

28th November, 1996

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 28th November, 1996  
9:00 a.m.

PRESENT:

The Treasurer (Susan E. Elliott), Adams, Carey, Chahbar, Cole, Copeland, Crowe, Curtis, DelZotto, Eberts, Gottlieb, Goudge, MacKenzie, O'Connor, Puccini, Sealy, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Mr. Michael Brown, Senior Counsel - Discipline introduced Ms. Michelle Fuerst who acted as Duty Counsel.

ADJOURNMENTS

The following discipline matters were adjourned at the November 22nd, 1996 Assignment Tribunal to January 1997:

Peter David Clark  
Martin King Ian Rumack  
David Roy Snider

Re: David Eric HOWLETT - Niagara Falls

The Secretary placed the matter before Convocation.

Messrs. MacKenzie and Adams, Ms. Curtis and Ms. O'Connor did not participate.

Ms. Lesley Cameron appeared for the Law Society and Ms. Fuerst, Duty Counsel appeared on behalf of the solicitor. The solicitor was not present.

Ms. Cameron advised that the solicitor requested an adjournment for medical reasons to the next Discipline Convocation in January.

Convocation was advised that the solicitor was not practising.

It was moved by Mr. Cole, seconded by Mr. DelZotto that the request for an adjournment be granted to the next Discipline Convocation in January 1997.

Carried

28th November, 1996

Re: Moeen Mahmood Ahmad JANJUA - Mississauga

The Secretary placed the matter before Convocation.

Mr. Wright withdrew for this matter.

Mr. Glenn Stuart appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Mr. Stuart advised that the solicitor was out of the country and planned to return in January 1997. The solicitor requested an adjournment to the January Discipline Convocation.

Counsel, the reporter and the public withdrew.

The request for an adjournment to the January Discipline Convocation peremptory to the solicitor was voted on and adopted.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision to grant the adjournment to January 1997 peremptory to the solicitor.

Re: Moshe Ted RONEN and Lawrence ZIMMERMAN - Toronto

The Secretary placed the matter before Convocation.

Ms. Curtis and Mr. MacKenzie withdrew for this matter.

Mr. Neil Perrier and co-counsel Ms. Alexis Singer appeared for the Society. Mr. Douglas Crane appeared on behalf of Mr. Ronen and Mr. Edward Morgan appeared on behalf of Mr. Zimmerman. The solicitors were present.

The Report of the Discipline Committee dated November 15th, 1996 together with the Affidavit of Service addressed to Moshe Ted Ronen sworn 26th November, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th November, 1996 (marked Exhibit 1), the Acknowledgement, Declaration and Consent signed by Mr. Ronen on 21st November, 1996 (marked Exhibit 2), the Report of the Discipline Committee dated November 15th, 1996 together with the Affidavit of Service addressed to Lawrence Zimmerman sworn 26th November, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th November, 1996 (marked Exhibit 3) and the Acknowledgement, Declaration and Consent signed by Mr. Zimmerman on 28th November, 1996 (marked Exhibit 4). 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

Eleanore Cronk

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

Neil J. Perrier and Alexis Singer  
for the Society

28th November, 1996

MOSHE TED RONEN & LAWRENCE ZIMMERMAN  
of the City  
of Toronto  
a barrister and solicitor

J. Douglas Crane, Q.C. & Edward Morgan

Heard: October 28, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

#### REPORT

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On February 2, 1996 Complaint D37/96 was issued against Lawrence Zimmerman alleging that he was guilty of professional misconduct. This was withdrawn on consent and replaced by Complaint D37a/96 sworn on October 28, 1996.

On February 2, 1996 Complaint D38/96 was issued against Moshe Ted Ronen alleging that he was guilty of professional misconduct. This was withdrawn on consent and replaced by Complaint D38b/96 sworn on October 28, 1996.

These matters were heard together in public on October 28, 1996 before Eleanore Cronk sitting as a single Benchers. The Solicitors attended the hearing and were represented by J. Douglas Crane, Q.C. and Edward Morgan. Neil Perrier and Alexis Singer appeared on behalf of the Law Society. Exhibit 3 filed at the hearing, was a written consent of all parties by which they consented to these Complaints being heard jointly by Eleanore Cronk, sitting as a single Benchers.

#### DECISION

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The following particulars of professional misconduct were not disputed by the Solicitors and were found to have been established:

##### Complaint D37a/96: Concerning Lawrence Zimmerman

2. 1) he provided information to his partner, Moshe Ted Ronen for the preparation and submission of accounts/certificates on his behalf to the Ontario Legal Aid Plan and failed to review the said accounts/certificates which included;
  - i) providing duty counsel services to patients who were not assigned by OLAP and thereafter failing to properly complete the 7uaccounts/certificates so that their accuracy could be verified and the patients/clients could be identified;
  - ii) over billed for travel disbursements;
  - iii) duplicate claims; and
  - iv) a claim for an appeal hearing not held.

##### Complaint D38b/96: Concerning Moshe Ted Ronen:

2. a) he prepared and submitted improper billings to the Ontario Legal Aid Plan ("OLAP") in the following manner:

- i) providing duty counsel services to patients who were not assigned by OLAP and thereafter failing to properly complete the accounts/certificates so that their accuracy could be verified and the patients/clients could be identified;
- ii) he rendered numerous duplicate or inaccurate accounts; and,
- iii) he signed his partner's name to OLAP accounts/certificates on numerous occasions with his partner's consent.

### Evidence

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

#### "AGREED STATEMENT OF FACTS"

##### I. JURISDICTION AND SERVICE

1. The Solicitor, Lawrence Zimmerman ("Mr. Zimmerman"), admits service of Complaint D37a/96 and is prepared to proceed with a hearing of this matter on October 28, 1996.

2. The Solicitor, Moshe Ted Ronen ("Mr. Ronen"), admits service of Complaint D38b/96 and is prepared to proceed with a hearing of this matter on October 28, 1996.

##### II. IN PUBLIC/IN CAMERA

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

##### III. ADMISSIONS

4. Mr. Zimmerman has reviewed Complaint D37a/96 and this Agreed Statement of Facts and admits that the said particulars together with the facts set out in this statement constitute professional misconduct.

5. Mr. Ronen has reviewed Complaint D38b/96 and this Agreed Statement of Facts and admits that the said particulars together with the facts set out in this statement constitute professional misconduct.

##### IV. FACTS

6. Mr. Ronen was called to the Bar on April 10, 1986 and at all times relevant to this matter, practised in partnership with Lawrence Zimmerman in Toronto.

7. Mr. Zimmerman was called to the Bar on April 10, 1986 and at all times relevant to this matter, practised in partnership with Moshe Ted Ronen in Toronto.

8. From 1986 to 1990, both Solicitors carried on the practice of law on a part time basis and also worked in their respective family businesses.

9. By letter dated February 6, 1990 (Document Book, Tab 1), Mr. Ronen applied to the Ontario Legal Aid Plan ("OLAP") to participate on the mental health panel. Mr. Ronen also supplied his Legal Aid Solicitor Number. By letter dated November 19, 1990 (Document Book, Tab 2) his partner, Lawrence Zimmerman, also applied to participate on the panel. Both Solicitors stated that they were familiar with the Mental Health Act.

28th November, 1996

10. It is agreed that much of the misconduct which is hereinafter described results from the following factors:

- a) the Solicitors' failure to maintain office staff and facilities adequate to their practice;
- b) the Solicitors' failure to keep notes or other appropriate records to enable them to accurately render accounts to OLAP;
- c) Mr. Ronen signing Mr. Zimmerman's name to accounts/certificates with Mr. Zimmerman's consent but, without Mr. Zimmerman reviewing the said accounts/certificates; and,
- d) the Solicitors' failure to properly render accounts.

11. In 1990, OLAP offered substantive training programs periodically to qualify lawyers for the mental health panel one of which was voluntarily attended by Mr. Ronen. Carla McKague, then of the Advocacy Resource Center for Handicapped ("ARCH"), who ran the training programs and assumed a newly created position as OLAP's Mental Health Mentor, was available to assist lawyers in dealing with patients. The Mentor program was designed to provide Solicitors with substantive advice in dealing with patients and hospitals. Ms. McKague is not employed by OLAP nor did she have any authority by OLAP to assign, or make representations regarding the assignment of, solicitors on the mental health panel to patients.

12. Members of the mental health panel functioned in two capacities: first, as per diem mental health "Duty Counsel" to advise patients who have been involuntarily admitted of their rights and second, as counsel retained on a certificate to represent those patients requesting hearings under the Mental Health Act. One of Duty Counsel's functions was to assist patients wishing to assert their rights under the Mental Health Act to choose another lawyer from the mental health panel, thereby ensuring that the patient did not have the same lawyer representing him or her at a hearing as had advised him or her as Duty Counsel; exceptions were made to this policy in rare cases and only with expressed permission from OLAP.

13. It is acknowledged that during the period in question, OLAP provided little in the way of formal training as to the appropriate way in which to render legal aid accounts for mental health duty counsel. Neither Solicitor contacted OLAP to enquire whether they could see and charge for consultations with patients who had not been certified as incompetent or involuntary. It is the Solicitor's position that the other patients to whom they provided consultation and billed OLAP (i.e. patients who were not certified as being incompetent or involuntary, but who had informed the Solicitors that their physicians had told them that they could not leave the hospital or they would be so certified) needed and required legal advice. Carla McKague and Michael Bay, Chair of the Toronto West Psychiatric Review Board agree that such patients, although lacking prior authorization by OLAP, were in need of legal advice. Neither Carla McKague or Michael Bay have any knowledge, information or opinion on whether it would be appropriate for the Solicitors to bill OLAP for that service as this is not an area in which they had any dealings.

14. OLAP's mental health "Duty Counsel" plan operated as follows. When a patient in a psychiatric facility was certified as being admitted involuntarily, pursuant to section 38 of the Mental Health Act the attending physician would cause OLAP to be notified (Document Book, Tab 3). A representative of OLAP would then contact a mental health panel Duty Counsel and authorize the member to attend at the hospital within 24 hours if possible (but certainly within 48 hours) to interview the patient, advise the patient of his or her rights, and advise OLAP as to whether the patient wished to exercise his or her rights to a hearing represented by counsel under the Mental Health Act. Duty Counsel were also permitted to provide the names of three counsel, other than themselves, to act for the patients at the hearings.

15. Lawyers were generally called as duty counsel on a "rotation" basis. A designated OLAP representative verbally provided duty counsel with the assigned patient number and hospital over the telephone. It was left to the discretion of the administrative secretary to the program as to how to operate the duty counsel rotation and how frequently to call each member of the mental health panel for duty counsel work.

16. When the OLAP official responsible for assigning mental health duty work went on vacation in December 1991, Ronen and Zimmerman were the only two of the approximately 35 solicitors then on the duty counsel panel whose names were left with the replacement worker.

17. The administrative secretary of OLAP would review individual accounts to ensure that there were no obvious mathematical errors on the face of the individual accounts submitted.

18. Lawrence Zimmerman permitted Mr. Ronen to prepare and sign his name to accounts/certificates for OLAP mental health panel work, whether functioning as Duty Counsel or as counsel representing patients on certificate (see for example Document Book, Tab 22). Mr. Ronen prepared the accounts/certificates based on notes and information provided by Mr. Zimmerman. Mr. Zimmerman did not review the accounts/certificates prior to their submissions to OLAP.

19. During the period of September through December, 1991, Mr. Ronen submitted accounts for billable hours which equalled or exceeded 12 hours per day on 35 days (Document Book, Tab 24). Several of these days included accounts which contained billable hours in excess of 18 hours per day. These accounts include not only time spent with clients, but also travel time, which was allowable on the accounts.

20. During the same time period of September through December, 1991, Mr. Zimmerman submitted accounts to OLAP for billable hours which equalled or exceeded 12 hours per day on 27 days (Document Book, Tab 25). These accounts include not only time spent with clients, but also travel time, which was allowable on the accounts.

21. OLAP records indicate that Mr. Ronen was assigned to interview 149 patients as duty counsel for the mental health panel between April 1 and December 31, 1991. Mr. Ronen made 76 claims for interviewing a total of 513 patients. At Document Book, Tab 22 is a summary of comparisons of the number of patients assigned by OLAP to Mr. Ronen, and the number of claims by Mr. Ronen to OLAP from April 1991 to December 1991. The Solicitors state that part of the reason for this is that the Solicitors often had to do repeat calls to assigned patients due to the patient being heavily medicated or delirious at the time of the initial visit. Additionally they also provided consultation to unassigned patients who approached them during visits. It is agreed that the Solicitors did do repeat visits, however, the Solicitors did not provide the patients numbers on the certificates as required. Accordingly, the Solicitors are unable to verify their own accounts.

22. The Law Society takes the position that the Solicitors were paid approximately \$16,000 each for patient consultations without prior authorization. Although the Solicitors in no way acknowledge or agree that they are obliged to reimburse OLAP for the amounts charged for consultations of patients without prior authorization, they have agreed to each repay the sum of \$16,000 each to OLAP in an effort to resolve this matter as expeditiously as possible, thereby minimizing the expense of a fully contested hearing. The Solicitors state that they did not realize that they could not render accounts for patients without prior authorization.

23. Throughout the relevant period, Ronen and Zimmerman carried on a practice without a secretary. Their OLAP accounts were handwritten by Mr. Ronen and inadequate records were kept of meetings with patients and attendances before the Psychiatric Review Board. The failure to keep complete records led to numerous billing errors on the part of the Solicitors.

24. The Solicitors frequently made notes of visit with patients without accurate date references, so that the accounts for visits to certain patients were attributed to the wrong date or the wrong Solicitor. Also, the time spent with patients was not recorded with precision by the Solicitors, so that they frequently rendered accounts by rounding the time spent with each patient either down or up to the nearest hour or half-hour. At Document Book, Tab 20 is a calender drafted by Larry Kowan, an investigator with OLAP, setting out daily hours billed by each Solicitor during the material time period.

Complaint D38b/96 - Moshe Ronen

25. Mr. Ronen made a claim for representation of J.F. which included attending a review matter and withdrawing his services on November 19, 1991. A copy of this account is at Document Book, Tab 9.

26. An appeal hearing was scheduled for J.F. for 10:00 a.m. on November 19, 1991 at *Mount Sinai Hospital*.

27. Carolyn Jones, the Chair of the Penetanguishene Psychiatric Review Board, was designated to chair the appeal hearing. She arrived at the hearing at approximately 9:30 a.m. on November 19, 1991 at which time J.F. advised her that he did not wish to have a hearing and that he had dismissed his counsel the previous evening.

28. Carolyn Jones received information from hospital staff that the Solicitor, who was Mr. F.'s counsel, had met with the patient on the evening of November 18, 1991.

29. Carolyn Jones telephoned Mr. Ronen at his office between 10:00 a.m. and 10:30 a.m., at which time he spoke to her and confirmed that he had met with J.F. the previous evening. He indicated Mr. F. had dismissed the Solicitor as counsel and advised that he no longer wished to have a hearing. The Solicitor advised Carolyn Jones that he had spoken with Mr. F. by telephone on the morning of November 19, 1991 to confirm the client's instructions that the hearing was to be cancelled. A copy of Carolyn Jones' reporting letter to Michael Bay, Chair of the Toronto West Psychiatric Review Board (under which jurisdiction *Mount Sinai Hospital* falls) confirming her involvement with the case is attached hereto as Document Book Tab 10.

30. Mr. Ronen's OLAP account does indicate "withdrawn" on the line which referred to a hearing. No hearing in fact took place.

31. Duty counsel are permitted to claim for distances travelled to and from hospitals in respect of representing a patient.

32. A comparison between the most direct route between two points claimed to have been travelled, with allocation for a margin of error should the most direct route not be taken, indicates that there were numerous occasions where there was a discrepancy between the distance claimed to have been travelled and the most direct route. As a result, Mr. Ronen overbilled OLAP for travel disbursements in the sum of \$316.68.

