealistic and independent to a fault, extremely intelligent, logical and creative in his thinking, eloquent and out spoken"

and that:

"...he may appear arrogant and abrasive to colleagues and others who may suffer from a sense of insecurity or inferiority but, to use a trite expression, 'he does not suffer fools gladly'."

He stated that Spicer attacks any project he undertakes with an extraordinary degree of enthusiasm and commitment and that Spicer:

"...revealed nothing whatever which lead me to question his honesty or integrity. Indeed, to the contrary".

At one stage Dr. Gordon warns this Committee not to reply on the evidence of Helen Thibault in that:

"...I understand that the complainant has confessed that she lied to her mother, the doctor at the hospital, at the preliminary hearing and at both trials."

He also states that Helen Hansen took a class from him in theory. He states Ms. Hansen was:

"...a vociferous woman's liber, had a huge chip on her shoulder and I gained the impression that, in the matter of appointments to administrative positions in the school systems, she considered women were not equally treated."
(Exhibit 62)

This Committee finds that the opinions of Dr. Gordon do not accord with its own observations and conclusions in respect of the credibility of Helen Thibault and Helen Hansen. Particularly, he had no first hand knowledge of Helen Thibault and was drawing conclusions about Helen Hansen's credibility because of her feminism, a most illogical approach, in the opinion of this Committee.

The Committee noted the very impressive support Spicer received from Dr. E.L. Hurlbert from the University of Regina. Dr. Hurlbert met Spicer in 1983 when he enrolled in graduate classes at the University of Regina. He found Spicer to be:

"...an industrious, conscientious and enthusiastic scholar...I have no hesitation in saying that when I consider which of those many students demonstrated outstanding talent for disciplined and detailed research work in the area of law and litigation, Michael Spicer comes immediately to mind."
(Exhibit 22, Tab 13)

The Committee considered similar very positive statements about Michael Spicer from David Dempster, Susan Inch, Greg Wurzer, Paul Yurack, David Weyant, Dr. Howard McConnell.

Letter from William Wardell:

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In a letter received from William Wardell, dated June 20, 1990, wherein Mr. Wardell informed the Committee that the applicant had taken two classes in the College of Law in which Wardell was the instructor, Wardell found that:

"...There was nothing in his conduct in that class that would indicate that he was not in good character." (sic)

Mr. Wardell also stated that he worked with the applicant as a student in the clinic program and that he worked extremely hard as an advocate for young offenders. He stated that:

"...In his dealing with his clients he was careful to put their interest first above the institutional interest of the facility. He prepared very well for his cases and was always conscious of the rules of professional conduct."

However, at page 2 of William Wardell's letter, the Committee noted the following troublesome comment:

"...During the term I only remember one incident which was of concern to me. Michael was assisting a teacher friend of his in a matter which also involved an allegation of misconduct. He had mentioned the case a couple of times to me and I had made some passing comments which I had hoped that would be helpful. I told him that I thought it sounded like a serious matter and I felt his friend should be obtaining counsel. I felt that because of Michael's experience with the Saskatchewan's Teachers' Federation advocacy by him in the matter may be detrimental to his client. Apparently a request for hearing was issued. Some correspondence developed between counsel for the hearing committee and Mr. Spicer on behalf of the friend. Mr. Spicer wrote to counsel for the hearing committee using our firm's letterhead. I believe he felt it would have more impact on counsel for the hearing committee and he seemed to conclude that because he had some discussions with me about the case that I had somehow authorized the use of our letterhead. When this was pointed out to him that no such authorization or permission had been given he quickly concluded that what he had done was most inappropriate and he either phoned or sent a letter of apology for using our letterhead to counsel of the hearing Committee. He apologized to myself. Soon thereafter he had his client approach me. I ended up acting for his client in the hearing. It was a difficult case and certainly Mr. Spicer's decision to advise his client that he required counsel from the private bar was the right one in the end."

(Exhibit 22, Tab 16)

Upon reviewing that particular letter, the Committee was prompted to note that a very similar incident occurred during this very hearing. Following the time limited for the delivery of written argument, the argument on behalf of the Society was not delivered to the Admissions Office on time. Spicer was forced to wait and finally left. Subsequently, the following letter dated 24 June, 1991 was faxed to the Committee;

"...As you know, the deadline for filing submissions, noon on Friday, 21 June 1991, was moved back at the request of Counsel for the Law Society, who was not ready to file his written argument.

"The new limit for filing was noon today. Mr. Spicer attended at the Law Society offices and met with the Clerk of your Committee, Mrs. Pat Gyulay. Three copies of written argument, and three copies of an accompanying Book of Authorities, were filed at 11:50 a.m. and attached is a receipt.

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"At noon, Mr. Lockwood still had not arrived. Mrs. Gyulay phoned him and was told he would be late, and Mr. Spicer was to wait; Lockwood would be there by 1 p.m.

