

20th June, 1991

MINUTES OF SPECIAL CONVOCATION

Thursday, 20th June, 1991  
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence, Q.C.), Bragagnolo, Brennan, Campbell, Chapnik, Copeland, Cullity, Feinstein, Finkelstein, Kiteley, Lamek, Levy, Mohideen, Murray, Palmer, Scott, Thom and Wardlaw.

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"IN PUBLIC"

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ADMISSIONS COMMITTEE

Re: STEPHEN LAWRENCE CAPPE, Toronto

Application for Readmission

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Thomas Lockwood appeared for the Society. Mr. S. Labow appeared for the applicant who was present.

Mr. Lamek presented the Application for Readmission which was filed as Exhibit 1.

(See Application in Convocation file)

The applicant had no objection to the participation of those Benchers who sat on the original panel.

There were no submissions by Society's counsel. Mr. Labow spoke in support of the decision of the Committee.

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

The Report was adopted.

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

Counsel and the applicant retired.

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Re: EDWARD HENRY LUCK, Toronto

Application for Readmission

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Thomas Lockwood appeared for the Society. Mr. W. Trudell and Ms. Janet Brookes appeared for the applicant who was present.

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Mr. Lamek presented the Application for Readmission which was filed as Exhibit 1.

(See Application in Convocation file)

Based on the Report and submissions by both counsel the Committee considered and applied the relevant principles.

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

It was moved by Mr. Campbell, seconded by Mr. Wardlaw that the Committee be asked to submit a more detailed report on its deliberations and that the matter be adjourned.

Carried

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

Mr. Trudell, on behalf of the applicant waived a seised Convocation and the matter was adjourned.

Counsel and the applicant retired.

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#### DISCIPLINE COMMITTEE

Re: JOHN DAVID MARSHALL, Toronto

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society. Mr. Mitchell of Mr. Stockwood's office appeared for the solicitor who was present.

Mr. MacKenzie requested an adjournment on consent.

The adjournment was granted and the matter was put over to the Special Convocation in September.

Counsel and the solicitor retired.

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Re: TIMOTHY JOHN LUTES, Orillia

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Ron Cohen appeared for the Society. Mr. Brian Greenspan appeared for the solicitor who was present.

Mr. Cohen requested an adjournment on consent.

The adjournment was granted and the matter was put over to the Special Convocation in September.

Counsel and the solicitor retired.

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Re: PATRICK ANTHONY COCCIMIGLIO, Thunder Bay

Mr. Lamek placed the matter before Convocation.

Mr. Campbell withdrew from Convocation.

20th June, 1991

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society. Mr. Brian Greenspan appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 23rd May, 1991, together with an Affidavit of Service sworn 19th June, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 31st May, 1991 (Marked Exhibit I) together with Acknowledgement, Declaration and Consent signed by the solicitor 20th June, 1991 (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

Thomas J.P. Carey, Chair  
Lee K. Ferrier  
Ms. June Callwood

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

Gavin MacKenzie  
for the Society

PATRICK ANTHONY COCCIMIGLIO  
of the City  
of Thunder Bay  
a barrister and solicitor

Brian Greenspan  
for the Solicitor

Heard: February 19 and  
April 10, 1991

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 November 2, 1990, Complaint D206/90 was issued against Patrick Anthony Coccimiglio alleging that he was guilty of professional misconduct.

The hearing was heard in public on February 19, 1991 and April 10, 1991 before this Committee composed of Thomas J.P. Carey, Chair, Lee K. Ferrier and Ms. June Callwood. Mr. Coccimiglio appeared and was represented by Brian Greenspan. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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The following particular of conduct unbecoming was admitted and found to have been established:

Complaint D206/90

Conduct Unbecoming

3. (a) The Solicitor was convicted on November 30, 1988, in the Provincial Court (Criminal Division) at Thunder Bay, Ontario, of committing a sexual assault on Sonya Bolrowski.

Evidence

The evidence before the Committee on the issue of professional misconduct and conduct unbecoming was in the form of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D206/90 and is prepared to proceed with a hearing of this matter on February 19, 1991.

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 pleads guilty to particular 3(a) of Complaint D206/90. The parties have agreed to jointly request that particular 2(b) of the Complaint be withdrawn. The Solicitor pleads not guilty to particular 2(a) of the Complaint, and the parties intend to lead viva voce evidence with respect to that particular to supplement the evidence in this Agreed Statement of Facts.

IV. BACKGROUND

4. The Solicitor is at present 32 years of age. He was called to the bar on April 10, 1986. In January, 1987, and January, 1988 (the dates of the alleged sexual assaults on his clients), he was employed as an associate lawyer by Weiler, Maloney, Nelson in Thunder Bay. He is currently a member of the firm Deighton, Coccimiglio in Thunder Bay.

V. FACTS RELATING TO PARTICULAR 3(a)

5. On November 30, 1988, the Solicitor was convicted in the Provincial Court (Criminal Division) at Thunder Bay of the offence of committing a sexual assault on Sonya Bolrowski contrary to section 246.1 of the Criminal Code. Attached as Exhibit "A" to this Agreed Statement of Facts is a copy of the reasons for judgment of His Honour Judge R.D. Clarke whereby the Court found the Solicitor guilty of the offence.

6. On January 20, 1989, His Honour Judge Clarke imposed a sentence of 30 days' imprisonment on the Solicitor. Attached as Exhibit "B" to this Agreed Statement of Facts is a copy of Judge Clarke's reasons for sentence.

7. The Solicitor appealed his conviction and sentence to the District Court. The Honourable Judge Hoolihan allowed the appeal against conviction on June 30, 1989, and ordered a new trial. Attached as Exhibit "C" to this Agreed Statement of Facts is a copy of Judge Hoolihan's reasons for judgment.

8. The Crown appealed Judge Hoolihan's order to the Court of Appeal. On May 29, 1990, the Court of Appeal allowed the appeal and restored the conviction imposed at trial. The Court of Appeal reduced the sentence of 30 days' imprisonment to one of time served. Attached as Exhibit "D" to this Agreed Statement of Facts is a copy of the Court of Appeal's endorsement dated May 29, 1990. No further appeals have been brought by either the Solicitor or the Crown.