33. On November 29, 1991, Mr. Ronen claimed that he functioned as mental health duty counsel between 11:00 a.m. and 5:30 p.m. at *Humber Hospital*, the *Clarke Institute* and *St. Joseph's Hospital* on November 29, 1991. By account dated December 1, 1991, he also claimed that he functioned as mental health duty counsel at the *Scarborough Grace Hospital* and *Mount Sinai Hospital* between 12:00 p.m. and 5:00 p.m. on the same date. Claims 11202023 and 11204060 are at Document Book - Volume II, Tab C, pages 212 & 213, respectively.

34. By account dated September 6, 1991, Mr. Ronen claimed that he functioned as mental health duty counsel at *Scarborough General Hospital* between 9:30 a.m. and 11:00 a.m. on September 6, 1991. By account dated September 12, 1991, he also claimed that he functioned as mental health duty counsel at *St. Michael's Hospital* between 9:30 a.m. and 12:00 p.m. on the same date. Claims 10909049 and 10916035 are at Document Book - Volume II, Tab C, pages 169 & 173.

35. By account dated April 15, 1991, Mr. Ronen claimed that he functioned as mental health duty counsel at the *Toronto East General Hospital* from 9:30 a.m. to 11:00 a.m. on April 15, 1991. By account dated April 16, 1991, he also claimed that he functioned as mental health duty counsel at the *Toronto General Hospital* between 9:30 a.m. and 11:00 a.m. on the same date. Claims 10419041 and 10419044 are at Document Book - Volume II, Tab C, pages 147 & 148.

36. By account dated August 23, 1991, Mr. Ronen claimed that he functioned as mental health duty counsel at the *Toronto General Hospital* between 9:00 a.m. and 10:00 a.m. and at *St. Michael's Hospital* between 10:30 a.m. and 12:00 p.m. on August 23, 1991. Also by account dated August 23, 1991, he also claimed that he functioned as mental health duty counsel at *St. Michael's Hospital* between 9:00 a.m. and 10:30 a.m. and at *York Finch Hospital* between 11:30 a.m. and 1:00 p.m. on the same date. Claims 10909111 and 10828007 are at Document Book - Volume II, Tab C, pages 170 & 166, respectively.

37. By account dated July 15, 1991, Mr. Ronen claimed that he functioned as mental health duty counsel at *Northwestern Hospital* between 9:00 a.m. and 11:30 a.m. and at *Humber Hospital* between 12:00 p.m. and 1:30 p.m. on July 15, 1991. By account dated July 16, 1991, he also claimed that he functioned as mental health duty counsel at the *Western Hospital* between 9:30 a.m. and 10:30 a.m. and at the *Clarke Institute* between 11:00 a.m. and 12:00 p.m. on the same date. Claims 10717046 and 10809088 are at Document Book - Volume II, Tab C, pages 159 & 160, respectively.

38. It is agreed that the erroneous claims are the result of the Solicitors improper billing practices, inadequate facilities, office staff and records, and not the result of any deceit or specific intent to defraud OLAP.

Complaint D37a/96  
Lawrence Zimmerman

39. As stated above, Mr. Zimmerman allowed his partner, Mr. Ronen, to sign his name on accounts to the Ontario Legal Aid Plan for duty counsel and certificate work performed for him. He provided notes and information to his partner for claims made on his behalf.

40. OLAP records indicate that Mr. Zimmerman was assigned 241 patients to interview as duty counsel for the mental health panel between April 1 and December 31, 1991. Mr. Zimmerman's accounts to OLAP for that period were for interviewing 424 patients. The Solicitors state that part of the reason for this



is that the Solicitors often had to do repeat calls to assigned patients due to the patient being heavily medicated or delirious at the time of the initial visit. Additionally they also provided consultation to unassigned patients who approached them during visits. It is agreed that the Solicitors did do repeat visits, however, the Solicitors did not provide the patients numbers on the certificates as required. Accordingly, the Solicitors are unable to verify their own accounts.

41. Duty counsel are permitted to claim for distances travelled to and from hospitals in respect of representing a patient.

42. A comparison between the most direct route between two points claimed to have been travelled, with allocation for a margin of error should the most direct route not be taken, indicates that there were numerous occasions where there was a discrepancy between the distance claimed to have been travelled and the most direct route. As a result, Mr. Zimmerman over billed OLAP in the sum of \$325.09 for travel disbursements.

43. Mr. Ronen claimed on his own behalf that he functioned as mental health duty counsel at the following hospitals on July 15, 1991: the *Western Hospital* (9:30 - 10:30 - there is no morning or afternoon designation); the *Clarke Institute* (11:00 a.m. - 12:00 p.m.). On the same claim, Mr. Ronen claimed on his own behalf that he functioned as mental health duty counsel at the following hospitals on July 16, 1991: *Centenary Hospital* (9:00 - 10:30 a.m.); *Wellesley Hospital* (11:00 a.m. - 2:00 p.m.); the *Branson Hospital* (4:00 - 5:30 p.m.) and *St. Joseph's Hospital* (6:30 p.m. - 8:30 p.m.). The Statement of Account is dated July 16, 1991.

44. Based on information provided by Mr. Zimmerman, his partner, Mr. Ronen, claimed that Mr. Zimmerman also functioned as mental health duty counsel at the following hospitals on July 15, 1991: the *Western Hospital* (9:30 - 10:30 - there is no morning or afternoon designation); the *Clarke Institute* (11:00 a.m. - 12:00 p.m.). Based on information provided by Mr. Zimmerman, Mr. Ronen made a further claim that Mr. Zimmerman also functioned as mental health duty counsel at the following hospitals on July 16, 1991: *Centenary Hospital* (9:00 - 10:30 a.m.); *Wellesley Hospital* (11:00 a.m. - 2:00 p.m.); the *Branson Hospital* (4:00 - 5:30 p.m.); and *St. Joseph's Hospital* (6:30 - 8:30 p.m.). The Statement of Account is dated August 15, 1991. Copies of claims 10809088 and 10819058 are at Document Book - Volume II, Tab C, page 160 & Tab D, page 234. Based on information provided by Mr. Zimmerman, his partner, Mr. Ronen, claimed that Mr. Zimmerman functioned as mental health duty counsel at *Mount Sinai Hospital*, the *Toronto General Hospital*, the *Toronto Western Hospital*, *St. Michael's Hospital* and the *Toronto East General Hospital* on June 25, 1991 and the *Humber Hospital* on June 26, 1991, claiming \$604.68 for 9.5 hours as well as travel fees of \$171.00 and disbursements of \$48.69. Based on information provided by Mr. Zimmerman, his partner, Mr. Ronen, made another claim on his behalf for the same amounts and for the same hospitals. Copies of claims 10809084 dated July 12, 1991 and 10702056 dated June 25, 1991 are at Document Book - Volume II, Tab D, pages 233 & 227, respectively.

45. Based on information provided by Mr. Zimmerman, his partner, Mr. Ronen, claimed that Mr. Zimmerman functioned as mental health duty counsel at the *Wellesley*, *North York General*, and *Centenary Hospitals* between 9:30 a.m. and 11:30 p.m. on August 20, 1991. Based on information provided by Mr. Zimmerman, his partner, Mr. Ronen, also made a claim on his behalf for services as mental health duty counsel at *Riverdale*, *Etobicoke General*, and *Northwestern Hospitals* between 9:30 a.m. and 4:00 p.m. on August 20, 1991. Copies of claims 10823151 dated August 22, 1991 and 10909069 dated August 21, 1991 are at Document Book - Volume II, Tab D, pages 235 & 239.

46. It is agreed that the erroneous claims are the result of the Solicitors improper billing practices, inadequate facilities, office staff and records, and not the result of any deceit or specific intent to defraud OLAP.

47. Mr. Zimmerman provided his partner, Mr. Ronen, with information which formed the basis of a claim for an appeal hearing on July 23, 1991 where he represented E. S. A copy of claim 0417200 is at Document Book, Tab 8.

48. Although E. S. had been a patient at the Toronto General Hospital in 1991, her medical file indicates that she withdrew her application for a hearing on July 18, 1991, therefore the hearing did not take place.

49. Mr. Zimmerman failed to review the account for representation of E. S. made on his behalf by his partner, Mr. Ronen.

50. It is agreed that the Solicitor attended an initial interview with Ms. S., but that the account does not accurately reflect the services provided. *It is further agreed that this is a result of the solicitor's improper billing practices and inaccurate record keeping.*

#### Changes in the Solicitors' Practices

51. The Solicitors have not practised in the mental health area and have not done any legal aid work since the investigation into this matter began in April, 1992. They have since that time engaged in a general commercial law practice and have implemented proper office administration, record keeping, docketing and billing practices.

#### Community Involvement and Charitable Works of the Solicitors

52. A brief of character letters has been provided by the Solicitors containing 33 letters from judges, lawyers, members of parliament, community and religious leaders, charitable institutions, clients and others.

53. Since his student days, Mr. Ronen has devoted a considerable amount of his time and energies toward community activities. As an active member of various Jewish community organizations, Ronen has dedicated himself to causes which embrace social welfare issues, the fight against ethnic and religious discrimination, the protests and struggle for freedom of Soviet Jews in the 1980s and Ethiopian Jews through the late 1980s and 1990s, and numerous other community causes. He has evidenced a consistent willingness to sacrifice his own personal career advancement to community volunteer work. Community leaders and politicians both within and outside of the Jewish community have attested to his selfless dedication to community affairs. Moreover, the character letters have provided evidence that Mr. Ronen has a general reputation in the community as a person of honesty and integrity.

54. Mr. Zimmerman has also been active in Jewish community affairs since his student days. Although he is not as active in serving in official capacities in community institutions as Ronen, his practice is to a large degree devoted to supporting Ronen's involvement in these institutions and, consequently, the institutions themselves. Furthermore, numerous community leaders, acquaintances and clients have attested to Zimmerman's devotion to family, religion and to charitable works. Clients have indicated that this attitude of charity and self-sacrifice permeates his client relations and client service. Numerous character letters have indicated that Mr. Zimmerman has a general reputation a person of honesty and integrity.

#### Recommended Penalty

55. The Law Society and the Solicitors jointly submit that the appropriate penalty under the circumstances is a reprimand in Convocation for both Mr. Ronen and Mr. Zimmerman. The Solicitors have agreed to pay costs in the sum of \$1,000 each.

#### V. DISCIPLINE HISTORY

56. The Solicitors do not have a discipline history.

Dated at Toronto, this 28th day of October, 1996.

#### RECOMMENDATION AS TO PENALTY

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It is recommended that Lawrence Zimmerman and Moshe Ted Ronen be reprimanded in Convocation and that they each pay Law Society costs in the amount of \$1,000.

#### REASONS FOR RECOMMENDATION

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This case concerns professional misconduct involving improprieties, in the case of Lawrence Zimmerman, in the preparation and submission of accounts/certificates to the Ontario Legal Aid Plan and, in the case of Moshe Ted Ronen, in the preparation and submission of billings to the Ontario Legal Aid Plan. But for the numerous, and compelling, mitigating circumstances in this case a more serious penalty would have been appropriate. However, following lengthy submissions by counsel for all parties concerning the matter of penalty, the Panel concluded that many of the relevant circumstances in this case were unusual and, when viewed cumulatively, warranted a reprimand in Convocation for both Solicitors plus the imposition of costs.

As noted in the Agreed Statement of Facts, the Panel received a joint submission from the parties regarding penalty in which a reprimand in Convocation for both Solicitors was urged, together with a requirement that the Solicitors be obliged to pay the costs of the Law Society in the sum of \$1,000 each. As has been noted in many prior decisions of the Discipline Committee, it is appropriate that joint submissions by the parties, developed after extensive discussions, be given serious weight by the hearing Panel. While it is recognized that joint submissions concerning penalty are not binding on a hearing Panel, nonetheless it is in the interests of the discipline process generally and, hence, in the interests of the public and the profession, that joint submissions not be lightly rejected by a hearing Panel. This is particularly so, when, as in this case, multiple pre-hearing conferences took place over an extended period of time. It was the evidence before the hearing Panel that in this case four pre-hearing conferences took place during 1996, before two different Benchers, during which the issues with respect to the Complaints were thoroughly explored, a resolution was agreed upon by the parties, the Solicitors admitted professional misconduct, and joint submissions were agreed upon for presentation to the hearing Panel. The conduct and efficacy of pre-hearing conferences is an important element of the Law Society's discipline process. In this case, as a result of lengthy efforts, the issues were narrowed, admissions of professional misconduct were obtained and a contested hearing before a Discipline Committee Panel (which, it was estimated, might have lasted several weeks) with the usual uncertainty of final result, was avoided. Apart from these facts, however, there were a number of other significant factors to be taken into account in determining an appropriate penalty.

First and importantly, as set out in paragraphs 38 and 46 of the Agreed Statement of Facts, on all of the evidence available to the Law Society it was agreed that the erroneous claims made by the Solicitors to the Ontario Legal Aid Plan were not the result of any deceit or specific intent on the part of either Solicitor to defraud the Plan but, rather, were the result of the Solicitors' improper billing practices, inadequate facilities, office staff and records. At all relevant times, the Solicitors carried on a law practice without a secretary. Their accounts to the Ontario Legal Aid Plan were handwritten by one of the Solicitors and inadequate records of meetings with patients and attendances before the Psychiatric Review Board were kept. This failure to keep complete records, it was agreed, had led to numerous billing errors on the part of the Solicitors. It is also relevant that these billing improprieties occurred in the early years of the practice of law by both Solicitors.

One of the unusual features of this case concerns the nature of the legal practice carried on by the Solicitors at the relevant times. The evidence indicated that in 1990 both Solicitors applied to the Ontario Legal Aid Plan to participate on the mental health panel. At the time, the Ontario Legal Aid Plan provided little in the way of formal training as to the appropriate way in which to render legal aid accounts for mental health duty counsel. Once the Solicitors became authorized members of the mental health panel they functioned both as per diem mental health "duty counsel" to advise patients who had been involuntarily admitted of their rights and, further, as counsel retained on certificates to represent those patients requesting hearings under the Mental Health Act (Ontario). While neither Solicitor contacted the Plan to enquire whether they could see and charge the Plan for consultations at mental health facilities with patients who had not been certified as incompetent or involuntary, it was the evidence before the Panel that they did not realize that they could not render accounts for patients without prior authorization. On the evidence there was no clear indication by the Ontario Legal Aid Plan at the time that specific prior authorization was necessary for all patient consultations. Further, the evidence indicated that those familiar with the Plan's mental health panel operations at the time considered that those patients to whom unauthorized advice was given, were in need of advice. There is no suggestion, therefore, that the services rendered were unnecessary or that they were undertaken to artificially inflate billings to the Plan.

As noted, it was acknowledged by the Law Society in this case that the erroneous claims made by the Solicitors to the Ontario Legal Aid Plan were not the result of any deceit or specific intent to defraud the Plan. This is particularly significant because other cases drawn to the attention of the hearing Panel in which harsher penalties had been imposed against solicitors who had rendered improper or false accounts to the Ontario Legal Aid Plan had involved a demonstrated pattern of pervasive dishonesty or an established intent to defraud the Plan. The evidence in this case was to the contrary. While the misconduct proven against these Solicitors is serious, it essentially involves failure to take proper care to ensure the accuracy of accounts.

The attention of the Panel was drawn, for example, to the decision of Convocation and the Discipline Committee in the Lorenzo Girones case, decided in 1973. In that case, it was held that an allegation that the Solicitor had knowingly submitted accounts to the Ontario Legal Aid Plan for professional services which he "knew or should have known were false" had not been established. A second allegation, that the Solicitor had supplied certificates to the Ontario Legal Aid Plan which were "false in that all of the legal aid alleged to have been supplied", was found to be established. A majority of the Discipline Committee had recommended a three-month suspension and the imposition of one-half of the Law Society's costs. Convocation, however, had reduced this penalty to a reprimand in Convocation.