"At 1:00 p.m., still no Lockwood. Mrs. Gyulay phoned Counsel for the Law Society and was told he would be attending by 2 p.m. and would Mr. Spicer like to wait another hour? In the alternative, would Mr. Spicer leave Counsel's copy with Mrs. Gyulay and the Law Society would courier its argument to Mr. Agro?

"I'm too old for this sort of cheap gamesplaying. It is Counsel for the Law Society who has been playing fast and loose with procedures. If he wants our argument, he can drive to Hamilton and pick it up from me in person.

"I am very sorry to say, it is the childishness of Mr. Lockwood that is responsible for so much waste of your time.

"Very truly yours,

"John L. Agro per MJS" (signed)

"JOHN L. AGRO, Q.C.
36 Oak Knoll Drive
Hamilton, Ontario
L8S 4C3"

As events transpired, that particular letter was not composed by Mr. Agro but by the applicant himself. Subsequently, Mr. Agro faxed the following explanation to Mr. Lockwood:

"Dear Tom:

"...Mike's instructions were to leave at 12:01; out of his courtesy he stayed until 1:30.

"He tried to reach me for instructions and unfortunately I was at lunch with my daughter.

"Tom, the letter is written in my name and I take full responsibility therefor as my instructions were clear.

"The penultimate paragraph is not my language. I probably would have used other language but meaning the same.

"We could have been requested for more time as we had freely given on Friday, bucking Toronto traffic at noon is not pleasant going either way; if Mike was annoyed I don't blame him.

John L. Agro"

The Committee views this creation of comments attributed to Mr. Agro by the applicant as being strikingly similar to the conduct that William Wardell found troubling when he dealt with the applicant in Saskatchewan.

(Exhibit 22, Tab 16)

Considering all the positive evidence, both viva voce and through letter or affidavit presented on behalf of Michael Spicer, the Committee must weigh it in relation to the totality of the evidence of character, both present and past, so as to arrive at an informed conclusion of whether the applicant is of good character at the present time.

Incidents During Bar Admission: Evidence of Lisa Bath

Lisa Bath attended before the Committee. She was a former employee of the Law Society of Upper Canada attached to the Bar Admission Course. She appeared with counsel, professing a fear of the applicant. She was an admissions clerk with the Society. She testified that Spicer was:

"...often rude, unreasonable and frightening...If he had come in and we couldn't help him, he would fly off the handle. It was very hard to calm him down, if you could at all."

She testified that she was personally frightened of the applicant and remained so at the time of testifying. She found that Spicer "was not to be trusted". She gave testimony with respect to the writing of the accounting examination which had to be successfully completed on computer by a certain date. She stated that she sent a letter to Spicer and also left a note for him in his Bar Admission materials box. Spicer complained to the Director of Education that he had not been informed. He was given a further opportunity to write the examination and had difficulties with the computer. He was upset and very angry. Ms. Bath feared that he was going to "reach across and grab her".

"...He is a very angry person if he doesn't get his way. He looks down on people; he's better than you; you don't know anything; you're not helping him; he wants someone who will...I treaded very softly with him; he went from mad to calm, cool and collected."

The material filed before the Committee relating to Spicer's unhappiness with the computer is revealing (Exhibit 22 (c)). The hard copy attributes the following comments to Spicer:

"I am very upset that the examination must be by computer. I detest computers. During the exam I went to the third floor office three times to find assistance. There was no one available. Someone did arrive just as my time had run down to six minutes."

On a second occasion Spicer logged into the computer:

"...yo can consider THIS NOTE TO BE THE REQUIRED LETTER OF NOTICE TO THE DIRECTOR OF THE BAR ADMISSIONS COURSE REQUESTING CONSIDERATION.

"Sorry if I am upset. Only the Director would understand the pressure that I am under at the present time. I am going home now to prepare for the debtor examination tomorrow morning.

" I spit on this computer." (sic)
(Exhibit 22 (c))

Evidence of Jim Mercer and Keith Jackson:

Exhibits 58 and 59 comprise the affidavit evidence of Jim Mercer and Keith Jackson respectively, both of whom contradict in substantial detail the allegations by Spicer that he had been unfairly treated in his accounting examination. In his sworn affidavit, Mercer states that students are generally given two opportunities to write the accounting examination and that a third may only be given with the permission of the Director of Education. He states that on January 28, 1991 Spicer attempted the accounting exam, whereafter:

"...Mr. Jackson and Ms. Berggren came to me upset because of an encounter they had had with Mr. Spicer, who had requested their help. Ms. Berggren expressed fear and anxiety over the incident. I was concerned that a student could so intimidate the staff. When Mr. Spicer completed the exam he came upstairs to our offices. He was angry and upset, to the point

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where he did not seem to be in control of himself. He requested that we set up another exam session as he had just failed. I advised him that exams are scheduled through the BAC office.

"...On January 29, 1991, Mr. Spicer again attempted the accounting exam. That day I found a message on my desk telling me that a student was having difficulties with the exam. I went to the exam room and Mr. Spicer told me I was too late to help and that he wanted to destroy the terminal. Again, Mr. Spicer seemed to be out of control and I was concerned that he would actually damage the equipment...I noticed Mr. Spicer's comment on the terminal machine 'I spit on this computer'."