VI. FACTS RELATING TO PARTICULAR 2(a)

9. The Solicitor was retained on or about September 29, 1986, by Ilsa Maguire to represent her in collecting arrears of support from her husband, Frank Zela.

10. Mr. Zela and Ms. Maguire had been married on July 31, 1975, in Sudbury. There were four children of the marriage.

11. Ms. Maguire alleges that she was sexually assaulted by the Solicitor in January, 1987. She reported the matter to the Thunder Bay Police Force in January, 1988, after she learned of an allegation by Sonya Bolrowski that the Solicitor had sexually assaulted Ms. Bolrowski.

12. The police laid a charge of sexual assault against the Solicitor as a result of Ms. Maguire's report. The Crown elected to proceed by way of summary conviction, and the trial proceeded at the same time as the trial of the Solicitor on the charge referred to above involving Sonya Bolrowski. During the trial it came to the Court's attention that the offence was alleged to have occurred more than six months prior to the date on which the information was sworn. His Honour Judge Clarke purported to convert the trial on the charge involving Ms. Maguire into a preliminary inquiry. Judge Clarke committed the Solicitor for trial on this charge on June 29, 1988.

13. The trial of the charge involving Ms. Maguire was scheduled for December 4, 5 and 6, 1989, in District Court before the Honourable Judge Loukidelis. Attached as Exhibit "E" is a copy of the indictment.

14. Prior to plea, the Solicitor's counsel brought an application to quash the indictment on the basis that Judge Clarke did not have jurisdiction to convert the trial into a preliminary inquiry and to commit the Solicitor for trial. The application was dismissed.

15. The Solicitor's counsel then brought an application for an order in lieu of a writ of Certiorari to quash the indictment and for an order of prohibition to prevent the District Court from proceeding with the trial. The application was heard by the Honourable Mr. Justice Donnelly on April 10, 1990. The application was granted. Attached as Exhibit "F" to this Agreed Statement of Facts is a copy of the order of Mr. Justice Donnelly dated April 10, 1990. Attached as Exhibit "G" to this Agreed Statement of Facts is a copy of the endorsement of Mr. Justice Donnelly.

17. The Solicitor acknowledges having reviewed this Agreed Statement of Facts and having taken the advice of his counsel, Mr. Brian Greenspan, before signing it.

DATED at Toronto this 19th day of February, 1991."

REASONS FOR DECISION AS TO COMPLAINT D206/90 - 2(a)  
(ORAL DECISION)

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Both counsel handled this case in an extremely professional manner. It was a very delicate, sensitive matter. It is a credit to both counsel. This matter was one that could have led to a lot of confrontation between counsel quite easily and a very emotional case where either counsel could have gone over the line in cross-examining, either the Solicitor or the complainant, and that didn't happen at all.

The Committee has carefully listened to all of the evidence in this case which is difficult for a number of reasons. The allegations are serious ones. They relate to a period of time that is over four years ago. And because of the nature of the complaint, that being a sexual assault upon Ilsa Maguire, in the office of the lawyer, it is a situation where, in its very nature, is unlikely to have a lot of corroboration. These kind of cases are very difficult for that reason.

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The Committee has made findings of credibility, findings of fact as follows - The Committee finds as a fact that in or about the month of January, 1987, the complainant, Ilsa Maguire, attended at the office of the Solicitor for an appointment in the evening, to discuss a matter that this Solicitor was handling for Ilsa Maguire, now known as Ilsa Trott.

The Committee finds that in the course of that meeting there was a conversation between the Solicitor and Ilsa Maguire in which a proposition was made by the Solicitor of a sexual nature, in explicit language, including a proposition regarding oral sex and mentioning a hotel.

The Committee is unable to find on the standard that this Committee feels is applicable (that standard being of convincing evidence), that in the course of making that proposition the Solicitor sexually assaulted Ilsa Maguire, although the Committee feels that there is some probability that that occurred.

The Committee is unable to find that on convincing evidence. In coming to those conclusions, the Committee has put emphasis on the evidence of the witness Ilsa Trott, also known as Ilsa Maguire, and in particular the evidence of Mary Kathleen Schiewe.

Miss Schiewe gave evidence that was credible in the view of the Committee, that the complainant appeared shaken at the aerobics class that Miss Schiewe took part in on the Monday following the date of the allegation; was physically upset, and later made the complaint to her of an incident.

The Committee also is assisted by the agreed evidence that was put before us in the form of a statement of Mr. Irvin Stach, a partner in the law firm of Weiler, Maloney who confirms a complaint about a sexual proposition and which involved going to a hotel.

In the view of the Committee not that a lot turns on that, as to when the complaint was made, whether it was a few weeks, or perhaps a couple of months after the incident.

In the result, the Solicitor is found not guilty of the allegation as set out, but guilty maybe I will invite help from counsel on this, whether it is a proper finding of not guilty, or for the Committee to amend the information.

It is the intent of the Committee in any event that the Solicitor be found guilty that in or about the month of January, 1987 he was guilty of professional misconduct, the particulars of which that he, in or about the month of January, 1987, indecently propositioned his client, Ilsa Maguire, to participate in sexual conduct with him.

We find that that is professional misconduct for the following reasons -- Ilsa Maguire/Trott, was the client. She came to him for assistance on a matrimonial situation, at a time when she was in a situation where she didn't have much money. She was also not trusting, to some extent, of what assistance she would get from lawyers. She indicated she did trust the Solicitor.

In our view it is an important message, to both the profession and the public that there is a bond of trust between a client and his or her Solicitor; that there is a necessity for solicitors, at all times, to be above reproach in their conduct with their clients; and for a solicitor to use his position of power and trust to satisfy himself or attempt to satisfy himself sexually with a client, even to the extent of asking and accepting a no response. This is unacceptable.

It is unacceptable because of the vulnerability of the client, especially a female client in these circumstances, to feeling that there may not be an option in terms of consenting or not, given the particular situation that a client finds herself in with the solicitor, client relationship and the need to rely on the solicitor's services to reach an end that the client cannot otherwise reach without the solicitor.