Similarly, in the case of Edmond Irani, a 1977 decision of the Discipline Committee and Convocation, it was alleged in part against the Solicitor that he had submitted a certificate to the Legal Aid Plan which did not reveal the receipt of all retainer funds from his client and, further, that he had accepted a client under a legal aid certificate which acting as duty counsel and without prior authorization from the Plan. It was the recommendation of the Discipline Committee, accepted by Convocation, that the Solicitor be reprimanded in Convocation and ordered to pay the Law Society's costs.

It was the position of the Law Society that the Solicitors were paid approximately \$16,000 each by the Ontario Legal Aid Plan for patient consultations without prior authorization. It is noteworthy that the Solicitors have made full restitution of these amounts. Indeed, it was not disputed that the Solicitors had provided their solicitors with a substantial sum at least one year prior to the date of the hearing to be held in trust pending a resolution for the purposes of making restitution. It was the ongoing process of pre-hearing conferences and continuing efforts to reach a resolution of the Complaints that appear, among other matters, to have prevented earlier payment. What is significant, however, is the early forming of an intent by the Solicitors to make restitution. The hearing panel was informed that the Ontario Legal Aid Plan is satisfied with the restitution which has been made.

In this case extensive character evidence supportive of both solicitors was introduced before the Panel. A Brief of Character Letters, marked as Exhibit 7 at the Hearing, contained some 32 character references on behalf of the Solicitors. While this, in itself, was not particularly remarkable, what was unusual is that many of these letters were from acknowledged leaders of the Bar and the community at large. They included, for example, letters from a number of prominent religious leaders in the Toronto area, respected lawyers and a Justice of the Ontario Court of Appeal. In most, if not all, of these letters the authors spoke favourably of the integrity and honesty of the Solicitors. They established that both Solicitors are respected leaders of the Jewish community in Toronto. Both have been involved (although in the case of Mr. Ronen, this involvement is more extensive and broadly based) in various community organizations including, in particular, in the Jewish community in Metropolitan Toronto. In these positions the Solicitors were outspoken advocates on behalf of disadvantaged groups and selfless in their dedication of time, energy and leadership to social causes. Many of these letters, which were not contradicted, spoke to the honesty and ethics generally of both Solicitors, and to their dedication to community work. The scope of these testimonial letters, the diversity of the backgrounds and experience of their authors and the unequivocal nature of their support for the general honesty of the Solicitors, was remarkable.

This evidence was complemented by other evidence which established another unusual feature of this case, namely, that these two Solicitors when they embarked on their legal practice had determined between themselves that one of them would be chiefly responsible for the administration of their practice and the carrying out of client services in order to free-up a significant proportion of the other Solicitor's time for community service. In short, they operated in partnership not only in the practice of law but in a joint enterprise to make a positive contribution to the community and to the disadvantaged in Ontario society. This approach to the practice of law and to community service resulted in one of the Solicitors devoting a significant amount of time to community involvement made possible chiefly through the assumption by the other Solicitor of a disproportionately high level of responsibility in their legal practice.

Both Solicitors co-operated fully with the Law Society in respect of these Complaints and, in addition, with the Ontario Legal Aid Plan. It was indicated that there were instances of subsequent billing to the Ontario Legal Aid Plan by the Solicitors after the times at issue in these Complaints, and that those subsequently rendered accounts were not problematic or in issue.

28th November, 1996

The Solicitors indicated before the Panel great remorse for their conduct and for the difficulties which had arisen as a result of their erroneous billings. Both made it clear, and the Panel accepted, that there was no realistic probability of any repeat impropriety. There was, therefore, every indication of specific deference and positive prospects for probable rehabilitation.

This matter has been outstanding for over four years. During that time the Solicitors have been required to live with the investigative process of the Law Society and the Ontario Legal Aid Plan, and the uncertainty attaching to the outcome of these processes. Having regard to these facts and, in particular, to the position of the Solicitors in the community at large and the impact which this case has had and will have on their reputations within the community, it is clear that the Solicitors have already paid a price for their transgressions. It is noteworthy in this regard, that in order to obtain the character reference letters ultimately submitted to the Panel, it was necessary for the Solicitors to disclose the nature of the allegations against them in this case to a wide variety of individuals including many beyond the legal community. Further a reprimand in Convocation for both Solicitors will result in publication not only by the Law Society in the usual course but by the Ontario Legal Aid Plan concerning these Complaints and their resolution.

For all of these reasons, the Panel concluded that the mitigating circumstances in this case were overwhelming and, in many respects, quite unusual. In the result, after careful consideration, the joint submission of the parties concerning penalty was accepted.

Both Solicitors were called to the Bar of Ontario on April 10, 1986.

ALL OF WHICH is respectfully submitted

DATED at Toronto, this 15th day of November, 1996

Eleanore A. Cronk

Mr. Perrier asked that a correction be made on page 1 of the Report - paragraph 2.1) i), 3rd line - "7uaccounts/certificates" should read "accounts/certificates."

There were no submissions, the finding of professional misconduct was confirmed and the Report adopted.

The recommended penalty of the Discipline Committee was that the solicitors be reprimanded in Convocation and each pay costs in the amount of \$1,000.

Mr. Perrier made submissions in support of the recommended penalty. He advised that both solicitors had paid the Society's costs.

Both counsel for the solicitors made submissions in support of the recommended penalty and drew Convocation's attention to the extraordinary character evidence.

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It was moved by Mr. Wilson, seconded by Mr. Topp that the recommended penalty be adopted.

Carried

The Treasurer reprimanded the solicitors.

Re: Charles John LEWONAS - Woodstock

The Secretary placed the matter before Convocation.

Ms. Curtis and Ms. O'Connor withdrew for this matter.

Ms. Jane Ratchford appeared for the Society and Mr. Lewonas appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 16th May, 1996, together with an Affidavit of Service sworn 22nd May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th May, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 19th June, 1996 (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

Nancy Backhouse, Chair  
Ronald D. Manes  
Shirley O'Connor

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

Jane Ratchford  
for the Society

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

Unrepresented  
for the solicitor

Heard: February 27, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On December 7, 1995 Complaint D377/95 was issued and on December 12, 1995, Complaint D365/95 was issued against Charles John Lewonas alleging that he was guilty of professional misconduct.

The matter was heard in public on February 27, 1996 before this Committee composed of Nancy Backhouse, Chair, Ronald D. Manes and Shirley O'Connor. The Solicitor was not present at the hearing and was unrepresented. Jane Ratchford appeared on behalf of the Law Society.

#### DECISION

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

##### Complaint D377/95

2 a) During the period May 2, 1986 to July 23, 1993,

i. He failed to honour in a timely manner undertakings given to the following solicitors on the completion of real estate transactions:

- (1) James F. Hutchinson
- (2) D. Bradley Bennett
- (3) Robert G. White
- (4) George H. Bishop
- (5) Wayne A. Petrie
- (6) Robert Bryson
- (7) Norman E. Bryne

ii) He failed to reply to professional letters from the following solicitors, in circumstances where a response was required:

- (1) James F. Hutchinson
- (2) D. Bradley Bennett
- (3) Robert G. White
- (4) Wayne A. Petrie
- (5) Peter H. Kratzmann
- (6) Kenneth L. Sherman

iii) He failed to reply to invoices from Christina Lindsay, regarding payment of a financial obligation incurred in relation to his practice.

iv) He failed to provide a timely report to Beneficial Realty Ltd. Upon the completion of a mortgage transaction.

v) He failed to serve his client Brian Watts and Cora J. Bonney in a conscientious, diligent and efficient manner by:

- (1) failing to respond to reasonable requests for information regarding the status of their respective matters; and
- (2) failing to proceed with their legal matters in a timely manner.

b) He failed to comply with his undertaking dated April 30, 1993 to another solicitor, Kenneth L. Sherman.

c) He failed to reply to the Law Society regarding a complaint Kenneth L. Sherman despite letters dated November 24, 1994 and December 20, 1994 and a telephone request on December 13, 1994.



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- d) He failed to serve his client, Wayne Fishback, in a conscientious, diligent and efficient manner regarding his claim for damages against Ingersoll Motor Products and Lubrico Warranty Company by:
  - i) failing to take any steps to proceed with the claim; and
  - ii) misplacing original documents given to him, by the client, supporting the claim.
- e) He failed to reply to the Law Society's request for information regarding a complaint by Wayne Fishback, despite letters dated November 25, 1994 and January 5, 1995 and telephone requests made on December 19, 1994 and December 28, 1994.
- f) He failed to serve his client, Leonard Sunday, in a conscientious, diligent, and efficient manner by failing to promptly report to the client on the closing of a real estate transaction;
- g) He failed to reply to the Law Society regarding a complaint by Peter H. Kratzmann despite letters dated October 26, 1994 and December 6, 1994 and a telephone request on December 1, 1994;
- h) He failed to serve his client, Waterloo County Education Credit Union Limited (Waterloo) in a conscientious, diligent and efficient manner by:
  - i) failing to answer reasonable requests for information regarding the payment of a mortgage insurance fee to the Canada Mortgage and Housing Corporation; and
  - ii) failing to remit to the Canada Mortgage and Housing Corporation a fee which was due and owing to it, or alternatively, in the event sufficient monies were unavailable to close the mortgage transaction by failing to seek Waterloo's instructions, in circumstances where they were required.
- i) He failed to reply to the Law Society regarding a complaint by Russell N. Lawson despite letters dated December 1, 1994 and January 6, 1995.
- j) He failed to serve his client Nick Miller, in a conscientious, diligent and efficient manner which retained to defend divorce proceedings commenced against him by:
  - i) failing to answer reasonable requests for information;
  - ii) failing to proceed with the client's case in a timely manner; and
  - iii) failing to follow the client's instructions to vary an Order of the Court dated October 19, 1993.
- k) He failed to reply to the Law Society regarding a complaint by Nick Miller despite letters dated December 1, 1994 and January 6, 1995.

Complaint 365/95

- 2 a) He permitted earned fees to remain in his mixed trust account contrary to Section 14 of Regulation 708; and
- b) During the period October 1992 to February 1994, he operated his general account transactions through his mixed trust account and commingled general office funds in his trust account in contravention of Section 14 of Regulation 708.

EVIDENCE

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

Complaint D377/95

AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D377/95 and is prepared to proceed with a hearing of this matter on February 27 and 28, 1996.

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 D377/95 and admits the particulars contained therein. The Solicitor further admits that the said particulars supported by the facts hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 19, 1970. He has been suspended for non-payment of his Errors and Omissions levy since May 26, 1995.

Particular 2a) iv) He failed to provide a timely report to Beneficial Realty Ltd. upon the completion of a mortgage transaction.

5. The Solicitor was retained by Beneficial Realty Ltd. to place a second mortgage on property at 84 Tennyson Street, Woodstock. The funds were advanced to the Solicitor on September 23, 1988. Despite several calls to the Solicitor's office, Beneficial Realty Ltd. had been unable to obtain a final report and a duplicate registered mortgage from the Solicitor.

6. By letter dated March 1, 1989 (Tab 1, Volume I, Document Book), D. Ross Millson, Manager of Beneficial Realty Limited, made a complaint to the Law Society regarding the foregoing.

7. By letter dated March 16, 1989 (Tab 2, Volume I, Document Book) the Law Society wrote to the Solicitor enclosing a copy of Mr. Millson's letter dated March 1, 1989 and requested his comments within two weeks. The Solicitor did not respond.

8. By registered mail dated May 30, 1989 (Tab 3, Volume I, Document Book), the Solicitor was advised that if his response was not received within two weeks, the matter would be referred to the Discipline Committee. The Law Society's letter was delivered and signed for on June 2, 1989.

9. By letter dated June 14, 1989 (Tab 4, Volume I, Document Book), the Solicitor advised the Law Society that he had personally attended at Mr. Millson's office and provided him with the required documentation.

10. By letter dated July 7, 1989 (Tab 5, Volume I, Document Book), Mr. Millson advised the Law Society that the matter had been concluded to his satisfaction.

Particular 2a) i) 1) He failed to honour in a timely manner his Undertakings given to James F. Hutchinson, another solicitor.

Particular 2a) ii) 1) He failed to reply to professional letters from James F. Hutchinson, another solicitor.

Myers purchase from Jacky

11. The Solicitor acted for the vendor with respect to the above-noted real estate transaction in the fall of 1986. On October 31, 1986, the Solicitor provided James F. Hutchinson, solicitor for the purchaser, with his Undertaking to obtain and register a discharge of mortgage and to obtain a building permit regarding a wooden deck on the rear of the house. A copy of the Solicitor's Undertaking to Mr. Hutchinson is contained at Tab 6, Volume I of the Document Book.

12. By letter dated October 23, 1987 (Tab 7, Volume I, Document Book), Mr. Hutchinson acknowledged receipt of the discharge from the Solicitor and reminded him of his Undertaking to obtain a building permit. Mr. Hutchinson requested that the Solicitor provide the building permit as soon as possible. The Solicitor did not respond.

13. By letters dated November 25, 1987 and December 22, 1987 (Tabs 8 & 9, Volume I, Document Book), Mr. Hutchinson requested that the Solicitor forward to him the building permit. The Solicitor did not respond.

14. By letter dated January 22, 1988 (Tab 10, Volume I, Document Book), Mr. Hutchinson wrote to the City of Woodstock requesting a copy of the building permit which was issued to the vendor.

15. By letter dated January 27, 1988 (Tab 11, Volume I, Document Book), Garth Ede of the City of Woodstock advised Mr. Hutchinson that a building permit had not been obtained for the wooden deck on the property.

16. By letters dated January 28, March 2, April 5, May 2, June 6, July 4, 1988 and January 9, 1990 (Tabs 12-18, Volume I, Document Book), the Solicitor was requested by Mr. Hutchinson to obtain and forward the building permit in compliance with his Undertaking dated October 31, 1986. The Solicitor did not respond.

17. By letter dated February 1, 1990 (Tab 19, Volume I, Document Book), Mr. Hutchinson made a complaint to the Law Society regarding the foregoing.

18. By letter dated February 22, 1990 (Tab 20, Volume I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Hutchinson's letter dated February 1, 1990 and requested his comments within two weeks. The Solicitor did not respond.

19. By letter April 11, 1990 (Tab 21, Volume I, Document Book), Mr. Hutchinson advised the Law Society that the Solicitor had finally complied with his Undertaking dated October 31, 1986.

Domagala purchase from Oliver

20. The Solicitor acted for the vendor with respect to the above-noted real estate transaction in late 1991. On November 29, 1991, the Solicitor provided Mr. Hutchinson, with an Undertaking to obtain and register a discharge of mortgage in favour of Mutual Life Assurance Co. within 45 days of closing. A copy of the Solicitor's Undertaking is contained at Tab 22, Volume I of the Document Book. The Solicitor did not provide Mr. Hutchinson with the said discharge within the required time.

21. By letter dated December 6, 1991 (Tab 23, Volume I, Document Book), Mr. Hutchinson requested the Solicitor to ask his clients, the Olivers, to return certain fixtures taken from the home after the sale. The Solicitor did not respond.

22. By letter dated May 25, 1992 (Tab 24, Volume I, Document Book), Mr. Hutchinson made a complaint to the Law Society regarding the foregoing.

23. On June 19, 1992, the Law Society called the Solicitor and left a message for him to return the call. The Solicitor returned the call that call and advised that he thought that the mortgage had been discharged. The Solicitor advised that he would look into the matter and get back to the Law Society. With respect to Mr. Hutchinson's letter dated December 6, 1991, the Solicitor advised that his clients would not return the items. A copy of the telephone communications with the Solicitor are contained at Tab 25, Volume I of the Document Book).

24. By letter dated June 23, 1992 (Tab 26, Volume I, Document Book), the Solicitor wrote to Mr. Hutchinson advising him that the mortgage had been discharged and that he provided Mr. Hutchinson with a copy of the same.