Mercer then explained the technicalities relating to the writing of the accounting examination and notes that:

"...the logs for Mr. Spicer...indicate that he spent only 20 minutes of on-line preparation time prior to attempting the exam for the first time. The course instructions recommend 10 to 20 hours...Students are allowed 2 hours for the exam which includes 15 minutes of reading time. During the reading time, students are not allowed to enter answers. Mr. Spicer's log indicates that he spent 34 minutes on the exam which includes the 15 minute reading period."

Mercer comments on Spicer's letter of complaint to the Director of Education:

"...Mr. Spicer writes that, during his second attempt at the exam a message appeared on his screen stating 'computer down for servicing'. Mr. Spicer wrote that by the time he was advised he could continue, his reading period has expired and the exam time had begun...Mr. Spicer's on-line time for his second attempt was 1 hour and 51 minutes. Therefore he requested to be graded 9 minutes before his time expired. Apparently, he did not need the time he complained he lost ... Spicer wrote that he had further difficulty with the computer while attempting the exam for the second time and that there was no one, either in the exam room or in the computer support group office to help him...Part III of the course instructions state that exams may be taken only during specified exam periods. Exams are not scheduled prior to 9:00 a.m. Therefore Mr. Spicer started his exam 48 minutes early...If Mr. Spicer had waited until the proper time, he would not have been interrupted with the 'computer down for servicing' message. He would also have been more successful in finding help from the staff during normal office hours...Based on the foregoing information, it appears that Mr. Spicer avoided writing his exam until the last few days of the Bar Admission course. He disregarded the course instructions and the procedures that virtually all other students follow. In his rush to complete the requirements for the Call to the Bar, he became frustrated. He directed that frustration at the computer support group and Bar Admission staff."
(Exhibit 58)

In Jackson's affidavit there is further evidence of Spicer's demanding nature, including confirmation that:

"...Ms. Berggren was even slightly frightened by him" and that:

"...based on my two encounters with Mr. Spicer I find that he is extremely demanding and has a menacing presence".

The incidents recounted in relation to Bar Admission staff, when weighed with all the other evidence of the case, demonstrate that side of Spicer's character which many of the witnesses described as manipulative, demanding, overbearing and irresponsible. Most importantly, however, it demonstrates that he is prepared to bend the truth when faced with personal difficulty.

Procedural Fairness:

Counsel for the applicant addressed numerous pages of written argument to complaints involving procedural fairness, including a failure by Law Society counsel to adequately inform the applicant of the case he had to meet, of failing to exactly particularize complaints respecting Spicer's conduct, of failing to disclose information to the applicant on a timely basis, and numerous other failures. The Committee has thoroughly reviewed the written correspondence between counsel for the Society and counsel for the applicant and the applicant himself leading up to the hearing and during the course of the hearing, and cannot conclude that there has been any procedural unfairness.

Much of the difficulty in providing disclosure to the applicant as to the case he had to meet was the direct result of the applicant's refusal to direct disclosure of same from relevant authorities. On occasion, the applicant refused to waive solicitor/client privilege, as has been noted. The position taken by the applicant would be appropriate if the applicant were charged with a criminal (or even a discipline) offence. The Committee has concluded that the position taken by the applicant is not appropriate in the present situation where a positive onus rests upon him to demonstrate good character. To a significant degree, the litany of complaints in this regard are wholly irrelevant to the matters which the Committee must determine. The complaint concerning procedural unfairness fails.

The Meaning of Good Character:

In its decision in Pal, the Admissions Committee defined good character as follows:

"Character is that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous or socially acceptable attributes or traits which would include, among others, integrity, candour, empathy and honesty."

This Committee would delete the words "or socially acceptable" so that the definition would read:

"Character is that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which would include, among others, integrity, candour, empathy and honesty."

This Committee is persuaded by the argument of Mr. Agro that many distinguished members of our profession have not been "socially acceptable" in the commonly held understanding of that term. From time to time renegades who arguably do not possess "socially acceptable attributes" have proved to be excellent lawyers.

Having accepted this minor amendment to the definition set out in the decision in Pal, this Committee is content that nothing need be added to that definition, in that it clearly and succinctly sums up what should be construed by the words "good character" for those seeking admission to the Law Society of Upper Canada.

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Conclusion:

This Committee is not persuaded that the character of the applicant, which exhibited such serious flaws on previous occasions, has undergone any qualitative change. The consistent eruption of these significant character flaws is most unsettling to the Committee. The Committee finds that the applicant continues to possess fundamental flaws of character that render him unfit to be entrusted with the mantle of membership in the Law Society of Upper Canada. He continues to engender both fear and favour among those with whom he comes in contact. This Committee is mindful of the applicant's obvious strengths, including his intelligence and capacity for hard work. However, it is deeply concerned by his apparent lack of integrity and his manipulative and overbearing nature when dealing with those over whom he believes he has power or conceives he may gain advantage.