That relationship of dependency then is such that the Solicitor is in a position to dominate the client in some respect and it simply cannot be acceptable to allow a solicitor, in any way, to breach that relationship in the way that we've found that it was breached.

There is a finding of professional misconduct on the basis of the sexual proposition of the client, but not on the basis of a sexual assault.

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that Patrick Anthony Coccimiglio be suspended for a period of three months.

In coming to our reasons for penalty, we have considered the following facts. First of all the Solicitor was convicted of sexually assaulting his client, Sonya Bolrowski, and he was convicted on November 30, 1988 of an allegation that relates to January, 1988.

For that, he initially received a thirty day sentence, which was reduced by the Court of Appeal, ultimately to time served, which from the material, was four days in jail.

Further the Committee takes into account that on that matter, and on the other matter that the Solicitor has been found guilty of professional misconduct on, that the matters have received considerable attention in the press in Thunder Bay where the Solicitor practises.

The Committee takes into account the Solicitor's age at the time and his experience at the Bar. In the case of the conduct regarding Ilsa Maguire. The Solicitor was not yet at the Bar a year. In the case of Sonya Bolrowski, the Solicitor had been at the Bar for less than two years.

The Committee also takes into account that in both cases, the Solicitor committed acts of misconduct in relation to female clients who had retained him in respect to family law matters, specifically divorce in both cases. That in both cases there is indication that both women were in the position of vulnerability and were relying on the Solicitor, as their Solicitor, to perform legal services for them and were dependant upon his advice and that they trusted the Solicitor.

The violation of that trust by a solicitor is an extremely serious matter in the view of this Committee. It is increasingly the type of matter that is being discussed in public forums.

The Committee has had drawn to its attention a number of cases, both involving discipline of doctors and discipline of lawyers, none of which contain facts that are on all fours with these facts. All cases must, of course, be dealt with on their own facts.

The Committee is convinced, on the basis of all of the evidence that we have heard, and specifically on the basis of the character letters that we have received and the character evidence given today by Mr. Coccimiglio's partner, Mr. Deighton, that the Solicitor is well respected in his community, has an excellent reputation in his community and enjoys the continued support of his clients, despite what has occurred here.

It would appear that the Solicitor has matured through this, in the sense that there has been no repeated allegations. He has married. He has a family now, and he has been at the Bar for approximately five years now.

If it were not for those mitigating factors, the Committee would have supported a suspension in the range that was urged upon us by counsel for the Law Society, and that range is six to twelve months.

However, we are mindful of the fact that the Solicitor was a very junior member of the Bar at the time of this offence and that these matters have been over his head for three years and that the allegations go back four years.

The fact that there are two separate allegations make the matter more serious. However, having said that, there must be recognition of the fact that there was not a complaint made, even apparently a complaint that would have come to the attention of the Solicitor on the first matter in time (that is the Maguire matter), nor was there any police or Law Society complaint until the second matter was complained of. So that there was not a warning so to speak to the Solicitor. The second matter then is not a second offence, in the sense that certainly the Solicitor had not been punished for the first matter before having been found guilty of the second matter. For that reason we are of the view that the penalty should be concurrent.

In all of the circumstances, we are of the view that the appropriate penalty to bring home the seriousness of this matter to the profession, and noting that the Solicitor himself did not seem to be in need of present rehabilitation, that the appropriate penalty would be a suspension for a period of three months.

Patrick Anthony Coccimiglio was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1986.

ALL OF WHICH is respectfully submitted

ORAL REASONS DELIVERED the 10th day of April, 1991

DATED this 23rd day of May, 1991

"T.J.P. Carey"  
Thomas J. P. Carey, Chair

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

Counsel for the Society made submissions respecting an amendment to the Report that on page 1, the particular of professional misconduct be deleted.

There were no submissions by Mr. Greenspan.

The Report as amended was adopted.

Mr. Lamek did not participate or vote.

It was moved by Mr. Lamek, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for three months be adopted.

Representations were made by both counsel. Counsel for the Society sought a lengthier suspension and counsel for the solicitor asked Convocation to adopt the penalty recommended because of mitigating factors.



Questions were taken from the Bench.

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

It was moved by Mr. Thom, seconded by Mr. Wardlaw that the solicitor be suspended for 6 months.

Not Put

It was moved by Ms. Kiteley but failed for want of a seconder that the solicitor be permitted to resign or be disbarred.

It was moved by Mr. Levy, seconded by Mr. Copeland that the solicitor be suspended for 4 months for the sexual assault charge and 2 months consecutive for the sexual impropriety charge.

Not Put

It was moved by Mr. Scott, seconded by Mr. Mohideen that the solicitor be suspended for a period of 12 months.

Carried

It was moved by Mr. Levy, seconded by Mr. Bragagnolo that Ms. Palmer and Mr. Murray be disqualified from voting.

Lost

The motion made by Mr. Lamek that the recommended Penalty be adopted was not put.

Mr. Finklestein entered Convocation but did not participate.

Counsel, the solicitor, the reporter and the public were recalled and informed of the decision of Convocation. The Treasurer advised that Convocation would give written Reasons.

Mr. Greenspan, on behalf of the solicitor asked that the suspension commence on August 1st, 1991 to allow the solicitor to make arrangements for the orderly transfer of his clients. Convocation granted the request.

Counsel and the solicitor retired.

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Re: MICHAEL FRANK STOYKA, Windsor

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Robert Conway appeared for the Society. Mr. Brian Greenspan appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 2nd April, 1991 together with an Affidavit of Service sworn 24th April, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 5th April, 1991 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 20th June, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

20th June, 1991

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Mrs. Mary Weaver, Q.C., Chair  
Mr. Bernard Shaffer, Q.C.  
Mrs. Netty Graham

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

J. Robert Conway  
for the Society

MICHAEL FRANK STOYKA  
of the City  
of Windsor  
a barrister and solicitor

Brian Greenspan  
for the Solicitor

Heard: January 15, 1991

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 April 20, 1990 Complaint D66/90 was issued against Michael Frank Stoyka alleging that he was guilty of professional misconduct and on September 20, 1990 Complaint D157/90 was issued against Michael Frank Stoyka alleging that he was guilty of professional misconduct.