25. By letter dated June 26, 1992 (Tab 27, Volume I, Document Book), Mr. Hutchinson advised the Law Society that he had received the discharge from the Solicitor.

Easton purchase from Falkins

26. The Solicitor acted for the vendors with respect to the above-noted real estate transaction in the fall of 1991. On October 31, 1991, the Solicitor provided Mr. Hutchinson with an Undertaking to obtain and register a discharge of mortgage in favour of the Royal Bank of Canada and to payout from the proceeds of closing a Legal Aid Lien and to provide a clear executions certificate for Gary Falkins, the vendor. A copy of the Solicitor's Undertaking is contained at Tab 28, Volume I of the Document Book.

27. The Solicitor provided Mr. Hutchinson with a copy of the discharge but did not confirm that the Legal Aid Lien had been paid. By letters dated January 29, February 26, March 23, July 3 and August 4, 1992 (Tabs 29-32, Tab 33, Volume I, Document Book), Mr. Hutchinson requested that the Solicitor provide confirmation that his Undertaking had been complied with.

28. By letter dated July 9, 1992 (Tab 35, Volume I, Document Book), the Solicitor forwarded a cheque in the sum of \$5,796.84 to the Legal Aid Plan representing payout of most of the legal aid certificate in the name of Mr. Falkins.

29. By letter dated September 22, 1992 (Tab 34, Volume I, Document Book), Mr. Hutchinson made a complaint to the Law Society regarding the foregoing.

30. On October 9, 1992, the Law Society called the Solicitor and left a message for him to return the call. The Solicitor returned the call that day and advised that he forwarded a cheque to the Legal Aid Plan on July 9, 1992 (Tab 35, Volume I, Document Book) but a balance of \$300.00 remained outstanding. The Solicitor further advised that he would send a cheque and obtain the discharge of lien. A copy of the handwritten notes of the telephone conversation with the Solicitor is contained at Tab 36, Volume I of the Document Book.

31. By letter dated January 5, 1993 (Tab 37, Volume I, Document Book), the Law Society wrote to the Solicitor requesting a status report on this matter. The Solicitor did not respond.

32. On January 20 and 22, 1993, the Law Society called the Solicitor and left messages for him to return the calls. A copy of the handwritten notes of the messages left for the Solicitor are contained at Tab 38, Volume I of the Document Book.

33. By letter dated January 25, 1993 (Tab 39, Volume I, Document Book), the Solicitor wrote to the Legal Aid Plan enclosing a cheque in the sum of \$413.49 (there was an overhead charge and interest owing) and requesting a discharge of lien.

34. By letter dated February 18, 1993 (Tab 40, Volume I, Document Book), the Law Society acknowledged receipt of the Solicitor's letter to Legal Aid and requested confirmation that he received the clearance certificate. The Solicitor did not respond.

35. On March 4 and 11, 1993, the Law Society called the Solicitor and left messages for him to return the calls. On March 11, 1993, the Solicitor advised that he attended at the Legal Aid office that day and that the matter was being looked into. A copy of the handwritten notes of the communications with the Solicitor are contained at Tab 41, Volume I of the Document Book.

36. On March 15, 1993, the Law Society called the Solicitor and left a message for him to return the call. The Solicitor returned the call and advised the Law Society that he had received the certificate that day and that he would process the same at the Sheriff's office in the next couple of days. The Solicitor further advised that he would provide Mr. Hutchinson with the clearance certificate. A copy of the handwritten notes of the telephone conversation with the Solicitor are contained at Tab 42, Volume I of the Document Book.

37. By letter dated March 17, 1993 (Tab 43, Volume I, Document Book), the Solicitor provided a copy of his letter to Mr. Hutchinson and the Sheriff's Executions Certificate complying with his Undertaking to Mr. Hutchinson.

Foster purchase from Carlisle

38. The Solicitor acted for the vendor with respect to the above-noted real estate transaction in late 1992. On December 11, 1992, the Solicitor provided Mr. Hutchinson with an Undertaking to obtain and register a discharge of mortgage in favour of the Bank of Montreal and to pay the City of Woodstock realty taxes for August and November 1992 and penalty from the proceeds of the sale and to provide Mr. Hutchinson with a receipt of payment. A copy of the Solicitor's Undertaking is contained at Tab 44, Volume I of the Document Book.

39. By letter dated November 2, 1993 (Tab 45, Volume I, Document Book), Mr. Hutchinson advised the Solicitor that his client, Ms. Foster, paid the outstanding taxes together with the penalty and interest in the total sum of \$414.21. Mr. Hutchinson requested that the Solicitor forward a cheque to his office payable to his client for the above amount and to provide him with a receipt in accordance with his Undertaking. The Solicitor did not respond.

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40. By letter dated November 10, 1993 (Tab 46, Volume I, Document Book), Mr. Hutchinson made a complaint to the Law Society regarding the foregoing.

41. By letter dated December 16, 1993 (Tab 47, Volume I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Hutchinson's letter dated November 10, 1993 and requested his comments within two weeks. The Solicitor did not respond.

42. By letter dated March 23, 1994 (Tab 48, Volume I, Document Book), the Law Society again wrote to the Solicitor requesting his comments within seven days. The Solicitor did not respond.

43. On April 12 and 20, 1994, the Law Society called the Solicitor and left messages to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 49, Volume I of the Document Book.

44. By registered mail dated April 22, 1994 (Tab 50, Volume I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

45. By letter dated May 6, 1994 (Tab 51, Volume I, Document Book), the Solicitor advised the Law Society that payment of the taxes would be made by no later than May 31, 1994. The Solicitor further advised that he was not financially able to make payment before that date.

46. By letter dated October 12, 1994 (Tab 52, Volume I, Document Book), Mr. Hutchinson advised the Law Society that the tax arrears had been paid in full by the Solicitor.

Pollard/Riches purchase from Avey

47. The Solicitor acted for the vendor with respect to the above-noted real estate transaction in 1993. On June 18, 1993, the Solicitor provided Mr. Hutchinson with an Undertaking to obtain and register a discharge of mortgage in favour of Victoria & Grey Trust Co. and to pay realty taxes and penalty, if still outstanding, from the proceeds of the sale and to provide Mr. Hutchinson with a tax receipt marked paid. A copy of the Solicitor's Undertaking is contained at Tab 53, Volume I of the Document Book.

48. By letter dated December 13, 1993 (Tab 54, Volume I, Document Book), Mr. Hutchinson wrote to the Solicitor requesting a response to his earlier letter dated November 16, 1993. The Solicitor did not respond.

McMahon purchase from Inman

49. The Solicitor acted for the vendor with respect to the above-noted real estate transaction in 1993. On July 23, 1993, the Solicitor provided Mr. Hutchinson with an Undertaking to obtain and register a discharge of mortgage in favour of the Scotia Mortgage Corporation. A copy of the Solicitor's Undertaking is contained at Tab 55, Volume I of the Document Book.

50. By letter dated November 23, 1993 (Tab 56, Volume I, Document Book) Mr. Hutchinson wrote to the Solicitor requesting a response to his letter dated September 23, 1993 with regard to confirming the completion of his Undertaking. The Solicitor did not respond.

51. By letters dated February 15, 1994 (Tabs 57 & 58, Volume I, Document Book), Mr. Hutchinson made complaints to the Law Society regarding the two foregoing transactions.

52. By letter dated March 30, 1994 (Tab 59, Volume I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Hutchinson's letters dated February 15, 1994 and requested his comments within two weeks. The Solicitor did not respond.

53. On April 12 and 20, 1994, the Law Society left messages for the Solicitor to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages for the Solicitor are contained at Tab 60, Volume I of the Document Book.

54. By registered mail dated April 22, 1994 (Tab 61, Volume I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

55. By letter dated May 6, 1994 (Tab 62, Volume I, Document Book), the Solicitor advised the Law Society that he attended at Mr. Hutchinson's office that day and provided him with the particulars as set out in his Undertakings.

56. On November 25, 1994, Mr. Hutchinson's office confirmed that the Solicitor's Undertakings had been complied with. A copy of the handwritten notes of the telephone communications with Mr. Hutchinson's office is contained at Tab 63, Volume I of the Document Book.

Particular 2a) i) 2) He failed to honour in a timely manner his Undertaking given to D. Bradley Bennett, another solicitor

Particular 2a) ii) 2) He failed to reply to professional letters from D. Bradley Bennett, another solicitor

Crawford purchase from Koekebakker

57. The Solicitor acted for the vendor with respect to the above-noted real estate transaction in 1986. On July 31, 1986, the Solicitor provided D. Bradley Bennett, solicitor for the purchaser, with an Undertaking to obtain a declaration about the existence and location of a fence and to use his best efforts to obtain and register a quit claim deed. A copy of the Solicitor's Undertaking is contained at Tab 64, Volume I of the Document Book.

58. By letters dated April 13, 1987, January 11, March 16, May 6, December 8, 1988, October 18, 1989, June 14, July 20 and August 29, 1990 (Tabs 65-73, Volume I, Document Book), Mr. Bennett wrote to the Solicitor requesting that he provide confirmation that his Undertaking had been complied with. The Solicitor did not respond.

59. By letter dated November 1, 1990 (Tab 74, Volume I, Document Book), Mr. Bennett made a complaint to the Law Society regarding the foregoing.

60. By letter dated November 15, 1990 (Tab 75, Volume I, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Bennett's letter dated November 1, 1990 and requested his comments within two weeks. The Solicitor did not respond.

61. By registered mail dated February 14, 1991 (Tab 76, Volume I, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Discipline Committee. The Law Society's letter was delivered and signed for on February 20, 1991.

62. By letter dated February 28, 1991 (Tab 77, Volume I, Document Book), the Solicitor advised that on March 1, 1991 he would obtain the particulars necessary to complete the Declaration.

63. By letter dated April 30, 1991 (Tab 78, Volume I, Document Book), the Law Society requested the Solicitor for an update regarding his outstanding undertaking.

64. By letter dated May 14, 1991 (Tab 79, Volume I, Document Book), the Solicitor advised the Law Society that he had delivered the Declaration to Mr. Bennett's office on March 1, 1991.

#### Broad purchase from Shipp

65. The Solicitor acted for the vendors with respect to the above-noted real estate transaction in 1990. On June 18, 1990, the Solicitor provided Mr. Bennett with an Undertaking to obtain and register a discharge of mortgage in favour of the Bank of Montreal, to provide an amended statement of adjustments and to provide an amended direction re: funds. A copy of the Solicitor's Undertaking is contained at Tab 80, Volume I, Document Book.

66. By letters dated August 13 and September 19, 1990, January 9, February 28 and May 9, 1991 (Tabs 81-85, Volume I, Document Book), Mr. Bennett wrote to the Solicitor requesting compliance of his Undertaking. The Solicitor did not respond.

67. By letter dated July 23, 1991 (Tab 86, Volume I, Document Book), the Solicitor wrote to the Bank of Montreal requesting that a discharge of mortgage be forwarded to him as soon as possible.

68. By letter dated July 25, 1991 (Tab 87, Volume I, Document Book), Mr. Bennett made a complaint to the Law Society regarding the foregoing.

69. On August 12, 1991, Mr. Bennett advised the Law Society that the Solicitor complied with his Undertaking. A copy of the handwritten notes of the telephone conversation with Mr. Bennett are contained at Tab 88, Volume I of the Document Book.

70. By letter dated August 15, 1991 (Tab 89, Volume I, Document Book), the Law Society wrote to the Solicitor requesting an explanation for his delay in complying with his Undertaking.

71. By letter dated September 18, 1991 (Tab 90, Volume I, Document Book), the Solicitor advised the Law Society that he did not pursue the Bank of Montreal with vigour causing the delay in obtaining the discharge.

Particular 2a) i) 3) He failed to honour in a timely manner his Undertaking given to Robert G. White, another solicitor

Particular 2a) ii) 3) He failed to reply to professional letters from Robert G. White, another solicitor

#### Bailey purchase from Johnson

72. The Solicitor acted for the vendors with respect to the above-noted real estate transaction in early 1989. On March 1, 1989, the Solicitor provided White, Coad, Patience & Bennett, solicitors for the purchaser, with an Undertaking to obtain and register a discharge of mortgage in favour of Canada Trustco Mortgage Company and to obtain and register a discharge of mortgage in favour of Avco Financial Services Realty Limited within 45 days after closing. A copy of the Solicitor's Undertaking is contained at Tab 92, Volume I of the Document Book.



73. By letters dated February 13, November 23, 1990 and June 24, 1991 (Tabs 92-94, Volume I, Document Book), Robert G. White of White, Coad, Patience & Bennett wrote to the Solicitor requesting that he comply with his Undertaking. The Solicitor did not respond.

Sato purchase from Parr

74. The Solicitor acted for the vendors with respect to a real estate transaction. On July 15, 1988, the Solicitor provided White, Coad, Patience & Bennett with an Undertaking to obtain and register a discharge of mortgage in favour of London Life Insurance Company within 30 days of closing. A copy of the Solicitor's Undertaking is contained at Tab 95, Volume I of the Document Book.

75. By letters dated September 15, 1988, February 14, December 10, 1990 and June 24, 1991 (Tabs 96-98, 94, Volume I, Document Book), Mr. White wrote to the Solicitor requesting that he comply with his Undertaking.

76. By letter dated August 13, 1991 (Tab 99, Volume I, Document Book), Robert G. White made a complaint to the Law Society regarding the two foregoing transactions.

77. By letter dated August 14, 1991 (Tab 100, Volume I, Document Book), the Solicitor provided the Law Society with a copy of his letter to Mr. White of the same date, a charge/mortgage of land and a registered discharge in compliance with his Undertakings.

Particular 2a) i) 4) He failed to honour in a timely manner his Undertaking given to George H. Bishop, another solicitor.

78. The Solicitor acted for the vendors with respect to a real estate transaction in 1986. On May 2, 1986, the Solicitor provided George H. Bishop, solicitor for the purchaser, with an Undertaking to obtain confirmation by way of a declaration of addresses of tenants and confirmation that the leases for the property were verbal and to obtain and register a discharge of mortgage in favour of Grace Gepp within 15 days of closing. A copy of the Solicitor's Undertaking is contained at Tab 1, Volume II of the Document Book.

79. By letters dated November 4, 1986, June 1, 1987 and November 14, 1989 (Tabs 2-4, Volume II, Document Book), Mr. Bishop wrote to the Solicitor requesting that he comply with his Undertaking. The Solicitor did not respond.

80. By letter dated September 10, 1991 (Tab 5, Volume II, Document Book), Mr. Bishop made a complaint to the Law Society regarding the foregoing.

81. On October 16, 1991, the Law Society called the Solicitor who advised that he had delivered the discharge of mortgage to Mr. Bishop's office. A copy of the handwritten notes of the telephone conversation with the Solicitor are contained at Tab 6, Volume II of the Document Book.

82. On October 18, 1991, Mr. Bishop advised the Law Society that he had received the required documentation from the Solicitor. A copy of the handwritten notes of the telephone conversation with Mr. Bishop is contained at Tab 7, Volume II of the Document Book.

Particular 2a) i) 5) He failed to honour in a timely manner his Undertaking to Wayne A. Petrie, another solicitor.

Particular 2a) ii) 4) He failed to reply to professional letters from Wayne A. Petrie, another solicitor.

83. The Solicitor acted for the vendors with respect to a real estate transaction in late 1990. On December 14, 1990, the Solicitor provided Siskind, Cromarty, Ivey & Dowler, solicitors for the purchaser, with an Undertaking to obtain and register a discharge of mortgage in favour of Royal Trust Corporation of Canada within 30 days of closing, to return and install chimney cap within 3 days of closing and to provide an amended statement of adjustments. A copy of the Solicitor's Undertaking is contained at Tab 8, Volume II of the Document Book.