As was stated at the outset, the onus rests upon the applicant to satisfy the Admissions Committee that he is of good character at the present time. Michael Spicer has failed to satisfy that onus. As a result, his application for admission is denied.

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

Mr. Spicer made submissions that the Benchers who prepared the decision in re: P should withdraw from Convocation for this matter.

Ms. Peters and Mr. Strosberg withdrew to permit Convocation to consider this matter.

Counsel, the applicant, the reporter and public withdrew.

Convocation rejected the submission.

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

The Benchers had before them copies of the following: the Society's Record Book, Book of Authorities and submissions together with the applicant's submissions.

Mr. Lockwood made submissions in support of the adoption of the Report.

Mr. Spicer made submissions opposing the Report.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

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CONVOCATION RESUMED AT 1:45 P.M.

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PRESENT:

The Treasurer, Arnup, Bellamy, Brennan, Campbell, Carter, Copeland, Cullity, Curtis, Finkelstein, Graham, Hill, Lax, Mohideen, Moliner, Murray, Palmer, Peters, Richardson, Strosberg, Thom, Topp, Wardlaw and Weaver.

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DISCIPLINE COMMITTEE

Re: MARVIN LARRY ELLISON, Scarborough

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

The adjournment was granted to the Special Convocation in January.

Counsel retired.

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Re: JOHN MELVILLE HARTLEY, Toronto

Mr. Perrier advised Convocation that Mr. Hartley had contacted the Society before lunch requesting an adjournment.

Messrs. Finkelstein, Strosberg and Topp, Ms. Bellamy and Ms. Peters withdrew.

Convocation denied the request since the matter had already been considered before Mr. Hartley's communication with the Society.

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APPLICATION FOR ADMISSION RE: MICHAEL JOHN SPICER (cont'd)

Mr. Spicer continued with his submissions.

Mr. Lockwood made brief submissions in reply.

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

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

Carried

Messrs. Strosberg and Hill and Ms. Curtis agreed to prepare written Reasons.

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

Counsel retired.

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DISCIPLINE COMMITTEE

Re: SPENCER BLACK, North York

The Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Peters and Messrs. Topp, Thom and Cullity withdrew.

Ms. Christina Budweth appeared on behalf of the Society and Mr. Price appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 16th August, 1993, together with an Affidavit of Service sworn 15th September, 1993 by Ronald Hoppie that he had effected service on the solicitor by registered mail on 20th August, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 14th September, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Stephen T. Goudge, Q.C., Chair
Stuart Thom, Q.C.
Maurice C. Cullity, Q.C.

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

Gavin MacKenzie
for the Society

SPENCER BLACK
of the City
of North York
a barrister and solicitor

Alan S. Price
for the solicitor

Heard: August 18, 1992
November 30, 1992
June 7, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 23, 1992, Complaint D42/92 was issued against Spencer Black alleging that he was guilty of professional misconduct. This complaint was replaced with Complaint D42a/92 issued on August 18, 1992.

The matter was heard in public on August 18, 1992, November 30, 1992 and June 7, 1993, before this Committee composed of Stephen T. Goudge, Q.C., Chair, Stuart Thom, Q.C. and Maurice C. Cullity, Q.C. Mr. Black attended the hearing and was represented by Alan S. Price. Gavin MacKenzie appeared on behalf of the Law Society.

REASONS FOR DECISION

This matter was heard by a Committee of Messrs. Goudge, Cullity and Thom on August 18, 19 and November 30, 1992. The Solicitor appeared and was represented by his counsel, Alan Price. Gavin MacKenzie appeared as counsel for the Society.

The Society alleged three particulars of professional misconduct:

Complaint D42a/92

2. a) He failed to conscientiously and diligently serve his client, the estate of Hans Otto Romer, by failing to make inquiries as to the whereabouts of the beneficiaries of that estate during the period March, 1987 to October, 1991.
- b) During the period March 22, 1990 to September 30, 1991 he misappropriated \$126,616.20 from the estate of Hans Otto Romer of which he was the sole executor and also solicitor.
- c) In the alternative to particular (b), during the period March 22, 1990 to September 30, 1991, he borrowed \$126,616.20 from the estate of Hans Otto Romer of which he was the sole executor and also solicitor contrary to the provisions of rule 7 of the rules of professional conduct.

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D42a/92 and is prepared to proceed with a hearing of this matter on August 18 and 19, 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 D42a/92 with his counsel, Alan S. Price, and admits particular 2(a) contained therein. The Solicitor also admits based upon the facts as hereinafter set forth, that he breached rule 7 of the rules of professional conduct, which provides that lawyers must not borrow money from clients (except in circumstances which are not relevant in this case). The Solicitor does not admit particular 2(b). He acknowledges, however, based on the admitted facts, that he is guilty of professional misconduct.

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IV. FACTS

4. The Solicitor was called to the bar on March 17, 1967. He is a sole practitioner with a general practice in Downsview.