This matter was heard in public on January 15, 1991, before this Committee composed of Mrs. Mary Weaver, Chair, Mr. Bernard Shaffer and Mrs. Netty Graham. Mr. Stoyka attended the meeting and was represented by Brian Greenspan. J. Robert Conway appeared as counsel for the Law Society.

DECISION

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

Complaint D66/90

- 2 a) He failed to reply promptly to correspondence from the Society requesting a reply to complaints received from Janette Long and Howard Staats thereby breaching the Undertaking he gave to the Society on August 22, 1989 to reply to Society correspondence within a period of two weeks of his receipt of such correspondence.
- b) He misled his fellow solicitor, Janette Long, by indicating to her that:
  1. He had prepared a proper Transfer/Deed of Land.
- e) He failed to conduct himself towards other members in a manner characterized by courtesy and good faith in that he failed to answer letters and telephone calls from Janette Long and Howard Staats.

Complaint D157/90

- 2 a) in or about the month of July, 1988 he facilitated an unconscionable loan transaction between his client, Joseph Dashevich, and one Graham Cross whereby Joseph Dashevich loaned the sum of \$10,000.00 to Graham Cross at a rate of interest which contravened s.347 of the Criminal Code in that the rate of interest payable exceeded an effective annual rate of 60%; and,
- b) on behalf of Joseph Dashevich, he received and held as security for the unconscionable loan a blank mortgage security purportedly signed by Graham Cross's spouse, Eda Mai Cross, without making reasonable enquiries as to whether Eda Mai Cross had received independent legal advice; and,
- c) when the said unconscionable loan went into default in or about the month of February, 1987 on account of the death of the borrower, Graham Cross, he arbitrarily and without the agreement of any of the parties concerned inserted in the mortgage a principal amount which was \$2,000.00 more than the principal balance outstanding on the loan at the time, together with an interest rate of 10% per anum, and then registered the said mortgage.

Evidence

The evidence before the Committee was contained in an Agreed Statement of Facts and Admissions, which is set out below:

"AGREED STATEMENT OF FACTS

1. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D66/90 and D157/90 and is prepared to proceed with a hearing of this matter on January 15, 1991.

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 Complaints D66/90 and D157/90 with his Counsel, Brian Greenspan, Esq., and admits the following particulars:

D66/90	Particulars 2(a), 2(b)(1) and 2(e)
D157/90	All

Counsel for the Law Society will seek leave to withdraw Particulars 2(b)(2), 2(c) and 2(d) of Complaint D66/90, on consent.

IV. FACTS

COMPLAINT D66/90

Long Complaint  
Particulars 2(b) & (e)

4. The Solicitor and fellow Windsor Solicitor Janette Long represented opposing parties in a matrimonial matter, Donald and Linda Chartrand. The Solicitor represented Donald Chartrand and Ms. Long represented Linda Chartrand.

5. A Separation Agreement was finalized and executed in July, 1989.

20th June, 1991

6. One of the terms of the Separation Agreement was that Donald Chartrand would purchase Linda Chartrand's interest in the matrimonial home after Donald Chartrand had obtained a mortgage loan on it. It was agreed that the Solicitor would prepare the Transfer and then deliver it and Donald Chartrand's purchase money to Ms. Long.

7. Ms. Long made numerous requests for the Transfer and purchase money by telephone and by letter between July and October, 1989. It is Ms. Long's evidence that the Solicitor assured her from time to time during chance encounters at the Courthouse that the Transfer had been prepared and was simply awaiting Donald Chartrand's signature. In fact, the Solicitor had not prepared the Transfer and does not dispute Ms. Long's evidence.

8. The reason the Solicitor had not prepared the transfer was because he was awaiting the obtaining of financing by Mr. Chartrand in order to purchase Mrs. Chartrand's interest in the matrimonial home. The financing took longer than expected, partly because staff vacations at the Bank delayed processing of Mr. Chartrand's loan application, and partly because Mr. Chartrand wanted to irritate Mrs. Chartrand by delaying the payment to her.

9. Eventually the Solicitor agreed to have an executed Transfer ready for Ms. Long to pick up at the Solicitor's office on October 6, 1989. The Solicitor did not, however, prepare the Transfer because Mr. Chartrand was still not in funds. When Ms. Long came to his office on October 6, 1989, however, the Solicitor told her that the Transfer was not ready because Donald Chartrand had not executed it.

10. After further pressure from Ms. Long's firm, the Solicitor admitted to Ms. Long in November, 1989 that he had not prepared the Transfer.

11. In order to expedite completion of the matter, Ms. Long then did a further title search, prepared the Transfer and had it executed by Linda Chartrand. She then sent the Transfer to the Solicitor and requested payment of the funds owing to Mrs. Chartrand.

12. The Solicitor was put in funds by Mr. Chartrand's bank in late December, 1989. Mr. Chartrand told the solicitor not to release the funds until Mr. Chartrand specifically authorized him to do so. Mr. Chartrand told the Solicitor that he "was in no hurry" to pay Mrs. Chartrand. However, the Solicitor continued to urge Mr. Chartrand to resolve the matter promptly.

13. Ms. Long complained to the Society about the Solicitor's delay by letter dated January 23, 1990 and she sent a copy to the Solicitor the same day. Upon receipt of his copy of Ms. Long's letter to the Society, the Solicitor immediately told Mr. Chartrand that the Solicitor had been reported to the Society because of the delay in completing the matter.

14. Mr. Chartrand immediately authorized the Solicitor to remit the funds to Ms. Long forthwith. The Solicitor then informed Ms. Long that he would be able to send the funds immediately and he further recommended to Mr. Chartrand that Mr. Chartrand offer to compensate Mrs. Chartrand with interest for the delay and to pay Ms. Long a fee for having prepared the Transfer. Mr. Chartrand agreed to do so, and resolution of the matter on that basis was completed within one week, on January 31, 1990.

15. The Society wrote the Solicitor about Ms. Long's complaint on February 9, 1990, and that letter was received by the Solicitor a couple of days after he had completed the matter. The Solicitor did not respond to that letter nor to another letter from the Society dated March 22, 1990.