84. By letters dated January 8, February 26, March 11, April 15 and June 19, 1991 (Tabs 9-13, Volume II, Document Book), Wayne A. Petrie of Siskind, Cromarty, Ivey & Dowler, wrote to the Solicitor requesting compliance of his Undertaking. Mr. Petrie also requested that the Solicitor return the sum of \$100.00 representing an overpayment to the Solicitor's client as the adjustments had been overstated by that amount. The Solicitor did not respond.

85. By letter dated September 26, 1991 (Tab 14, Volume II, Document Book), Mr. Petrie made a complaint to the Law Society regarding the foregoing.

86. By letter dated October 17, 1991 (Tab 15, Volume II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Petrie's letter dated September 26, 1991 and requested his comments within two weeks. The Solicitor did not respond.

87. By letter dated November 6, 1991 (Tab 16, Volume II, Document Book), the Solicitor advised the Law Society that he received the discharge of mortgage in April 1991 but did not register the same until November 1991. With respect to the \$100.00 discrepancy, the Solicitor advised that he had requested payment from his client but to date had not received the same. The Solicitor further advised that he would pay the \$100.00 to Mr. Petrie himself.

88. By letter dated November 26, 1991 (Tab 17, Volume II, Document Book), Mr. Petrie confirmed that the Solicitor had registered the discharge of mortgage.

Particular 2a) i) 6) He failed to honour in a timely manner his Undertaking to Robert Bryson, another solicitor.

89. The Solicitor acted for the vendors with respect to a real estate transaction in 1992. On May 1, 1992, the Solicitor provided Robert C. Bryson, solicitor for the purchaser, with an Undertaking to obtain and register a discharge of mortgage in favour of Firstline Trust Company within 45 days of closing; to obtain and register an order vacating Certificate of Action and discharging the claims for lien; to provide a building permit issued by the City of Woodstock for an existing deck; and to use best effort to obtain from the builder compliance of restrictive covenants. A copy of the Solicitor's Undertaking is contained at Tab 18, Volume II of the Document Book.

90. By letter dated November 17, 1992 (Tab 19, Volume II, Document Book), Robert C. Bryson made a complaint to the Law Society regarding the foregoing.

91. By letter dated January 5, 1993 (Tab 20, Volume II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Bryson's letter dated November 17, 1992 and requested his comments within two weeks. The Solicitor did not respond.

92. By letter dated January 25, 1993 (Tab 21, Volume II, Document Book), the Solicitor advised the Law Society that he would obtain an order discharging the three claims for lien and vacate the Certificate of Action by January 27, 1993. The Solicitor further advised that he had complied with the remaining parts of his undertaking.

93. By letter dated February 8, 1993 (Tab 22, Volume II, Document Book), the Solicitor advised Mr. Bryson that on February 4, 1993, he obtained the order to discharge the claims and to vacate the certificate. The Solicitor provided Mr. Bryson with copies of the same together with the original building permit and mortgage discharge.

Particular 2a) i) 7) He failed to honour in a timely manner his Undertaking to Norman E. Byrne, another solicitor.

94. The Solicitor acted for the vendors with respect to a real estate transaction in 1991. On May 1, 1991, the Solicitor provided Byrne, Martin & Bedford, solicitors for the purchaser, with an Undertaking to obtain and register a discharge of mortgage in favour of Bank of Nova Scotia within 40 days after closing. A copy of the Solicitor's Undertaking is contained at Tab 23, Volume II of the Document Book.

95. By letter dated June 1, 1993 (Tab 24, Volume II, Document Book), Norman E. Byrne wrote to the Solicitor reminding him that he had not received a response to his previous letters to him requesting compliance with his Undertaking. The Solicitor was advised that if Mr. Byrne did not hear from him by 5:00 that day, the matter would be referred to the Law Society. The Solicitor did not respond.

96. By letter dated June 2, 1993 (Tab 25, Volume II, Document Book), Mr. Byrne made a complaint to the Law Society regarding the foregoing.

97. By letter dated June 8, 1993 (Tab 26, Volume II, Document Book), Mr. Byrne advised the Law Society that the Solicitor complied with his Undertaking on June 4, 1993.

Particular 2a) iii) He failed to reply to invoices from Christina Lindsay, regarding payment of a financial obligation incurred in relation to his practice.

98. The Solicitor retained the services of Christina Lindsay, a court reporter, to record an examination for discovery. On November 10, 1993, ms. Lindsay sent an invoice to the Solicitor for the amount of \$48.15. Reminder notices were sent to the Solicitor on December 14, 1993, January 11, February 15, March 16 and May 3, 1994. The Solicitor did not pay the outstanding invoice. A copy of Ms. Lindsay's account is contained at Tab 27, Volume II of the Document Book.

99. By letter dated May 11, 1994 (Tab 28, Volume II, Document Book), Christina Lindsay made a complaint to the Law Society regarding the foregoing.

100. By letter dated June 9, 1994 (Tab 29, Volume II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Lindsay's letter dated May 11, 1994 and requested his comments within two weeks. The Solicitor did not respond.

101. By letter received by the Law Society on August 3, 1994 (Tab 30, Volume II, Document Book), the Solicitor advised that he had forwarded payment to Ms. Lindsay.

102. By letter dated September 29, 1994 (Tab 31, Volume II, Document Book), Ms. Lindsay advised the Law Society that she had not received payment from the Solicitor.

103. On October 31, 1994, ms. Lindsay advised the Law Society that she had been paid by the Solicitor. A copy of the handwritten notes of the telephone communication is contained at Tab 32, Volume II of the Document Book.

Particular 2a) v) He failed to serve his clients, Brian Watts and Cora J. Bonney, in a conscientious, diligent and efficient manner.

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104. The Solicitor was retained on or about August 25, 1989 by Brian Watts and Cora J. Bonney to obtain a divorce on their behalves from their respective spouses. The petition for divorce was not served upon the spouses. The initial actions lapsed and on January 28, 1991, Mr. Watts and Ms. Bonney attended at the Solicitor's office to execute documentation to commence the divorce proceedings again. They were advised by the Solicitor that they would receive notice of service upon their respective spouses within two weeks. Mr. Watts and Ms. Bonney heard nothing further regarding their cases.

105. As a result, Mr. Watts and Ms. Bonney attended at the Woodstock court office and learned that their divorce papers had not been filed with the court. Subsequently, they attended at the Solicitor's office requesting the return of their marriage certificates so they could proceed to obtain their respective divorces. The Solicitor did not return the marriage certificates as requested.

106. By letter dated July 18, 1991 (Tab 33, Volume II, Document Book), Mr. Watts and Ms. Bonney made a complaint to the Law Society regarding the foregoing.

107. By letter dated August 15, 1991 (Tab 34, Volume II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Watts and Ms. Bonney's letter and requested his comments within two weeks. The Solicitor did not respond.

108. By letter dated September 18, 1991 (Tab 35, Volume II, Document Book), the Solicitor advised the Law Society that he had issued the divorce papers and that they were not served as the instructions for service he received regarding one of the parties had not been explicit. The Solicitor further advised that he treated the two matters as one and for this reason the Solicitor did not serve the other party although this person's whereabouts were known. The Solicitor further advised that he offered to resurrect the files and proceed at his expense because of the delay.

109. By letter received by the Law Society on October 30, 1991 (Tab 36, Volume II, Document Book), Ms. Bonney and Mr. Watts advised that they had attended at the Solicitor's office and called numerous times inquiring about the status of their cases. The Solicitor was advised to call them if he experienced any problems concerning their case. The Solicitor did not call Mr. Watts or Ms. Bonney during the course of his retainer. Mr. Watts and Ms. Bonney accepted the Solicitor's offer to continue the Solicitor's retainer at the Solicitor's expense. A copy of this letter was forwarded to the Solicitor.

110. By letter dated December 13, 1991 (Tab 37, Volume II, Document Book), the Solicitor advised the Law Society that Mr. Watts attended at his office on December 9, 1991 at which time the Solicitor provided Mr. Watts with a Notice of Discontinuance for both actions and same were returned to him on December 12, 1991. The Solicitor further advised that he would file the said notices and issue a new Petition for both clients.

111. By letter dated February 15, 1992 (Tab 38, Volume II, Document Book), Ms. Bonney advised the Law Society that her divorce action was proceeding but Mr. Watts' matter was not. Mr. Watts' ex-wife's solicitor wrote to the Solicitor regarding a trust fund which had been set up for the children of the marriage. The issue of the trust fund had been delaying the proceedings. Mr. Watts provided material concerning the trust fund issue to the Solicitor on January 10, 1992. The Solicitor subsequently contacted Mr. Watts' mother, without his client's knowledge, and requested her cooperation regarding the trust fund issue.

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Mr. Watts attended at the Solicitor's office on January 23, 1992 and requested an explanation from the Solicitor regarding his actions. The Solicitor advised Mr. Watts that he would contact his ex-wife's solicitor and advise her of the circumstances of the trust fund. On January 30, 1992, Ms. Bonney and Mr. Watts attended at the Solicitor's office at which time Ms. Bonney signed documentation and Mr. Watts was advised that there were no new developments in his matter. Since that time, they have not heard further from the Solicitor.

112. By letter dated March 6, 1992 (Tab 39, Volume II, Document Book), the Law Society wrote to the Solicitor requesting that he communicate with his clients and provide a status report to the Society. The Solicitor did not respond.

113. By letter dated March 23, 1992 (Tab 40, Volume II, Document Book), the Solicitor advised the Law Society that Ms. Bonney's divorce would be final on March 24, 1992 and that on March 25, 1992, he would requisition the certificate of divorce. With respect to Mr. Watts' divorce, the Solicitor advised that the delay was due to an issue involving the release of trust funds for Mr. Watts' two children. The Solicitor advised that if Mr. Watts agreed to handle the matter as suggested by the Solicitor, his divorce would also have been finalized at that time. The Solicitor further advised that he would have a process server serve Mrs. Watts with the necessary documents.

114. On April 7 and 8, 1992, Ms. Bonney advised the Law Society that the issue of the trust fund had been resolved. A copy of the handwritten notes of the telephone conversation with Ms. Bonney is contained at Tab 41, Volume II of the Document Book.

115. On April 9, 1992, the Law Society called the Solicitor who advised the he was waiting for the documents to be served and assured the Society that he would contact Mr. Watts the following day to provide him with a status report. A copy of the handwritten notes of the telephone conversation with the Solicitor are contained at Tab 42, Volume II of the Document Book.

116. By letter dated April 24, 1992 (Tab 43, Volume II, Document Book), the Solicitor advised the Law Society that he had advised Mr. Watts that the trust fund problem had been resolved. The Solicitor advised that Mrs. Watts signed the acknowledgment of receipt card and that he was awaiting receipt of the same. The Solicitor further advised that once he received the acknowledgment of receipt card, he would arrange an appointment with Mr. Watts to sign an affidavit and to proceed to Judgment.

117. By letter dated May 8, 1992 (Tab 44, Volume II, Document Book), the Solicitor advised the Law Society that the Motion Record had been completed for the motion for Mr. Watt's Divorce Judgment and that he was waiting for the 20 day notice period since receipt of the Acknowledgement of Service by registered mail upon Mrs. Watt to expire in order to file the documents with the court.

118. By facsimile dated May 29, 1992 (Tab 45, Volume II, Document Book), the Solicitor advised the Law Society that the divorce judgment had been signed on May 20, 1992 and that the divorce would be effective as of June 20, 1992. The Solicitor advised that he would requisition the Certificate of Divorce at that time.

119. By facsimile to the Law Society dated June 23, 1992 (Tab 46, Volume II, Document Book), the Solicitor enclosed a copy of the Certificate of Divorce which was obtained that day. The Solicitor advised that the Certificate of Divorce was also sent to Mr. Watts.

120. By letter dated July 1, 1992 (Tab 47, Volume II, Document Book), Ms. Bonney and Mr. Watts confirmed that the Solicitor had obtained their respective divorces.

Particular 2a) vi) He failed to serve his clients, Robert & Ellen Montgomery, in a conscientious, diligent and efficient manner.

121. The Solicitor was retained by Robert and Ellen Montgomery in or about March 1991 to update their wills. However, the Solicitor did not update their wills. In addition, Mr. & Mrs. Montgomery provided the Solicitor with a promissory note that was worth \$25,000.00 which they wanted to will to their granddaughter. By letter dated July 31, 1991 (Tab 48, Volume II, Document Book), Mr. & Mrs. Montgomery advised the Solicitor to discontinue any work for them and asked him to return the promissory note as soon as possible. The Solicitor did not respond.

122. By letter dated August 10, 1991 (Tab 49, Volume II, Document Book), Mr. & Mrs. Montgomery made a complaint to the Law Society regarding the foregoing.

123. By letter dated September 18, 1991 to Randy Montgomery, Mr. & Mrs. Montgomery's son (Tab 50, Volume II, Document Book), the Solicitor forwarded a copy of the promissory note and the terms of a last will and testament of Mr. and Mrs. Montgomery.

124. On September 24, 1991, Robert Montgomery advised the law Society that they did not receive the papers as they were forwarded to their son. On September 25, 1991, the law Society called the Solicitor and advised him of the error in delivering the documents to Mr. & Mrs. Montgomery's son. The Solicitor advised that he would take steps to rectify the situation. A copy of the handwritten notes of the telephone communications with Mr. Montgomery and subsequently, with the Solicitor are contained at Tabs 51 & 52, Volume II of the Document Book.

125. On October 8, 1991, Mr. Montgomery advised that he had received the papers from his son and that the Solicitor called him to apologize for the error. A copy of the handwritten notes of the telephone conversation with Mr. Montgomery are contained at Tab 53, Volume II of the Document Book.

Particular 2a) ii) 6) He failed to reply to professional letters from Kenneth L. Sherman, another solicitor.

Particular 2b) He failed to comply with his Undertaking dated April 30, 1993 to another solicitor, Kenneth L. Sherman.

126. The Solicitor acted for the vendors with respect to a real estate transaction in 1993. On April 30, 1993, the Solicitor provided Kenneth L. Sherman, solicitor for the purchasers, and John and Pauline Champion, the purchasers, with an Undertaking to obtain and register on title a Death Certificate of Bela Miko and to provide proof of registration; and to obtain and register on title a Release of a one foot reserve from the Province of Ontario and to provide proof of registration. A copy of the Solicitor's Undertaking is contained at Tab 54, Volume II of the Document Book.

127. The Solicitor provided a further Undertaking to Kenneth Sherman dated April 30, 1993 to pay to National Trust Company for the outstanding mortgage and to register a discharge; to provide proof of death of Bela Miko by way of an affidavit from Bill Miko, son of the deceased; and to make a best effort to obtain a funeral director's statement of death of Bela Miko and to deposit same on title. A copy of the Solicitor's Undertaking is contained at Tab 55, Volume II of the Document Book.

128. By letters dated July 22, August 10 and October 24, 1994 (Tabs 56-58, Volume II, Document Book), Mr. Sherman wrote to the Solicitor requesting compliance with his undertakings. The Solicitor did not respond.

129. By letter dated November 2, 1994 (Tab 59, Volume II, Document Book), Kenneth L. Sherman made a complaint to the Law Society regarding the foregoing.

Particular 2c) He failed to reply to the Law Society regarding a complaint by Kenneth L. Sherman despite letters dated November 24, 1994 and December 20, 1994 and a telephone request on December 13, 1994.

130. By letter dated November 24, 1994 (Tab 60, Volume II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Sherman's letter dated November 2, 1994 and requested his comments within two weeks. The Solicitor did not respond.

131. On December 9 and 12, 1994, the Law Society called the Solicitor and received a busy signal each time. On December 13, 1994, the Law Society called the Solicitor who advised that he would respond by the following Friday. A copy of the handwritten notes of the telephone communications is contained at Tab 61, Volume II of the Document Book.

132. By registered mail dated December 20, 1994 (Tab 62, Volume II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on December 23, 1994. The Solicitor did not respond.

133. On February 14, 1995, Mr. Sherman advised the Law Society that the Solicitor had not yet complied with his Undertaking. A copy of the handwritten notes of the telephone conversation with Mr. Sherman is contained at Tab 63, Volume II of the Document Book.