Particulars (b) and (c)

5. The Solicitor began acting for Hans Otto Romer in or about 1979. He prepared Mr. Romer's will, which was signed on June 4, 1981.

6. Mr. Romer died on March 25, 1987 at the age of 82. At the time of his death Mr. Romer was living at the Lincoln Place Nursing Home in Toronto. During the period of his stay there he had suffered several massive strokes as a result of which the Solicitor managed his assets for him. The Solicitor had a power of attorney over Mr. Romer's estate. The Solicitor met with Mr. Romer regularly during the period of Mr. Romer's residence in the home.

7. Mr. Romer's will named the Solicitor as sole executor and trustee of the estate. Letters of probate in respect of the estate were granted to the Solicitor on December 2, 1987. A copy of the letters of probate and will are attached, collectively, as Exhibit 1 to this agreed statement of facts.

8. The will provided that the residue of the estate was to be paid to Mr. Romer's brothers in equal shares per stirpes. The assets of the estate, at the date of death, were as follows:

Savings account #6548164 at CIBC in the name	
Spencer Black in trust for Romer	\$ 46,586.09
Romer trust ledger account balance	2,382.74
Romer mortgage to Ward - approximately	71,900.00
Romer mortgage to Teti - approximately	4,500.00
	<u>\$ 125,368.83</u>

9. The Teti mortgage was paid off in May, 1987. The Ward mortgage was paid off in September, 1987. The funds were deposited into the Solicitor's mixed trust bank account and credited to the Romer trust ledger account.

10. In February, 1988, the Solicitor transferred \$74,000 from the Romer trust ledger account (Ward/Teti funds) into a term deposit at the Canadian Imperial Bank of Commerce in the name of Spencer Black in trust for the estate of Hans Romer. The term deposit was rolled over into a new term deposit each time it matured until August, 1990, when it was transferred back into the Romer trust ledger account.

11. On March 9, 1990, the Solicitor prepared a promissory note wherein he promised to pay himself in his capacity as executor of Mr. Romer's estate, on demand, the sum of \$59,209.03 with interest at the rate of nine per cent a year. A copy of the promissory note is attached as Exhibit 2 to this agreed statement of facts.

12. On the same day, March 9, 1990, the Solicitor drew a cheque on his mixed trust account, payable to himself, in the amount of \$3,000. This cheque created a trust shortage which was eliminated on March 22, 1990.

13. On March 22, 1990, the Solicitor closed savings account #6548164 at the CIBC and deposited the balance of \$59,209.03 into his mixed trust account. That deposit was credited to a trust ledger in the name of Eleanor Black, the Solicitor's wife.

14. The Solicitor disbursed these funds in the following manner:

<u>Date</u>	<u>Payee</u>	<u>Amount</u>
March 9, 1990	Spencer Black (see paragraph 12)	\$ 3,000.00
March 26/90	Spencer Black	54,000.00
April 30/90	Receiver General of Canada	2,000.00
Sept. 24/90	Mario Vigna (Part of cheque for \$3,900; payment for services rendered by law clerk)	<u>209.03</u> <u>\$59,203.03</u>

15. On November 28, 1990, the Solicitor transferred the balance of \$85,730.09 (Teti/Ward mortgage funds) held in the trust account ledger in the name of Hans Romer to Cabot Trust. The funds were used to purchase a short term GIC in the name of Spencer Black in trust for Hans Romer in the amount of \$60,000. The balance, \$25,730.09, was used to open a savings account.

16. During the period November 28, 1990, to September 20, 1991, the Solicitor transferred all of these funds, plus accumulated interest, to the trust ledger account in the name of Eleanor Black. During approximately the same period, the Solicitor disbursed a total of \$67,407.17 of these funds to his wife and himself. Funds were received and disbursed as follows:

<u>Date</u>	<u>Source/Payee</u>	<u>Receipts</u>	<u>Payments</u>
Nov. 28/90	Cabot Trust savings account T. Cirillo	\$15,000.00	\$11,250.00
Feb. 28/91	Eleanor Black		3,750.00
Apr. 29/91	Cabot Trust savings account Spencer Black	5,000.00	5,000.00
Aug. 16/91	Cabot Trust savings account Spencer Black	6,248.53	3,000.00
Sept. 20/91	Cabot Trust GIC Spencer Black	64,158.64	27,407.17
Sept. 26/91	Eleanor Black		2,000.00
Sept. 27/91	Spencer Black		5,000.00
Sept. 30/91	Spencer Black		<u>10,000.00</u>
		<u>\$90,407.17</u>	<u>\$67,407.17</u>

The balance in the trust account in the name of Eleanor Black after September 30, 1991 remained at \$23,000.

17. Present in the Solicitor's file at the time of the Law Society's investigation of this matter was a promissory note dated November 28, 1990 evidencing the \$15,000 transfer. A copy of the November 28, 1990 promissory note is attached as Exhibit 3 to this agreed statement of facts. Additionally, the Law Society investigator discovered promissory notes dated April 29, 1991, August 16, 1991 and September 20, 1991 evidencing the further transfers. Copies of these promissory notes are attached as Exhibits 4, 5 and 6, respectively, to this agreed statement of facts.