16. Ms. Long did not inform the Society that the Solicitor had completed the matter because she assumed that the Solicitor would.

17. Complaint D66/90 was served on the Solicitor by letter dated April 20, 1990.

18. It was not until July, 1990 that the Society learned that the matter had been resolved, and then it was Ms. Long who informed the Society that the matter had been completed. That came about because Ms. Long was served with a subpoena to testify at the hearing scheduled on July 24, 1990. Being served with the subpoena caused her to realize that the Society might be unaware that the matter was completed immediately after she had complained.

Staats Complaint  
Particulars 2(a) & (e)

19. Mr. Staats is a solicitor in Brantford, Ontario. His client, Keith Dunbar, was convicted in Windsor on October 31, 1986 of the offence of careless driving under the Highway Traffic Act.

20. Mr. Dunbar instructed Mr. Staats to appeal the conviction and seek a new trial. Mr. Staats then contacted the Solicitor on November 26, 1986 and asked him to act as Mr. Staats' agent to serve and file the Notice of Appeal and to act on the appeal.

21. During the November 26, 1986 telephone conversation the Solicitor agreed to act and Mr. Staats sent him the Notice of Appeal the same day.

22. Mr. Staats chose the Solicitor because he had known him for twenty years.

23. The Solicitor's articling student served and filed the Notice of Appeal the following day, November 27, 1986. She put a note in the file to the effect that the hearing date would be fixed when the trial transcript was delivered.

24. No one at the Solicitor's office communicated this to Mr. Staats. When Mr. Staats followed up on the matter, the Solicitor did not respond to his requests.

25. Between April, 1987 and July, 1989 Mr. Staats wrote the Solicitor six letters requesting information on the status of Mr. Dunbar's appeal. The Solicitor ignored those letters as well as several telephone calls from Mr. Staats during the same period.

26. The matter was not covered during the investigation which culminated in August, 1989 discipline proceedings because Mr. Staats did not complain to the Society about it until January, 1990, and because the Solicitor's file on the matter had inadvertently been closed out and, therefore, was not included in the thorough review of his files in preparation for the August, 1989 discipline proceedings.

27. Mr. Staats complained to the Society by letter dated January 15, 1990. The Society wrote the Solicitor on February 9, 1990 and again on March 22, 1990 about Mr. Staats's complaint. The Solicitor did not reply to either letter.

28. The appeal could still be prosecuted if Mr. Dunbar wished, but he has decided to abandon his appeal because of the lengthy delay.

Breach of Undertaking  
Particular 2(a)

29. The Solicitor's failure to respond to the Society's letters regarding the Long and Staats complaints was a breach of one of the terms of the undertaking which the Solicitor gave the Society on August 22, 1989. In that undertaking, the Solicitor promised to reply to correspondence from the Discipline Department within two weeks of receiving that correspondence. The undertaking is at page 56 of the Document Brief.

30. The Solicitor gave the undertaking in conjunction with the disposition of discipline proceedings against him at that time. The subject matter of those proceedings was the Solicitor's failure to serve fourteen clients in a conscientious, diligent and efficient manner during the period from 1980 to 1988, together with his failure to inform those clients and the Errors and Omissions Department of his possible negligence, and also his failure to reply to correspondence and telephone calls from the Society about complaints from some of the clients. The Complaint in those proceedings is at page 10 of the Document Brief.

31. The penalty imposed in those discipline proceedings was a Reprimand in Committee based on a joint submission for that disposition. The joint submission was made because of the psychiatric evidence to the effect that the misconduct stemmed from the Solicitor resorting to procrastination, avoidance and even denial when he became unable to handle an increasingly heavy caseload. The psychiatrist's reports are at pages 46-55 of the Document Brief.

COMPLAINT D157/90  
(Dashevich)

32. The Solicitor was approached in July, 1988 by one Graham Cross who said that he knew someone who was looking for investors regarding some condominiums. Mr. Cross was in the business of buying and reselling properties for his own profit.

33. The Solicitor then arranged for his long-time acquaintance and former client, Joseph Dashevich, to lend \$10,000.00 to Mr. Cross. The agreement between Mr. Dashevich and Mr. Cross was that Mr. Dashevich would double his money, but Mr. Dashevich and the Solicitor disagree as to the period over which this return was to be earned -- Mr. Dashevich says it was to be two weeks and the Solicitor says it was to be four months.

34. For the purposes of these discipline proceedings the parties hereto accept the Solicitor's recollection, which amounts to an effective annual rate of interest of 300%. The rate of interest which s.347 of the Criminal Code defines as criminal is a rate in excess of 60% per anum.

35. The security for the loan was to be a mortgage on property owned by Mr. Cross's wife. The mortgage was prepared by the Solicitor and given to Mr. Cross to arrange for his wife to sign. The principal amount of the mortgage was left blank. Mr. Cross then returned the executed mortgage to the Solicitor, and it was understood that the Solicitor would register the mortgage in the event of default.

36. The \$10,000.00 was advanced to Mr. Cross from the Solicitor's trust account on July 21, 1988. Mr. Cross sent the Solicitor a cheque for \$11,000.00 on August 2, 1988 in repayment of the loan which the Solicitor deposited to his trust account. However, Mr. Cross then informed the Solicitor that he needed \$10,000.00 of that \$11,000.00 back, and accordingly, the Solicitor returned \$10,000 to Mr. Cross. The Solicitor sent the remaining \$1,000.00 to Mr. Dashevich.

37. Between August 18 and December 12, 1988 Mr. Cross made nine more payments totalling \$9,000.00 on account of the loan, and those payments were credited towards interest owing. Mr. Cross made the payments to the Solicitor's office in cash. The Solicitor kept a record of the payments, but did not deposit them to any account. His office advised Mr. Dashevich of each payment, and Mr. Dashevich then attended and picked up each cash payment.

38. As of December, 1988, Messrs. Dashevich and Cross apparently agreed that the principal outstanding was still \$10,000.00. If that was so, then Mr. Cross had paid interest totalling \$10,000.00 on a loan of \$10,000.00 during a six-month period, which yielded an effective annual rate of interest of 200%, as opposed to the 300% rate agreed upon earlier.