134. To date the Solicitor has not responded to the Law Society regarding a complaint by Kenneth L. Sherman and has not complied with his undertakings to Mr. Sherman.

Particular 2d) He failed to serve his client, Wayne Fishback, in a conscientious, diligent and efficient manner.

135. In 1991, Wayne Fishback purchased a vehicle which included a two year warranty on the engine. Subsequently, the engine blew and Mr. Fishback engaged a mechanic to fix the engine under the warranty. The mechanic advised Mr. Fishback that the dealership did not pay the warranty on his vehicle and that they would not fix the engine as a result. Mr. Fishback called the Solicitor who asked that Mr. Fishback provide him with the sales slip which clearly stated the two year warranty on the engine. The Solicitor spoke with the dealership and subsequently advised Mr. Fishback to purchase a new engine and have the mechanic fix it. The Solicitor further advised Mr. Fishback to provide him with the mechanic's bill at which time he would sue for the recovery of the costs of repairing his vehicle. Mr. Fishback provided the Solicitor with both the sales slip and the mechanic's bill.

136. Approximately three months later, Mr. Fishback called the Solicitor and was advised that the Solicitor had misplaced the sales slip and the mechanic's bill. The Solicitor advised Mr. Fishback that he would commence an action in the Small Claims Court for recovery of the repair costs. Mr. Fishback attended at the Solicitor's office and signed a Small Claims Court form. The Solicitor however did not commence the action. When Mr. Fishback called the Solicitor to follow up, the Solicitor advised that he had been suspended and that another lawyer would be handling his case. Mr. Fishback called the other lawyer and was advised that they knew nothing about his case.

137. By letter dated March 22, 1994 (Tab 64, Volume II, Document Book), Wayne Fishback made a complaint to the Law Society regarding the foregoing.

138. By letter dated April 13, 1994 (Tab 65, Volume II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Fishback's letter dated March 22, 1994 and requested his comments within two weeks. The Solicitor did not respond.

139. By letter dated May 18, 1994 (Tab 66, Volume II, Document Book), the Solicitor confirmed to the Law Society that the contents of Mr. Fishback's letter was correct. He further advised that Mr. Fishback agreed to continue with the Solicitor's services and that the Solicitor would keep Mr. Fishback informed of the status of the action.

140. By letter dated June 13, 1994 (Tab 67, Volume II, Document Book), the Law Society asked the Solicitor to confirm that he had misplaced the bill of sale and to provide details of the work done for Mr. Fishback. The Solicitor did not respond.

141. On July 12 and 15, 1994, the Law Society left messages for the Solicitor to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages left for the Solicitor are contained at Tabs 68 & 69, Volume II of the Document Book.

142. By registered mail dated July 19, 1994 (Tab 70, Volume II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

143. By letter dated August 3, 1994 (Tab 71, Volume II, Document Book), the Solicitor advised the Law Society that he had done nothing during the time he had been retained by Mr. Fishback.

Particular 2e) He failed to reply to the Law Society's request for information regarding a complaint by Wayne Fishback, despite letters dated November 25, 1994 and January 5, 1995 and telephone requests made on December 19, 1994 and December 28, 1994.

144. By letter dated November 25, 1994 (Tab 72, Volume II, Document Book), the Law Society asked the Solicitor for an explanation as to why he did not pursue his client's claim. The Solicitor was also requested to provide the Society with the current status of the action and a chronology of the steps the Solicitor had taken on behalf of Mr. Fishback since May 1994. The Solicitor did not respond.

145. On December 19, 1994, the Law Society called the Solicitor who advised that he would respond by the end of the week. A copy of the handwritten notes of the telephone conversation with the Solicitor is contained at Tab 73, Volume II of the Document Book.

146. On December 28, 1994, the Law Society called the Solicitor to inquire about his response to the Society. The Solicitor advised that he would respond by January 3, 1995. A copy of the handwritten notes of the telephone conversation with the Solicitor are contained at Tab 74, Volume II of the Document Book.

147. By registered mail dated January 5, 1995 (Tab 75, Volume II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on January 9, 1995. The Solicitor did not respond.



148. To date, the Solicitor has not responded to the further inquiries made by the Law Society regarding a complaint by Wayne Fishback.

Particular 2a) ii) 5) He failed to reply to professional letters from Peter H. Kratzmann, another solicitor.

Particular 2f) He failed to serve his client, Leonard Sunday, in a conscientious, diligent and efficient manner by failing to promptly report to the client on the closing of a real estate transaction.

149. The Solicitor acted for Leonard Sunday with respect to the purchase of property at 677 Princess Street, Woodstock. The transaction had closed on April 30, 1993. Shortly after the closing Mr. Sunday's neighbour stated erecting a fence along the property line. Mr. Sunday made several requests for a reporting letter from the Solicitor. Mr. Sunday subsequently retained Peter H. Kratzmann to assist him and to make a claim for an easement by adverse possession with respect to a mutual driveway. Mr. Kratzmann also requested a reporting letter from the Solicitor.

150. By letter dated July 13, 1993 (Tab 76, Volume II, Document Book), the Solicitor reported to his client, Mr. Sunday, advising that the driveway set out in the survey was used by the previous owners as a driveway and therefore, Mr. Sunday was the owner of the driveway up to the gas meter located on the property.

151. By letter dated February 21, 1994 (Tab 77, Volume II, Document Book), Mr. Kratzmann wrote to the Solicitor setting out the difficulties Mr. Sunday was experiencing with his neighbour over the driveway and the legal action taken by him regarding this dispute. Mr. Kratzmann suggested that the Solicitor notify his insurers and requested his response within a reasonable time. The Solicitor did not respond.

Particular 2g) He failed to reply to the Law Society regarding a complaint by Peter H. Kratzmann despite letters dated October 26, 1994 and December 6, 1994 and a telephone request on December 1, 1994.

152. By letter dated October 4, 1994 (Tab 78, Volume II, Document Book), Peter H. Kratzmann made a complaint to the Law Society regarding the Solicitor's failure to respond to his correspondence.

153. By letter dated October 26, 1994 (Tab 79, Volume II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Kratzmann's letter dated October 4, 1994 and requested his comments within two weeks. The Solicitor did not respond.

154. On December 1, 1994, the Law Society called the Solicitor who advised that he had provided a statement to the adjuster for the Errors and Omissions department and thought that he did not have to respond to the Complaints department. When advised that a response was still required by the Complaints department, the Solicitor indicated that he would respond by December 5, 1994. A copy of the handwritten notes of the telephone conversation with the Solicitor are contained at Tab 80, Volume II of the Document Book.

155. The Solicitor did not respond and by registered mail dated December 6, 1994 (Tab 81, Volume II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

156. To date, the Solicitor has not responded to the Law Society regarding the complaint by Peter H. Kratzmann.

Particular 2h) He failed to serve his client, Waterloo County Education Credit Union Limited (Waterloo), in a conscientious, diligent and efficient manner.

157. The Solicitor acted for Waterloo County Education Credit Union Limited (hereinafter referred to as "Waterloo") to secure financing to Donald McLachlin. The transaction closed on June 25, 1991. The Solicitor was to forward the mortgage insurance fee directly to Central Mortgage and Housing Corporation thereafter referred to "CMHC". CMHC contacted Waterloo to advise that the fee had not been paid. Waterloo called the Solicitor several times with respect to the fee and was advised by the Solicitor's secretary that the fee had been paid. The Solicitor did not respond. Waterloo then retained Russell N. Lawson to assist with this matter.

158. By letters dated September 7, September 20 and October 17, 1994, (Tabs 82-84, Volume II, Document Book), Mr. Lawson wrote to the Solicitor requesting a copy of the cancelled cheque and covering letter to CMHC proving that the fee had been paid. The Solicitor did not respond.

Particular 2i) He failed to reply to the Law Society regarding a complaint by Russell N. Lawson despite letters dated December 1, 1994 and January 6, 1995.

159. By letter dated November 15, 1994 (Tab 85, Volume II, Document Book), Mr. Lawson made a complaint to the Law Society regarding the Solicitor's failure to pay the fee to CMHC. The Solicitor advised Mr. Lawson that he did not send the fee to CMHC but used the amount inadvertently in the closing of the transaction.

160. By letter dated December 1, 1994 (Tab 86, Volume II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Lawson's letter dated November 15, 1994 and requested his comments within two weeks. The Solicitor did not respond.

161. On January 4 and 5, 1995, the Law Society called the Solicitor and each time received a busy signal. A copy of the Law Society's attempts to reach the Solicitor are contained at Tab 87, Volume II of the Document Book.

162. By registered mail dated January 6, 1995 (Tab 88, Volume II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on January 11, 1995. The Solicitor did not respond.

163. To date, the Solicitor has not responded to the Law Society regarding a complaint by Russell N. Lawson.

Particular 2j) He failed to serve his client, Nick Miller, in a conscientious, diligent and efficient manner while retained to defend divorce proceedings commenced against him.

164. Mr. Miller retained the Solicitor in or about July 1993 in relation to correspondence he had received from his ex-wife's solicitor requesting support payments for her and their son in the amount of \$500.00 each. Mr. Miller advised the Solicitor that his son did not reside with his ex-wife and therefore, he should not have to pay his ex-wife support for their son. Mr. Miller provided the Solicitor with the documentation he had regarding the case. In October 1993,

28th November, 1996

Mr. Miller received a letter from the court in Sudbury where the ex-wife resided that a support order had been granted and that the amount of \$1,000.00 would be deducted from his pay. Mr. Miller attended at the Solicitor's office with the Order. The Solicitor advised Mr. Miller that he had contacted his ex-wife's solicitor and that they reached an agreement that Mr. Miller would pay \$800.00. The Solicitor further advised him that he would contact his ex-wife's solicitor and the courts and have the support order reduced to the agreed upon amount.

165. On November 1, 1993, the amount of \$1,000.00 was deducted from his pay. Mr. Miller called the Solicitor several times during the months of November through January without hearing back from him. Subsequently, Mr. Miller attended at the Solicitor's office and was advised by the Solicitor that he could no longer handle the case.

166. Mr. Miller then retained Douglas Arthur to take over the case Mr. Arthur brought an application to vary to support order returnable March 31, 1994 and was successful in deleting the support payment to Mr. Miller's son. A copy of the Notice of Application, affidavits of Mr. Miller and his son and the Order dated March 31, 1994 are contained at Tab 89, Volume II of the Document Book.

Particular 2k) He failed to reply to the Law Society regarding a complaint by Nick Miller despite letters dated December 1, 1994 and January 6, 1995.

167. By letter received by the Law Society on November 17, 1994 (Tab 90, Volume II, Document Book), Nick Miller made a complaint to the Law Society regarding the foregoing.

168. By letter dated December 1, 1994 (Tab 91, Volume II, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Miller's letter and requested his comments within two weeks. The Solicitor did not respond.

169. By registered mail dated January 6, 1995 (tab 92, Volume II, Document Book), the Solicitor was reminded of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on January 11, 1995. The Solicitor did not respond.

170. To date, the Solicitor has not responded to the Law Society regarding a complaint by Nick Miller.

#### V. DISCIPLINE HISTORY

171. On January 27, 1994, the Solicitor was ordered to pay costs within 30 days and was suspended for one month commencing February 15, 1994 by Convocation for failing to file his forms 2/3 for the fiscal year ending March 31, 1992, failing to maintain books and records and violating the provisions of a co-signing agreement with the Law Society by failing to obtain a co-signing signature on nine cheques.

DATED at Toronto this 21st day of February, 1996."

Complaint D356/95

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D356/95 and is prepared to proceed with a hearing of this matter on February 27 and 28, 1996.

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 D356/95 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in March, 1970. He has been suspended for non-payment of his Errors & Omissions levy since May 26, 1995.

5. The Solicitor was found guilty of professional misconduct on July 27, 1993 in regard to his failure to maintain his books and records, failure to file his Forms 2/3 for the fiscal year ended March 31, 1992 and for violating provisions of a co-signing agreement with the Law Society by failing to maintain a co-signature on nine cheques drawn against his trust account in June, 1992. The Committee recommended to Convocation that the Solicitor be suspended for one month. This recommendation was accepted by Convocation on January 27, 1994 with the suspension to commence February 15, 1994 and thereafter until his books and records were brought up to date.

6. A Law Society examiner attended at the Solicitor's office on March 31st and April 6, 1994 to determine whether or not the books and records were up to date so that the suspension could be lifted. The books and records had been updated and the suspension was lifted. However, other improprieties which are below were discovered (Document Book, Tab 1).

7. In October, 1992, Revenue Canada placed an Attachment Order on the Solicitor's general account due to arrears in payment of his income tax. As a result of the Attachment Order, the Solicitor avoided transferring his earned fees from his trust account to his general account. The Solicitor prepared his own books and records and maintained a client ledger card for his mixed trust account in his own name (Document Book, Tab 2).

8. During the period May, 1992 to January, 1994, the Solicitor permitted earned fees to accumulate in his mixed trust account contrary to section 14(7) of Regulation 708 of the Law Society Act. The Solicitor then transferred funds from time to time (as noted in paragraph 9 below) from his ledger card to a client ledger card maintained in the name of his wife, P. Lewonas, and then disbursed these monies directly out of his mixed trust account for transactions pertaining to personal and law practice disbursements.

9. During the period from October, 1992 to January, 1994, the Solicitor transferred fees earned from various clients from the clients' respective ledger cards to the Solicitor's ledger card and then to the wife's ledger card as follows:

October, 1992 \$3,944.44 for fees earned during the period May, 1992 to October, 1992 (Document Book, Tab 3);

December, 1992 \$6,712.21 for fees earned during the period November, 1990 to November, 1992 (Document Book, Tab 4);

April, 1993 \$9,567.35 for fees earned during the period January, 1993 to April, 1993 (Document Book, Tab 5);

June, 1993 \$8,956.63 for fees earned during the period May, 1993 to June, 1993 (Document Book, Tab 6);

September, 1993 \$7,091.04 for fees earned in the month of September, 1993 (Document Book, Tab 7);

January, 1994 \$1,765.55 for fees earned during the period December, 1993 to January, 1994 (Document Book, Tab 8).

10. Once the fees were transferred to the wife's ledger card, the Solicitor then used the funds for various expenses predominantly pertaining to the Solicitor's practice. The following represents cheques drawn on the trust account and recorded on the wife's ledger card in violation of sections 14(8) and (9) of Regulation 708 of the Law Society Act (Document Book, Tab 9):

Cheque Date	Cheque Number	Payee	Amount
December 21, 1992	4937	Ford Credit Canada Ltd.	\$2,500.00
December 21, 1992	4941	Bell Canada	1,369.24
April 27, 1993	5127	Union Gas Ltd.	297.90
April 28, 1993	5130	Woodstock PUC	586.45
June 18, 1993	5257	Bell Canada	402.00
June 30, 1993	5324	BDO Ward Mallette	1,500.00
September 21, 1993	no number	Bell Canada	814.82
September 28, 1993	5519	Cole Business Machines	19.38
January 14, 1994	5674	Lucy Taylor wages	345.28
January 18, 1994	5675	Bell Canada	404.57
Total:			\$8,239.64

#### V. PRIOR DISCIPLINE

11. On January 27, 1994, the Solicitor was ordered to pay costs within 30 days and was suspended for one month commencing February 15, 1994 by Convocation for failing to file his forms 2/3 for the fiscal year ending March 31, 1992, failing to maintain books and records and violating the provisions of a co-signing agreement with the Law Society by failing to obtain a co-signing signature on nine cheques.

DATED at Toronto, this 26th day of February, 1996."

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that Charles John Lewonas be granted permission to resign provided he has done so by the time this matter reaches Convocation. If he does not avail himself of this opportunity by that time, then this Committee recommends that he be disbarred.