18. The Solicitor used the funds from the Romer Estate for his personal benefit. The Solicitor informed the Society that the income from his law practice had dropped substantially, from a gross income of income of \$50,000 a month to \$10,000 a month, during the period 1990 to 1991, as a result of a downturn in the real estate market, and that he needed these funds to meet his financial obligations.

19. The Solicitor failed to disclose the savings account and term deposit on his monthly trust comparisons.

20. In a letter dated August 27, 1991, a Law Society examiner referred to a previous attendance at the Solicitor's office and confirmed a meeting scheduled for 9:00 a.m. on October 28, 1991. Sometime in the early October, 1991, the Solicitor contacted Joseph Banner of Centrepont Financial Services Inc. regarding Mr. Banner's facilitating a loan to the Solicitor which would be secured by a mortgage on his home. An application for the loan was executed by the Solicitor on October 15, 1991. The Solicitor eliminated the trust shortage from the Romer estate by depositing \$138,221.55 into his trust account on December 4, 1991. The amount in excess of \$126,616.20 represents interest. In order to eliminate the shortage, the Solicitor and his wife borrowed \$150,000 at an interest rate of 11.25% for one year secured by a second mortgage on their home, which was registered in the name of the Solicitor's wife. The mortgage was registered on November 26, 1991.

Particular (a) - Failure to Conscientiously and Diligently Serve His Client

21. During the Law Society's investigation of the Solicitor's handling of the Romer estate, the Solicitor informed the Society that one of the reasons that he had been unable to distribute the corpus was because he did not know the whereabouts of Mr. Romer's brothers.

22. The will prepared by the Solicitor for Mr. Romer did not contain the names or addresses of Mr. Romer's brothers, the beneficiaries under the will.

23. The Solicitor made no efforts during the interval between Mr. Romer's death to the date of the attendance of the Law Society at his office to locate any of Mr. Romer's beneficiaries.

24. There were a number of inadequacies revealed in the Solicitor's file respecting his carriage of the estate which were as follows:

1. No application for death benefits had been made to the government of Canada;
2. No tax returns have been filed for Mr. Romer since 1985;
3. No tax returns have been filed for the estate; and
4. No accounting had been prepared for the estate.

25. During the Law Society's investigation of this matter, the Law Society examiner discovered the names and addresses of Mr. Romer's brothers on a note in the closed real estate file relating to the sale of Mr. Romer's home in 1979. A copy of the note is attached as Exhibit 7 to this agreed statement of facts.

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

The Solicitor gave evidence before the Committee and was cross-examined by Mr. MacKenzie. Max Moessner, a friend of the deceased, and William Edward, an employee in the Audit Department of the Law Society, also gave evidence.

The Solicitor is 52 years of age and, since his call to the Bar in 1967, he has practised continuously in the Municipality of Metropolitan Toronto, predominantly in the area of residential real estate transactions. Between the years 1970 and 1979, he taught part-time courses and gave special lectures at a high school and at Seneca College and Ryerson College. His lectures at Ryerson were in the business section of the curriculum and were directed at financing business ventures. In 1991, Mr. Black was a seminar leader in the real estate section of the Bar Admission Course.

From about the end of May 1989, the cash flow from the Solicitor's practice deteriorated drastically. He stated that "it went from a booming practice to nothing". He had drawn on his line of credit with a bank in the amount of \$50,000 and was overdrawn by an additional \$35,000. Although he had prepared wills and advised executors with respect to estate matters, he testified that he did not believe he had been an executor before. He also testified that questions of conflicts of interest were a common concern in his real estate practice.

With respect to his appropriation of estate funds for his own purposes, the Solicitor maintained that he had believed that he was legally entitled to borrow from the estate until he reviewed the rules of professional conduct in preparation for his teaching in The Bar Admission Course. He testified that his decision to repay the funds was due to his discovery that he must have breached the rule against borrowing. He stated that his decision had nothing to do with the impending visit of the employee from the audit department of the Law Society.

There was a conflict between the testimony of the Solicitor and that of Max Moessner on a number of matters. The latter gave evidence that he had met the Solicitor when he attended at the Solicitor's office with the deceased on one occasion and that, after a discussion with the Solicitor at the funeral of the deceased, he had written to the Solicitor giving him the addresses of the deceased's relatives. Mr. Moessner stated that the Solicitor knew who Moessner was at the funeral and that he, Moessner, had introduced his wife to the Solicitor. He also stated that the Solicitor had indicated that he had looked at the will of the deceased and that he (Moessner) was not a beneficiary. The Solicitor testified that he had no recollection of having met Mr. Moessner on any occasion or of receiving any letter from him containing the addresses of the deceased's brothers. The Solicitor said that he did recall speaking to someone at the funeral whom he had, incorrectly, assumed was a brother of the deceased. No written communication from Mr. Moessner was found in the deceased's files.