39. In December, 1988 Mr. Cross asked the Solicitor to request a further loan of \$8,000.00 from Mr. Dashevich. The Solicitor did so and Mr. Dashevich agreed. In this case, the funds were advanced by Mr. Dashevich directly to Mr. Cross.

40. Mr. Cross died on March 2, 1989. At that time there was \$18,000 owing on the loan -- the original principal of \$10,000.00 plus the additional \$8,000.00 advanced in December, 1988. The Solicitor then inserted the figure of \$20,000.00 in the mortgage executed by Mr. Cross's wife as the principal owing, and inserted a rate of interest of 10% p.a., calculated semi-annually. He then registered the mortgage.

41. The Solicitor inserted a principal amount of \$20,000.00 in the mortgage because that was his rounded off estimate of the principal and interest owing at that time.

42. When Mrs. Cross was contacted about payment on the mortgage she said that she did not sign any mortgage, and that any signature on a mortgage purporting to be hers was a forgery.

43. Mr. Dashevich then retained another Solicitor to recover the balance outstanding on the loan. Mr. Dashevich's new Solicitor made a demand upon the Solicitor for repayment of the loan, alleging that the Solicitor had negligently advised Mr. Dashevich on the investment of his money. Mr. Dashevich commenced action against the Solicitor in February, 1990, and the Solicitor settled Mr. Dashevich's claim by paying \$13,000.00 in March and April, 1990.

44. The Solicitor failed to notify the Errors and Omissions Department of Mr. Dashevich's claim because he was erroneously of the view that he had not acted as a Solicitor on any aspect of the transaction, and was therefore under no obligation to report the matter to E. & O. The Solicitor charged no fee nor rendered any account with respect to the transaction. The Solicitor concedes that he was in error in failing to recognize his position as a solicitor in this matter and in his consequent failure to report Mr. Dashevich's claim to E. & O.

45. Mr. Dashevich's ultimate recovery, taking into account the Solicitor's payment of \$13,000.00, was \$23,000.00. That means in the end Mr. Dashevich made interest of \$5,000.00 over twenty-two months on an investment of \$18,000.00, which was an effective annual rate of interest of 15%.

#### V. JOINT SUBMISSION AS TO PENALTY

46. This is the third occasion since 1979 on which the Solicitor has been found guilty of professional misconduct for failing to serve a client.

47. The first occasion was on November 1, 1979. A copy of that complaint is at page 7 of the Document Brief on Penalty. The Solicitor was reprimanded in Committee.

48. The second occasion was on August 22, 1989. A copy of the complaint is at page 10 of the Document Brief on Penalty. The substance of the Complaint is that the Solicitor failed to serve fourteen clients, and also failed to inform the clients and the Errors and Omissions Insurer of his neglect.

49. That Discipline Committee reprimanded the Solicitor in Committee based on the joint submission to that effect from Counsel. The reasons for that joint submission are set out on pages 17 & 18 of the Agreed Statement of Facts in that case and in the Decision of the Committee on penalty. The Agreed Statement of Facts is at page 16 of the Document Brief on Penalty, and the Transcript of the Discipline Committee's decision is at page 34 of the same brief. The Reports of Dr. Yaworsky and Alan T. Marshall, Q.C., which were referred to by the Committee, are at pages 40-43 and 46-55 of the brief. A report on the follow-up by the Practice Advisory Service after the August, 1989 hearing is at page 44 of the Document Brief.

50. The parties hereto jointly submit that the Solicitor ought to be reprimanded in Convocation and fined \$10,000.00.

DATED at Toronto this 15th day of January, 1991."

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that the said Michael Frank Stoyka be Reprimanded in Convocation and fined \$10,000.00.

#### REASONS FOR RECOMMENDATION

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##### 1. Complaint D66/90

There are three (3) particulars of professional misconduct arising from conduct reported by two (2) different lawyers, Ms. Janette Long and Mr. Howard Staats, complaining of similar types of conduct namely:

- 2 a) breach of an undertaking to the Law Society given on August 22, 1989;
- 2 b) misleading his fellow solicitor, Janette Long; and
- 2 e) failure to conduct himself towards other members in a manner characterized by courtesy and good faith.

Each of these particulars is of a serious nature. We note that the conduct occurred in each instance at the same time as the Solicitor was subject to an earlier complaint which terminated in August of 1989. It is apparent that the penalty given in the earlier discipline matter did not deter the Solicitor from continuing in engaging in conduct that has resulted in these present proceedings and some of it of a nature similar to that which were the subject matter of the earlier proceedings. The Solicitor then proceeded to breach the undertaking he had given to the Law Society in the earlier proceedings by failing to reply to correspondence from the Law Society. Had he notified the Society upon receipt of their correspondence that he had settled with Ms. Long the matter that was the subject matter of her complaint then these proceedings might not have been started. The Staats' matter was terminated when Mr. Staats' client abandoned his appeal by reason of the undue delay caused by this Solicitor.

##### 2. Complaint D157/90 - Dashevich

The conduct admitted by the Solicitor to be professional misconduct is his participation in an unconscionable loan transaction in which the interest rate contravened the Criminal Code and, secondly, that subsequent to the death of the borrower he inserted a principal amount in a mortgage wherein the principal amount was left blank and in which he inserted an amount without the consent of any of the parties concerned. The transaction itself involved two sophisticated clients who, it appears, retained his services not so much as a solicitor but as a mortgage broker. The spouse of the borrower denied that she had executed the mortgage and said that her signature on the document was a forgery. Both borrower and lender were sophisticated and experienced entrepreneurs, familiar with loans secured by way of mortgage. The document was held by the Solicitor on the understanding that it would not be registered until default. The fact that the borrower asked for and was given by the lender additional funds five (5) months after the original advance during which time the borrower had paid the interest that the lender sought, seems to satisfy our concern that the parties lacked individual legal advice or that there was a conflict of interest between the parties. The law suit commenced by the lender against the Solicitor was settled in the law suit commenced after the death of the borrower. Consequently there were no serious consequences of an ongoing nature arising from the conduct of the Solicitor.