#### REASONS FOR RECOMMENDATION

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The Solicitor has been engaged in a pattern of misconduct dating back to 1986. There are numerous incidents of undertakings given to other solicitors not being complied with until 3, 4 or 5 years later. In order to obtain compliance it was necessary for the Law Society to become involved and write several letters. There were 6 incidents of the Solicitor failing to serve his clients. In 5 of the matters, he failed to make any response to requests by the Law Society for information. In response to an attachment order being placed by Revenue Canada on the Solicitor's general account, he operated his general account through his mixed trust account contrary to the regulations.

The Solicitor did not attend the hearing and accordingly this Committee does not have the benefit of any explanation from him with respect to any mitigating factors that might exist. He has not been practising since the spring of 1995. In June, 1995, his files were handed over to the staff trustee.

The Committee considers this a very serious matter. Counsel for the Law Society urged the Committee to consider imposing the penalty of disbarment on the basis of Solicitor's governability. In the Committee's view, the appropriate penalty is that the Solicitor be permitted to resign.

There is no evidence of dishonesty by the Solicitor. Of the 14 undertakings which he failed to honour in a timely manner, 13 were ultimately satisfied, although only after lengthy involvement by the Law Society. His failure to honour a financial obligation incurred in relation to his practice was with respect to a \$43.00 amount. Some but not all of the clients' complaints were ultimately resolved to their satisfaction.

In the view of the Committee, this case is distinguishable from the Wickham decision where no effort was made by the solicitor to respond to the 17 particulars contained in the complaints and where the solicitor failed to produce his books and records notwithstanding an overwhelming number of contacts with the Law Society.

Having said that, it is clear from the breadth and nature of the particulars in the complaint that the public needs to be protected from the Solicitor.

The Solicitor has one prior disciplinary offence. On January 27, 1994, he was suspended for 30 days or so long thereafter until his books and records were maintained and was ordered to pay costs in the amount of \$1,700.00 for failure to file, failure to maintain his books and records and for violating the provisions of a co-signing agreement with the Law Society. Taking into account the relatively modest prior disciplinary record of the Solicitor, the Committee is of the view that the appropriate penalty is that he be permitted to resign provided he has done so by the time this matter reaches Convocation. If he does not avail himself of this opportunity by that time, then this Committee recommends that he be disbarred.

28th November, 1996

Charles John Lewonas was called to the Bar on March 19, 1970.

ALL OF WHICH is respectfully submitted

DATED this 16th day of May, 1996

Nancy Backhouse, Chair

There were no submissions, the finding confirmed and the Report adopted.

The recommended penalty of the Discipline Committee was that the solicitor be permitted to resign.

Ms. Ratchford made submissions in support of the recommended penalty. She advised that the solicitor had tendered his resignation.

It was moved by Mr. Cole, seconded by Mr. Topp that the recommended penalty be adopted.

Carried

Re: Ernest Abel BENEVIDES - North York

The Secretary placed the matter before Convocation.

Mr. Topp withdrew for this matter.

Mr. Perrier appeared for the Society and Mr. Tom Lockwood appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 24th May, 1996, together with an Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 24th May, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th November, 1996 (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

Jane Harvey, Chair

W. A. Derry Millar

Robert B. Aaron

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

ERNEST ABEL BENEVIDES  
of the City  
of North York  
a barrister and solicitor

Neil J. Perrier  
for the Society

Thomas J. Lockwood, Q.C. & Rena Krasnow  
for the solicitor

Heard: February 14, 1996

28th November, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On May 25, 1995 Complaint D108/95 was issued against Ernest Abel Benevides alleging that he was guilty of professional misconduct.

The matter was heard in public on February 14, 1996 before this Committee comprising Jane Harvey, Chair, W. A. Derry Millar and Robert B. Aaron. The Solicitor attended the hearing and was represented by Thomas Lockwood, Q.C. and Rena Krasnow. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D108/95

2.   a)   In or about April and May 1991, he misappropriated the sum of \$80,000, more or less, from his client the estate of Lillian Hutchinson;
- b)   In or about April 1991, to facilitate this misappropriation, he prepared and registered a mortgage on property owned by his clients Chong Ning Jew and Yim Jew, and signed their names to the mortgage document, without their knowledge or consent;
- c)   In or about December 1991, he misappropriated the sum of \$40,000, more or less, from his client the estate of Lillian Hutchinson;
- d)   In or about December 1991, to facilitate this misappropriation, he prepared and registered a mortgage on property owned by his clients Robert Jung and Lam Fong Jung, and signed their names to the mortgage document, without their knowledge or consent;
- e)   In or about March 1992, he misappropriated the sum of \$45,000, more or less, from his client the estate of Lillian Hutchinson;
- f)   In or about March 1992, to facilitate this misappropriation, he prepared and registered (in June 1992) a mortgage on property owned by his cliengs David Ngai Min Ing and Kuen Miu Ing, and signed their names to the mortgage document, without their knowledge or consent;
- g)   In or about January or February, 1993, he misappropriated the sum of \$45,000, more or less, from his client Trulfin Investments Inc.;



28th November, 1996

- h) In or about January or February, 1993, to facilitate this misappropriation, he prepared and registered a mortgage on property owned by his clients Robert Jung and Lam Fong Jung, and signed their names to the mortgage document, without their knowledge or consent;
- i) In or about April 1993, he misappropriated the sum of \$100,000, more or less, from Mike and Bessie Marmer;
- j) In or about April 1993, to facilitate this misappropriation, he prepared and registered a mortgage on property owned by his clients Chong Ning Jew and Yim Jew, and signed their names to the mortgage document, without their knowledge or consent;
- k) In or about April 1993, he misappropriated the sum of \$100,000 more or less, from Laurentian Bank of Canada in trust for RRSP No. 3-009-464;
- l) In or about April 1993, to facilitate this misappropriation, he prepared and registered a mortgage on property owned by his clients George and Kathleen Berry, and signed their names to the mortgage document, without their knowledge or consent.

#### Evidence

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

#### "AGREED STATEMENT OF FACTS"

##### I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D108/95 and is prepared to proceed with a hearing of this matter on February 13 and 14, 1996.

##### 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 D108/95 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

##### IV. BACKGROUND FACTS

4. The Solicitor was called to the Bar of the Province of Ontario on September 16, 1948. Upon his Call the Solicitor joined the firm of Deacon, Bayly as a partner. Within a year the firm name changed to Deacon, Benevides. In 1977, Mr. Thomas H. Thomson joined the firm as an associate. From 1977 to 1995 the firm operated under the name Deacon, Benevides & Thomson. During that period the Solicitor practised as a sole practitioner. The bulk of the Solicitor's practice was in civil litigation.

5. The Solicitor practised for 47 years in Ontario with no prior discipline record. He was awarded the Queen's Counsel designation in 1962. During his 47 year career, the Solicitor has never before been subject to discipline proceedings.

6. The Law Society ("Society") commenced its investigation into the Solicitor's conduct in September of 1993. From September 1993 to May 1994 the Solicitor's responses to the audit investigator's questions were somewhat less than forthright. On May 18, 1994, the Solicitor initiated contact with the Society through his counsel and requested a meeting. On the same day, the Solicitor and his counsel attended upon the Society and admitted the misconduct alleged herein. Subsequent to May 1994, the Solicitor co-operated fully with the Society's investigation. The Solicitor had made complete restitution. None of the clients lost any money. All have been repaid by the Solicitor. There have been no claims to the Society's Compensation Fund with respect to any of the within matters.

7. The Solicitor provided an Undertaking dated May 18, 1994, (Tab 1 of the Document Book) to cease the practice of law. As part of the Undertaking, the Solicitor consented to co-signing controls being placed on his trust account. The Solicitor has complied with the Undertaking to the Society's satisfaction.

8. The Solicitor's books and records maintained under section 15 of Regulation 708 under the *Law Society Act* are adequate.

9. The Solicitor fully retired from practice on January 27, 1995.

V. FACTS

A. Summary of Complaint that Initiated Investigation

10. The Solicitor was the sole executor and solicitor for the estate of Lillian Gertrude Hutchison ("Estate"). A bank account was maintained by the Solicitor on behalf of the Estate at the National Bank of Canada. The Will of the late Lillian Gertrude Hutchinson provided for no trust provisions. It was an "immediate distribution Will".

11. A number of the residual beneficiaries of the Estate retained Ms. Debra Stephens ("Stephens"), as they were unable to obtain either any significant proceeds from the Estate or adequate information from the Solicitor. There was one specific legatee and fifteen residual legatees under the Will. It is the Solicitor's position that due to his heavy workload at the time he was not able to keep up with their numerous inquiries. The Solicitor did, however, respond to certain inquiries when he was able to do so.

12. After communicating with the Solicitor and reviewing the accounts of the Estate, Stephens wrote a letter of complaint to the Law Society dated October 8, 1992, concerning the Solicitor's administration of the Estate (Tab 2 of the Document Book). The Solicitor states that Stephens advised him that she had telephoned the Law Society only to ascertain what steps she should take and was advised to write a letter to the Law Society.

13. By letter dated September 14, 1993, David Warga ("Warga"), a solicitor retained by Mr. Robert Jung and Mrs. Lam Fong Jung ("Jungs") complained to the Society with respect to the Solicitor (Tab 3 of the Document Book). Warga had conducted a title search on the property owned by the Jungs at 102-102A Dixon Road and discovered another mortgage on title of which the Jungs were previously unaware. The Solicitor states that the balance owing under the said Charge on 102 - 102A Dixon Road had, in fact, been paid off before the Jungs learned of the Registration but the Discharge had not as yet been registered (See Tab 21 of the Document Book). The Charge contained signatures purporting to be the Jungs, but which they had not signed.

28th November, 1996

B. Misappropriation of Mortgage Proceeds - \$410,000

14. Between 1991 - 1993, the Solicitor purported to invest funds in six mortgages. Those mortgages are summarized below and discussed individually in some detail. The Solicitor misappropriated the following monies from the Estate and other clients.

Mortgagor	Amount of Misappropriation	Registration Date	Discharge Date
<i>Mortgagee: Hutchinson Estate</i>			
(a) Jew	\$80,000	April 19, 1991	April 30, 1993
(b) Jung	\$40,000	December 24, 1991	June 25, 1993
(c) Ing	\$45,000	June 8, 1992	June 30, 1993
<i>Mortgagee: Trulfin Investments Inc.</i>			
(d) Jung	\$45,000	February 1, 1993	September 2, 1993
<i>Mortgagee: Mrs. &amp; Mrs M. Marmer</i>			
(e) Jew	\$100,000	April 30, 1993	March 28, 1994
<i>Mortgagee: Laurentian Bank of Canada in Trust</i>			
(f) Berry	\$100,000	April 8, 1993	June 2, 1994
Total Misappropriation	\$410,000		

15. All of the above mortgages were formally registered on title, although the registered mortgagors were unaware of their existence. None of the mortgagors or mortgagees have suffered any losses as a result of the fraudulent mortgages as the principal and interest in respect of each mortgage has been repaid by the Solicitor.

16. Repayment of the Hutchinson Estate mortgages was precipitated by the Estate beneficiaries insisting on distribution after considerable delays in the administration of the Estate. The Hutchinson Estate mortgages were repaid in full by April 1993. The later three mortgages (Trulfin Investments, Marmer and Laurentian Bank of Canada) appear to have financed the repayment of the Hutchinson mortgages. The Solicitor used his personal funds to repay these latter three mortgages. This will be discussed in greater detail below.

17. When questioned about the Hutchinson Estate mortgages, the Solicitor initially claimed he had acted for all parties in the mortgages and had misplaced most of the client files. He had attempted to maintain a semblance of legitimacy by completing such mortgage formalities such as title searches, tax clearance certificates etc.

(a) Jew Mortgage to Hutchinson Estate - \$100,000, \$80,000 Advanced

28th November, 1996

18. The Solicitor had acted for Mr. and Mrs. Jew ("Jews") in their purchase of the property at 48 Ovendon Square, Scarborough, Ontario. Details of the mortgage are set out below and a copy of the Charge is Tab 4 of the Document Book.

Interest Adj. Date: April 17, 1991  
Date of Proceeds: Two amounts of \$40,000 were paid on April 17, and May 17, 1991 respectively. Copies of the two cheques and related bank drafts are Tabs 5 and 6 of the Document Book.  
Principal Amount: \$100,000, although only \$80,000 was advanced.  
Municipal Address: 48 Ovendon Square, Scarborough, Ontario.  
Interest Rate: 11%  
Chargor: Chong Ning Jew and Yim Jew  
Date Discharged: April 30, 1993. A copy of the Discharge is Tab 7 of the Document Book  
Date Repaid: April 12, 1993  
Balance Due Date: April 17, 1993  
Document Prepared By: Deacon, Benevides & Thomson

19. The mortgage proceeds were not distributed to the mortgagors (Jews) who had no knowledge of the transaction. The funds were ultimately deposited into the account of Rehctub Holdings Limited, a company wholly owned by the Solicitor. This is evidenced by the bank draft payees and the endorsements on the back of said drafts.

20. The Solicitor states that he used the funds from this mortgage to repay a personal loan and other debts. The bulk of the funds, (approximately \$62,611.47) for repayment of this mortgage came from the proceeds of the Marmer mortgage discussed in section 5 below (A copy of this cheque is Tab 24 of the Document Book). The Solicitor has admitted signing the Jews' names to the mortgage documents without their knowledge or consent.

(b) Jung Mortgage to Hutchinson Estate - \$40,000

21. The Solicitor had acted for the Jungs in their purchase of the relevant property at 102 - 102A Dixon Road, Weston, Ontario. Details of the mortgage are set out below and a copy of the Charge is Tab 8 of the Document Book.

Interest Adj. Date: December 20, 1991  
Date of Proceeds: December 20, 1991  
Principal Amount: \$40,000. A certified cheque made out to E.A. Benevides in Trust is Tab 9 of the Document Book.  
Municipal Address: 102-102A Dixon Rd., Weston, Ontario  
Interest Rate: 8.5%  
Chargor: Robert Jung and Lam Fong Jung  
Date Discharged: June 25, 1993. The discharge document is attached is Tab 10 of the Document Book.  
Date Repaid: February 2, 1993  
Balance Due Date: December 20, 1992  
Document Prepared by: Deacon, Benevides & Thomson

22. The mortgage proceeds were not distributed to the mortgagors who had no knowledge of the transaction. This was confirmed in a letter from Warga to the Society dated December 13, 1993 (Tab 11 of the Document Book). The proceeds of this mortgage were deposited by the Solicitor into his personal bank account at Central Guaranty Trust and were used for his personal affairs.

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23. On February 2, 1993, the sum of \$45,478.58 was deposited into the Estate account in full payment of the outstanding principal and interest owing under the said mortgage. The Solicitor states that the funds used for repayment of this mortgage came from the Trulfin Investments Inc. mortgage (\$45,000.00) and the balance from the Solicitor's own personal funds (\$478.00). A copy of the cheque to the Estate from Truflin Investments Inc. dated January 28, 1993, is Tab 12 of the Document Book. The Solicitor has admitted to signing the Jungs names on the mortgage documents without their knowledge or consent.

(c) Ing Mortgage to Hutchinson Estate - \$45,000

24. The Solicitor had acted for the Ings in their purchase of the relevant property at 12 Kew Gardens, Richmond Hill, Ontario. Details of the mortgage are set out below, and a copy of the Charge is Tab 13 of the Document Book.