A note in the Solicitor's handwriting referring to the Solicitor's meeting with a brother of the deceased at the funeral and containing an inaccurate description of the address of one of the deceased's brothers was found by Mr. Edward in the Solicitor's files. The Solicitor told Mr. Edward that the note was inaccurate and, according to Mr. Edward, that when the Solicitor had written to the address, his letter had been returned. Mr. Edward was not able to find either the original or a file copy of any such letter. In his evidence before the Committee, the Solicitor stated that he had thought he had written to the address but, as there was no copy on the file, he probably had not done so.

The Solicitor further testified that, after the meeting with the Law Society had been arranged, he searched for his file with respect to the sale of the deceased's house in 1979 and found it in a case in the basement of his office building which also contained a document that was partly in his handwriting and which contained the addresses of at least one of the deceased's brothers in Switzerland. The Solicitor testified that he had no idea how the file had found its way into the basement.

At the conclusion of the evidence, the Committee adjourned to permit counsel to prepare submissions with respect to the mental element required to substantiate a complaint of misappropriation. The Committee reconvened on November 30, 1992 for the purpose of hearing the submissions of counsel on this question.

At the conclusion of counsel's submissions, the Committee made findings of professional misconduct under particulars 2(a) and 2(b). No finding was made on particular 2(c).

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The finding under particular 2(a) was made on the basis of the Solicitor's admission in paragraph 3 thereof, an admission that, in the view of the Committee, was amply supported by the facts as agreed and the evidence presented at the hearing.

The principal issue that the parties raised before the Committee with respect to particulars 2(b) and 2(c) was whether the agreed facts and the other evidence before the Committee, sustain a finding of misappropriation (namely, particular 2(c)). The Solicitor admitted the latter, but contested the former.

In determining that the Solicitor's conduct constituted misappropriation and not merely a breach of rule 7, the Committee was of the view that the Solicitor's assertion of an intention to repay when he took the funds for his own use was not, by itself, exculpatory. Misappropriations commonly begin with a professed intention to repay.

The Solicitor contested a finding of misappropriation on the basis of his testimony that at the time of taking he did not believe his conduct should be characterized as that of a Solicitor taking client's funds. He testified that he thought that he was merely an executor borrowing from the estate and that this was permissible. On this basis, his counsel argued that the Solicitor lacked the necessary intention or mental element for a finding of misappropriation. Counsel urged that, if the Solicitor honestly believed that he was entitled to borrow the estate funds for his own purposes, this would negative a finding of misappropriation. Counsel submitted further that it was not sufficient for the Committee to conclude that the Solicitor ought to have known - or ought reasonably to have known - that his appropriation of the funds was improper.

The Society conceded that a finding of misappropriation required a finding that the Solicitor knew the taking was improper or was at least wilfully blind to its impropriety.

After reviewing the evidence, the Committee finds that the Solicitor knew or at least was wilfully blind to the fact that he was a solicitor improperly appropriating his client's funds for his own purposes. We rely particularly on the following basic facts:

- (a) The funds taken clearly belonged to the estate. They were held by him in his separate capacity as executor.
- (b) The Solicitor was solicitor to the estate. As solicitor he was acting for himself in his separate capacity as executor.
- (c) The funds taken were being held in the Solicitor's mixed trust account.
- (d) The promissory notes prepared at the time of taking provide for repayment by the Solicitor to the Solicitor as executor.

The Solicitor understood that he had complete control of the estate's funds. To quote his evidence:

"I thought I was borrowing from myself, really, and I thought I had the legal right to borrow from myself."

The Solicitor clearly acknowledged in evidence that borrowing from a client's funds held in trust would be wrong. Given this acknowledgement, the Committee is satisfied that the Solicitor either knew or was wilfully blind to the underlying reality of this circumstance: he was improperly taking a client's funds for his own purposes without the permission of anyone but himself.

In the Committee's view, where a solicitor to an estate who is also the executor, unilaterally takes for his own purposes estate funds, whether or not they are in his solicitor's trust account and whether or not he intends to return them, he is almost inevitably engaged in misappropriation. His complete control over the estate takes the situation beyond the scope of rule 7 and into the more serious realm of misappropriation of client's funds. The Committee finds it difficult to believe that any solicitor - and particularly one as experienced as Mr. Black - could think such conduct was permissible and it does not accept Mr. Black's testimony to that effect.

As the Committee has concluded that the facts require a finding of misappropriation whether or not the Solicitor intended to return the funds to the estate, it is not strictly necessary for the Committee to decide whether the Solicitor's testimony that he always had an intention of repaying the money should be accepted.

On those matters in which the Solicitor's evidence conflicted with that of Max Moessner, the Committee accepts Mr. Moessner's evidence and does not believe that the Solicitor was a credible witness. Having accepted Mr. Moessner's testimony that the Solicitor recognized him at the funeral and told him that he was not a beneficiary under the will, the note in the Solicitor's handwriting that referred to a meeting with a brother of the deceased at the funeral was, on the most favourable construction for the Solicitor, fabricated by him in an attempt to justify his failure to contact the beneficiaries during a period of more than three years.