20th June, 1991

Notwithstanding the serious nature of the conduct, we are persuaded that the appropriate penalty does not extend to a suspension for any length of time. The imposition of the fine is to the Solicitor the equivalent of such suspension and will not lead to a disruption in the conduct of the affairs of the Solicitor's clients that would result from such suspension. The fine paid by the Solicitor will defray in some measure the cost incurred by the Society in proceeding with this matter. After due consideration of all of the evidence, the Agreed Statement of Facts and the joint submission as to penalty, we recommend that the penalty be a Reprimand in Convocation plus a fine of ten thousand dollars (\$10,000.00).

Michael Frank Stoyka was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 21st day of March, 1969.

ALL OF WHICH is respectfully submitted

DATED this 2nd day of April, 1991

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

It was moved by Mr. Lamek, seconded by Mr. Murray that the Report be adopted.

There were no submissions by either counsel.

The Report was adopted.

It was moved by Mr. Lamek, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded in Convocation and fined \$10,000 be adopted.

There were no submissions by either counsel.

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

The Treasurer stated that the fine was recommended in lieu of a suspension to defray the costs of the investigation.

The Penalty was adopted.

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

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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

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CONVOCATION RECONVENED AT 2:00 P.M.

.....

PRESENT:

The Treasurer, (James M. Spence, Q.C.), Bragagnolo, Brennan,  
Chapnik, Copeland, Cullity, Feinstein, Finkelstein, Lamek, Murray,  
Palmer, Rock, Scott, Thom and Topp.

.....

Re: WOLF VON TEICHMAN, Toronto

Mr. Lamek placed the matter before Convocation.

Mr. Rock withdrew.

The reporter was sworn.

Mr. Robert Conway appeared for the Society. Mr. John Olah  
appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee  
dated 8th April, 1991 together with an Affidavit of Service sworn 24th  
April, 1991 by Louis Katholos that he had effected service on the  
solicitor by registered mail on 9th April, 1991 (marked Exhibit 1)  
together with Acknowledgement, Declaration and Consent signed by the  
solicitor 20th June, 1991 (marked Exhibit 2). Copies of the Report  
having been forwarded to the Benchers prior to Convocation, the reading  
of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert J. Carter, Q.C., Chair  
Frances Kiteley  
Ross Hall

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

J. Robert Conway  
for the Society

WOLF VON TEICHMAN  
of the City  
of Toronto  
a barrister and solicitor

John A. Olah  
for the Solicitor

Heard: February 26, 1991

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 October 26th, 1988, Complaint D94/88 was issued against Wolf  
Von Teichman alleging that he was guilty of professional misconduct.  
This Complaint was withdrawn on April, 18, 1990. On September, 17th,  
1990, Complaint D94a/88 was issued against the Solicitor replacing  
Complaint D94/88.

This matter was heard in public on February 26th, 1991, before this Committee composed of Robert J. Carter, Q.C., Chairman, Frances Kiteley and Ross Hall. Mr. Von Teichman attended the hearing and was represented by his counsel, John A. Olah. J. Robert Conway appeared on behalf of the Law Society.

## DECISION

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### PRE-TRIAL

At the outset of this matter on February 26, 1991, counsel for the Law Society and for the Solicitor asked the members of the Committee to conduct a Pre-Trial. Counsels' position was that the Pre-Trial should be conducted on the basis of the Agreed Statement of Facts. If at the conclusion of the Pre-Trial, the members of the Committee were in agreement with the approach taken by counsel as to finding and as to penalty, then the members of the Committee would be able to dispose of the matter in a hearing. On the other hand, if at the conclusion of the Pre-Trial it appeared that the members of the Committee did not agree with the joint-submissions either as to finding or penalty, then the matter should be adjourned to be heard by another Discipline Committee composed of different Benchers.

The Committee agreed to approach the matter in the fashion requested by counsel.

The Pre-Trial proceeded and the Committee received the Agreed Statement of Facts. Submissions were made by counsel for the Society and for the Solicitor. The members of the Committee deliberated at the conclusion of the submissions.

The Committee concluded that it would adopt the joint submission both as to finding and as to penalty.

### HEARING

The hearing then proceeded in the usual way.

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

#### Complaint D94a/88

- 2.a) he recklessly breached his fiduciary duty to his client, Mr. Knut Behrens, in two real estate transactions in which the interest of Knut Behrens conflicted with the interest of another client of the Solicitor, Helmut Sieber.

### Evidence

The entirety of the evidence before the Committee on the issue of professional misconduct was in the form of the following Agreed Statement of Facts:

#### "AGREED STATEMENT OF FACTS"

##### I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D94a/88 and is prepared to proceed with a hearing of this matter before the Discipline Committee on May 29, 1990.

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

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

### III. BACKGROUND

3. The Solicitor is 48 years of age, married with four sons. He was called to the Bar in 1971. After he was called, the Solicitor practiced with the law firm of Friedman, Burton, & Eisen doing general real estate work. In 1973, he joined the law firm of Tikal and Associates where he is a partner and practices real estate and corporate law.

### IV. JOINT SUBMISSION ON PENALTY

4. The Solicitor admits that he is guilty of professional misconduct as outlined in Complaint D94a/88. The Society and the Solicitor jointly submit that the Solicitor be suspended for a period of six months.

### The Individuals Involved

5. In October or November 1982, Dr. Knut Behrens, A West German national, contacted the Solicitor in Toronto. Mr. Behrens' hobby is farming. Mr. Behrens is an engineer by profession who is quite knowledgeable about farming and has owned a large farm in California for a number of years. Mr. Behrens had travelled extensively in Canada and looked at a number of farm properties in Ontario, Manitoba and British Columbia. The Solicitor was recommended to Mr. Behrens as one who might assist him with the purchase of Canadian farm property. The Solicitor gave Mr. Behrens a list of names of persons who could assist him in the acquisition of Canadian farm property and industrial property; Mr. Sieber was one of those names.