Interest Adj. Date: March 6, 1992  
Date of Proceeds: March 6, 1992  
Principal Amount: \$45,000  
Municipal Address: 12 Kew Gardens, Richmond Hill, Ontario  
Interest Rate: 8.25%  
Chargor: David Ngai Min Ing & Kuen Miu Ing  
Date Discharged: June 30, 1993. The discharge document is Tab 14 of the Document Book.  
Date Repaid: March 8, 1993  
Balance Due Date: March 6, 1993  
Document Prepared By:  
Deacon, Benevides & Thomson

25. The mortgage proceeds were not distributed to the mortgagors, who had no knowledge of the transaction. At Tab 15 of the Document Book is a handwritten note dated December 12, 1993, from the Ings to the Law Society confirming that they did not sign the said mortgage documentation. The proceeds of the mortgage were transferred to the Solicitor by certified cheque. A cheque in the amount of \$45,000 was deposited into the Solicitor's personal account at Central Guaranty Trust on March 6, 1992. The Estate files do not contain a copy of the cheque and the bank has been unable to locate another copy. The proceeds of this mortgage were used to make the monthly instalments on the Hutchinson Estate mortgages and to satisfy certain other debts of the Solicitor. On or about March 8, 1993, the sum of \$47,537.41 was deposited into the Estate account. A copy of bank draft requisition #355799 in favour of the Estate is Tab 16 of the Document Book.

26. The funds for repayment of the Ing mortgage came from the Solicitor's personal bank account. A copy of the cheque in the amount of \$47,537.41 payable to the Bank of Nova Scotia for the issuance of said draft referred to in paragraph 25 herein was drawn on the Solicitor's personal bank account (Tab 17 of the Document Book). he Solicitor has admitted to signing the Ing's names to the mortgage documents without their knowledge or consent.

(d) Jung Mortgage to Trulfin Investments Inc. - \$45,000

27. This is the second fraudulent mortgage that the Solicitor registered on this property. Details of the mortgage are set out below, and a copy of the Charge is Tab 18 of the Document Book.

Interest Adj. Date: January 29, 1993  
Date of Proceeds: Unknown  
Principal Amount: \$45,000  
Municipal Address: 102-102A Dixon Rd., Weston, Ontario  
Interest Rate: 16%  
Chargor: Robert Jung and Lam Fong Jung

28th November, 1996

Date Discharged: September 2, 1993. The Discharge is Tab 19 of the Document Book.  
Date Repaid: July 29, 1993  
Balance Due Date: July 29, 1993  
Document Prepared By:  
Not completed

28. The mortgage proceeds were not distributed to the mortgagors, who had no knowledge of the transaction as confirmed in a letter from Warga and the Jungs to the Law Society dated September 14, 1993 (Tab 20 of the Document Book). Apart from oral confirmation that full payment of the outstanding principal and interest owing under the said mortgage was received, the mortgagee, Truflin Investments Inc. did not assist the Society's investigation.

29. The funds for repayment of this mortgage came from the Solicitor's own assets and were paid by draft no. SV 15011 dated July 29, 1993, in the amount of \$48,636.35 (Tab 21 of the Document Book). This sum represented full payment of the outstanding principal and interest owing under the said mortgage. A copy of the Solicitor's cheque, drawn on the Solicitor's personal bank account, to Montreal Trust dated July 29, 1993, in the amount of \$48,636.35 for the issuance of said draft is Tab 22 of the Document Book. The Solicitor admitted to signing the Jungs' names to the mortgage documents without their knowledge or consent.

30. In his letter to the Society dated September 14, 1993, Warga states that the Solicitor had advised the Jungs that his office had prepared the mortgage documents as this information is not evident from the Charge. The Solicitor also confirmed this to Warga in a telephone conversation on September 12, 1993. In a telephone discussion with Mr. Andrew Cawse, the Society's investigator, a representative of the mortgagee (Truflin Investments Inc.) advised that the Solicitor had represented him in this transaction.

(e) Jew mortgage to Mr. & Mrs Marmer - \$100,000

31. This is the second mortgage that the Solicitor registered on this property. Details of the mortgage are set out below and a copy of the Charge is Tab 23 of the Document Book.

Interest Adj. Date: April 30, 1993  
Date of Proceeds: April 30, 1993. Copies of the two proceed cheques are Tab 24 of the Document Book.  
Principal Amount: \$100,000  
Municipal Address: 48 Ovendon Square, Scarborough, Ontario  
Interest Rate: 8.5%  
Chargor: Chong Ning Jew & Yim Jew  
Date Discharged: March 28, 1994. A copy of the registered Discharge is Tab 25 of the Document Book.  
Date Repaid: February 17, 1994. A copy of the cheque in the amount of \$102,529.89 is Tab 26 of the Document Book. Repayment includes an early repayment penalty of nearly five months interest.  
Balance Due Date: April 30, 1995  
Document Prepared By:  
E. Sidney Woolfson, Q.C.

28th November, 1996

32. The mortgage proceeds were not distributed to the mortgagors who had no knowledge of the transaction. Milton Davis, a solicitor retained by the Jews, wrote to the Society by letter dated February 22, 1994, (Tab 27 of the Document Book) with respect to the mortgage placed on his clients' property by the Solicitor. As evidenced from the back of the paid cheques, \$62,611.47 of the mortgage proceeds was deposited into the Estate account to fund the repayment of the first Jews mortgage and the balance of \$35,278.97 was paid into the Solicitor's personal bank account at Central Guaranty Trust. The Solicitor endorsed the back of the cheque with the Jews' names.

33. The funds for repayment of this mortgage came from the Solicitor's personal funds and were paid by bank draft from Montreal Trust. A copy of the Solicitor's cheque to Montreal Trust in the amount of \$102,529.89 for issuance of said draft in favour of Mr. & Mrs. Marmer is Tab 28 of the Document Book. This payment was in full satisfaction of the outstanding principal and interest owing under the said mortgage. The Solicitor admitted to signing the Jews' names on the Charge and the proceeds cheque without their knowledge or consent.

(f) Berry Mortgage to Laurentian Bank in Trust - \$100,000

34. Details of the mortgage are set out below, and a copy of the Charge is Tab 29 of the Document Book.

Interest Adj. Date: April 8, 1993  
Date of Proceeds: April 8, 1993. A copy of the proceeds cheque is Tab 30 of the Document Book.  
Principal Amount: \$100,000  
Municipal Address: 75 Wynford Heights, #1705, North York, Ontario  
Interest Rate: 9.5%  
Chargor: George Berry and Kathleen Berry  
Date Discharged: June 2, 1994  
Date Repaid: May 17, 1994. A copy of the cheque in the amount of \$102,249.29 is Tab 31 of the Document Book. Repayment includes an early repayment penalty for three months interest.  
Balance Due Date: April 8, 1995  
Document Prepared By:  
Robert G. Durno

35. The mortgage proceeds were not distributed to the mortgagors, George and Kathleen Berry, who had no knowledge of the transaction. This is evidenced by their letter dated May 12, 1994, to the mortgagee (Laurentian Bank) (Tab 32 of the Document Book). The mortgagees held the mortgage in trust for the self-directed RRSP of Robert Durno who had prepared the Charge. As evidenced from the back of the paid cheques, the mortgage proceeds were deposited into the Solicitor's personal bank account. The Solicitor used his personal funds to repay this mortgage. The mortgage was repaid in full on May 17, 1994.

36. By the end of May 1994, and prior to the issuance of the within Complaint, the Solicitor had repaid all of the outstanding principal and interest owing under the six mortgages described herein.

V. PRIOR DISCIPLINE

37. The Solicitor has no prior discipline.

DATED at Toronto, this 7th day of February, 1996."

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Ernest Abel Benevides be disbarred.

REASONS FOR RECOMMENDATION

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Mr. Benevides, a lawyer of forty-seven years' experience decided to ease his already comfortable financial situation by paying off a mortgage or mortgages on his own home and properties at a time when his net worth was approximately a million dollars.

He chose to do this by taking advantage of his position of trust as a lawyer and executor. He took money from an estate for which he was lawyer and executor. He then, to avoid discovery, gave the estate fictitious mortgages on the properties of other clients, mortgages which he prepared, on which he forged signatures and then falsely registered on title. He repeated this action from the same estate using other clients' property seven months later and again four months later. He then took money from three other real estate clients by preparing, signing and registering false mortgages. The total was six instances of misappropriation and as many forgeries and false registrations. The misappropriations totalled \$410,000; approximately \$165,000 was outstanding at any given time.

We have considered the evidence and able argument of counsel and authorities. The penalty for misappropriation is generally disbarment unless extenuating circumstances exist and then, the lesser penalty of permission to resign is given.

We have reviewed the authorities and note that the following elements have been present where permission to resign has been granted; serious medical condition affecting judgement and/or pressing family and/or financial difficulties, plus restitution.

In this case, we have misappropriation and forgery. Restitution has been made but there is no evidence of a serious medical condition or pressing family or financial difficulties.

Counsel for the Solicitor acknowledged that in the absence of the Solicitor's forty-seven years of unblemished practice prior to the events, the appropriate penalty would be disbarment. The Committee has wrestled with the question of whether the otherwise good character, age, and forty-seven years experience of the Solicitor should change the authorities in cases of this kind. We came to the conclusion that in the absence of proof of a serious medical condition or pressing family or financial difficulties that these were not sufficient extenuating circumstances.

Ernest Abel Benevides was called to the Bar on September 16, 1948.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED this 24th day of May 1996

Jane Harvey, Chair



28th November, 1996

There were no submissions, the finding confirmed and the Report adopted.

The recommendation of the Discipline Committee was that the solicitor be disbarred.

A notice of disagreement was filed by the solicitor.

Mr. Lockwood made submissions in support of the lesser penalty of permission to resign.

There were questions from the Bench.

Mr. Perrier made submissions in support of the recommended penalty.

There were further questions from the Bench followed by a reply by Mr. Lockwood.

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

It was moved by Mr. Gottlieb, seconded by Ms. Puccini that the solicitor be granted permission to resign.

Lost

It was moved by Mr. Goudge, seconded by Mr. MacKenzie that the solicitor be disbarred.

Carried

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

Re: Kishore Premji TANNA - Toronto

The Secretary placed the matter before Convocation.

Mr. Wright withdrew for this matter.

Mr. Stuart appeared for the Society and Mr. Mendel Green appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 13th September, 1996, together with an Affidavit of Service sworn 25th September, 1996 by Ron Hopple that he had effected service on the solicitor by registered mail on 23rd September, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 28th November, 1996 (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

Nancy L. Backhouse, Chair  
Jane Harvey  
Bradley H. Wright

28th November, 1996

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

Glenn Stuart  
for the Society

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

Mendel M. Green  
for the solicitor

Heard: July 24, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

#### REPORT

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This matter was heard in public on July 24, 1996, before this Committee composed of Nancy L. Backhouse, Chair, Jane Harvey and Bradley H. Wright. The Solicitor attended the hearing and was represented by Mendel M. Green. Glenn Stuart appeared on behalf of the Law Society.

#### DECISION

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The Solicitor seeks relief from Convocation's Order of June 23, 1994 indefinitely suspending him until he produces proper books and records with respect to his closed account for his Toronto office for the period January, 1990, to July, 1990.

The Solicitor produced his books and records for the period prior to and after January to July, 1990, to the satisfaction of the Law Society and has otherwise complied with the Order of Convocation. The committee is satisfied that the Solicitor, provided he satisfies the conditions set forth below, will have made every reasonable effort to comply with Convocation's Order. The Solicitor's records were misplaced when his accountant died and the Solicitor went to India due to the death of his father. He obtained photocopies of the bank statements and cancelled cheques from the bank but his accountant was unable to complete the books and records because some of the bank statements which were photocopied from microfiche were illegible. The records which were produced by the accountant show trust deficits for 3 clients as at July 31, 1990:

Chan (\$44.00)  
Odame (\$846.00)  
Patel (\$30.00)

The Solicitor has advised that these deficiencies have all been rectified and one of the conditions it is recommended that be imposed on the Solicitor is to provide verification of this or to put the corresponding amounts into trust.

The total balance in trust as at July 31, 1990, of \$35,841.63, according to the Solicitor's chartered accountant, represented the Solicitor's fees and disbursements for files already billed and accordingly belonged to the Solicitor. The Law Society has received no complaints from clients for the relevant period.

Counsel for the Law Society submitted that nothing had been done by the Solicitor since this matter was before Convocation on June 23, 1994, and that therefore, there was no basis to lift the suspension. We accept that there has been no change in circumstances since June, 1994, other than that the Solicitor

28th November, 1996

has now been suspended for a period of over 2 years and that during which no clients' complaints have arisen during that further time period. In our view, the Solicitor cannot reasonably do more than we have required him to do in this Decision to comply with Convocation's June 23, 1994 Order. In our view, the public interest is protected by lifting the suspension against the Solicitor with the conditions imposed on him, which were on the consent of the Solicitor.

Conditions

The Committee recommends that the Solicitor be reinstated on the following conditions:

1. He be required to produce the cancelled trust cheques for the period of January 1, 1990 to July 31st, 1990, and if the cancelled trust cheques are not available, then the Solicitor will be required to obtain a letter from Allen Gerstl, LL.B., Piyush Shaw, C.A., and the CIBC at the Bay and College Street branch confirming that to be the case, prior to this matter going to Convocation.
2. He provide proof that the three deficiencies which appear in the client trust accounts as set forth at tab 11 of exhibit 1 for the client Chan in the amount of \$44.00; Odame in the amount of \$846.00 and Patel in the amount of \$30.00 have been rectified. In the event that the Solicitor is not able to contact the clients and obtain acknowledgments from them that there are not trust monies owed to them, that he confirm that those amounts are in trust for his clients, prior to this matter reaching Convocation.
3. He be required to practice under the supervision of a member in good standing with the Law Society and approved by the Secretary of the Law Society for a minimum period of one year and thereafter for as long as it may be determined appropriate by the Secretary.
4. That there be co-signing controls on the Solicitor's general and trust accounts for a minimum period of one year and thereafter for as long as it may be determined appropriate by the Secretary.
5. He be required to provide the Law Society with monthly reconciliations for his trust and general accounts and copies of his trust and general receipt and disbursement journals before the end of the next following month for a period of one year and thereafter for as long as it may be determined appropriate by the Secretary.
6. He be required to participate in the Practice Review Program and comply with any recommendations made in the course of his involvement with the Program.

Kishore Premji Tanna was called to the Bar on the 21st day of March 1975.

ALL OF WHICH is respectfully submitted

DATED this 13th day of September, 1996

Nancy L. Backhouse, Chair

The recommendation of the Discipline Committee in the application by the solicitor for reinstatement was that the solicitor be reinstated with the conditions set out in the Report.

28th November, 1996

Mr. Stuart made submissions opposing the recommendation.

Mr. Green made submissions in support of the recommendation.

There were questions from the Bench.

There was a reply by Mr. Stuart and further questions from the Bench.

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

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

Carried

It was moved by Mr. Adams but failed for want of a seconder that the solicitor be required to produce all his books and records for the period January to July 1990 which could be reconstructed as set out on page 17, paragraph 52 (i) of the Society's Factum.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be reinstated with the conditions as set out in the Report excluding condition number 1 concerning the cancelled trust cheques.

Re: Lawrence Charissios DUCAS - Scarborough

The Secretary placed the matter before Convocation.

Mr. Topp withdrew for this matter.

Mr. Perrier appeared for the Society and Mr. Ducas appeared on his own behalf assisted by Ms. Fuerst, Duty Counsel.

Convocation was reminded that this matter was adjourned from September because of a motion for an increased penalty.

The recommendation of the Discipline Committee was that the solicitor be disbarred.

It was moved by Mr. Cole, seconded by Ms. Curtis that the solicitor be disbarred.

Counsel for the Society and the solicitor made submissions in support of the recommended penalty of permission to resign.

The solicitor withdrew following his submissions.

It was moved by Mr. Goudge, seconded by Mr. Carey that the solicitor be granted permission to resign.

Carried

The solicitor was recalled and informed of Convocation's decision.

Re: GARY MICHAEL YAFFE - Toronto

Mr. Stuart spoke to the above matter where the solicitor had still not appeared before Convocation to be reprimanded.

28th November, 1996

The Treasurer advised that this issue was referred to the Professional Regulation Committee for a policy decision and as soon as a decision was reached the Convocation Assignment Tribunal would be notified.

CONVOCATION ROSE AT 12:45 P.M.

Confirmed in Convocation this 24 day of January

, 1996

  
Treasurer