Given its findings on the issue of credibility, the Committee is not satisfied that the Solicitor intended to repay the funds to the estate. On balance, the weight of evidence points to a conclusion that the Solicitor had no intention of contacting the beneficiaries and that he would have treated the funds of the estate as his own if he did not hear from the beneficiaries and if he had not been compelled to do otherwise by the pending meeting with the Law Society's auditor. However, as indicated above, the Committee's finding of misappropriation is quite independent of this conclusion.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Spencer Black be disbarred.

REASONS FOR RECOMMENDATION

The Committee reconvened on Monday, June 7, 1993 to hear submissions as to penalty in light of its earlier reasons for decision. The Solicitor appeared and was represented by his counsel, Alan Price. Christina Budweth appeared as counsel for the Society.

The Committee's reasons are as follows:

The Committee has found that the Solicitor misappropriated \$126,616.20 from the estate of Hans Otto Romer of which he was the sole executor and also solicitor. It is clear that the general "rule" in the relevant jurisprudence is that solicitors who deliberately misappropriate funds should be disbarred save in exceptional circumstances.

Here two exceptional or extenuating circumstances were put forward on behalf of Mr. Black.

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Firstly, the manner in which the matter came to the attention of the Society was advanced. It was asserted that when the Solicitor brought it to the attention of the Society's representative attending in the Solicitor's office on October, 1991, that visit, for an entirely unrelated matter, was not in any way the cause of the disclosure, but that the disclosure was entirely voluntary.

In the Committee's view, in the circumstances of this case, the manner of disclosure does not constitute a significant extenuating factor. As we have found in our earlier decision. We have concluded that when the Solicitor originally took the funds from the estate he intended to treat the funds as his own until he heard from the beneficiaries or otherwise felt required to replace the funds because of an impending meeting with a Law Society representative. In light of this finding, we cannot treat the disclosure by the Solicitor as entirely innocent and voluntary.

The second circumstance put to us was that prior to reporting the Solicitor had taken steps to commence repayment of the funds. Again, we cannot conclude that this constitutes extenuation. The Solicitor took no such steps until after the appointment with the Society's representative had been arranged and confirmed. Once again, the steps taken to begin repayment do not seem to us to be entirely innocent or voluntary but taken in light of an impending visit by the Society.

In summary, we conclude that neither of the alleged extenuating circumstances in this case provide any excuse for the misappropriation.

Before concluding the matter, it is important to return to that finding. In the course of concluding that misappropriation occurred here we found that the Solicitor was, at the least, wilfully blind to the fact that he was a Solicitor improperly appropriating his client's funds for his own purposes. Our recommendation as to penalty is premised on this finding, not on a specific finding that the Solicitor knew he was improperly appropriating his client's funds for his own purposes.

It is our conclusion that a Solicitor who is wilfully blind to (or in other words, so clearly should have known that he must have deliberately ignored) the underlying reality of the circumstances here, is sufficiently morally culpable to require disbarment. A solicitor in the position of Mr. Black who takes funds that reside in his mixed trust account clearly belonging to an estate of which he is the Solicitor cannot escape the ultimate sanction by deliberately ignoring that circumstance and focusing on his being executor of the estate as well and asserting that he thought he was simply borrowing from himself. It must be made clear that such conduct is misappropriation and will, absent extenuating circumstances, attract the most severe sanction that can be imposed.

Spencer Black was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 17th day of March, 1967.

ALL OF WHICH is respectfully submitted

DATED this 16th day of August, 1993

Stephen T. Goudge,
Chair

It was moved by Mr. Finkelstein, seconded by Mr. Wardlaw that the Report be adopted.

25th November, 1993

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

It was moved by Ms. Weaver, seconded by Ms. Graham that the Recommendation as to Penalty, that is that the solicitor be disbarred, be adopted.

The Benchers had before them copies of the following: the Society's Book of Authorities and Factum, the Solicitor's Book of Authorities, Record Book and Factum, a letter from Dr. S.W. Wishinsky dated November 19, 1993 to the Law Society and a copy of Lavallee v. R. distributed on behalf of the Society.

Counsel for the Society made submissions in support of the recommended penalty.

Counsel for the solicitor sought a lesser penalty of permission to resign.

There were questions from the Bench.

A reply was made by Ms. Budweth.

Counsel, the solicitor, the reporter and public withdrew.

The motion to disbar the solicitor was voted on and adopted.

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

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

Counsel retired.

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Convocation addressed the outstanding discipline matters of Ross Hainsworth and Ernest Dyck. Both counsel and solicitors agreed that their matters be adjourned to Convocation on November 26th, 1993.

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CONVOCATION ROSE AT 4:55 P.M.

Confirmed in Convocation this day of , 1993.

Treasurer