6. Mr. Sieber is a former Austrian citizen now living in the Kincardine, Ontario area who carries on the business, among other things, of assisting individuals in buying farm properties. Mr. Sieber also owns one of the largest farm management companies in Canada which manages a number of farms in the Kincardine area. In addition, Mr. Sieber ran a consulting service to local farmers and assisted them in improving their agricultural practices. He owned and operated a research farm which had strong ties with Agriculture Canada. Mr. Sieber was instrumental in developing an alfalfa plant in the Kincardine area which will be utilizing product from local farmers. He is highly regarded in his local community because of his innovative techniques including the introduction of a novel rent system which is based on commodity prices, that is, it is tied to the economic conditions. This system has now become a model and copied by most farm management companies in Canada. Mr. Sieber is not a registered real estate broker or agent. The Solicitor and Mr. Sieber have a long standing relationship which is described on page 9 of this Agreed Statement of Fact.

### Behrens-Card Property

7. In April, 1983, Mr. Behrens met with Mr. Sieber regarding properties near Zurich, Ontario. Mr. Behrens looked at a number of properties with Mr. Sieber and other individuals in Ontario. He had also examined soil and climate maps; he also had access to the results of soil tests and cultivated acre examination results (these tests reveal the actual yield from the property). Mr. Behrens formed an intention to purchase a 550-acre farm owned by James and Janet Card. He advised Mr. Sieber that he was willing to pay \$616,500.00 for the farm based on his familiarity with farm prices in the area and representations by Mr. Sieber as to the quality and the value of the land.

8. Mr. Behrens knew that one of Mr. Sieber's businesses was to buy and sell land. Mr. Sieber is well known in the Kincardine area as the buyer and seller of farm land. He is also known for his reliability and intimate knowledge of farm properties in the area. Mr. Sieber carried on negotiations directly with the vendors. Mr. Behrens had no direct contact with the vendors and relied on Mr. Sieber. Mr. Sieber subsequently advised Mr. Behrens that Mr. Behrens had a binding agreement for the purchase of the property at that price. In fact, no Agreement of Purchase and Sale was ever executed between Mr. Behrens and the vendors.

9. At all times, the Solicitor believed that Mr. Behrens knew Mr. Sieber was in the business of buying and selling farm property. The Solicitor believed that Mr. Behrens knew that Mr. Sieber would make substantial profits on the land transactions. More specifically, the Solicitor's belief was that Mr. Behrens knew that Mr. Sieber was purchasing the property through one of his holding companies, Algonquin Farms, and selling the shares to Mr. Behrens and making an intermediate profit.

10. Unknown to Mr. Behrens, Mr. Sieber, through Algonquin Farms Limited, entered into an Agreement of Purchase and Sale dated April 11, 1983 to purchase the property for \$469,500.00. The agreement provided that the vendors would incorporate an Ontario Corporation (subsequently 533681 Ontario Limited) and Algonquin would then purchase the shares of this company. In effect, it was Mr. Sieber's intention to purchase the property at this price from Mr. and Mrs. Card and re-sell it to Mr. Behrens for approximately \$615,500.00, thereby earning an intermediate profit of about \$146,000.00.

11. The Solicitor acted for Mr. Sieber and Mr. Behrens on the closing of the transaction.

12. The Solicitor advised Mr. Behrens that the 20% land transfer tax accruing on real estate sales to non-residents might be avoided. The mechanism proposed by the Solicitor was one whereby the vendors would incorporate a new Ontario Corporation and transfer the subject land to that corporation prior to the closing of the transaction. The actual closing would be effected by a transfer of those shares to Algonquin Farms, a company controlled by Mr. Sieber. Mr. Behrens would then purchase all of the outstanding shares of the vendor corporation. Since the transaction did not directly involve a transfer to a non-resident, it was hoped that the Ministry of Revenue would accept the contention that no tax was payable. There is no allegation by the Society against the Solicitor as a result of this attempt to avoid payment of the tax.

13. To give effect to this structure, Mr. and Mrs. Card incorporated a company, 533681 Ontario Limited, and transferred the subject land to that company on April 19, 1983. The incorporation of 533681 Ontario Limited and the transfer to that company were completed by an independent solicitor acting for the vendors.

14. 533681 Ontario Limited then transferred its shares to Mr. Sieber's company, Algonquin Farms, for \$469,500 and the first sale to Algonquin was completed pursuant to the terms of the Agreement of Purchase and Sale. Algonquin Farms then transferred its shares in 533681 Ontario Limited (subsequently known as Grosvenor Farms Limited) to Mr. Behrens for the sum of \$615,500.00. Mr. Behrens forwarded \$617,994.00 to the Solicitor for this purpose.

15. Shortly after completion of these transactions, the solicitor met with Mr. Behrens in Europe. At that time he had the minute book for 533681 Ontario Limited with him and Mr. Behrens signed a number of documents in the minute books such as shareholders resolution(s), and directors resolution(s). At that time, the Solicitor specifically discussed Mr. Sieber's role and Algonquin's role in the transaction with Mr. Behrens. Mr. Behrens denies being advised of the fact Mr. Sieber was making an intermediate profit. The Solicitor's position is that he discussed the issue with Mr. Behrens and it appeared to him that Mr. Behrens was aware that Mr. Sieber was making an intermediate profit. However, the Solicitor failed to discuss the specific amount of the profit with Mr. Behrens.

16. On June 13, 1983, the Solicitor reported to Grosvenor Farms, the corporation controlled by Mr. and Mrs. Behrens. He purported to advise Mr. Behrens that he had purchased the shares in 533681 Ontario Limited for approximately \$615,500.00 from Algonquin Farms. However, he refrained from referring to the intermediate profit made by Algonquin Farms in the reporting letter. The Solicitor believed that Mr. Behrens knew that Mr. Sieber was making an intermediary profit but he was unaware whether Mr. Behrens knew the amount of that profit. He recklessly chose to make no inquiries from Mr. Behrens on this issue and left the matter to Mr. Behrens to raise, should Mr. Behrens have questions in this regard. Mr. Behrens takes the position that he was unaware of the intermediary profit at the time of the transaction and made no enquiries of the Solicitor on that issue at the time.

17. Mr. Behrens became aware of the amount of the intermediate profit in 1984 after he talked to his new neighbours and conducted his own search at the Registry office. Mr. Behrens raised the matter with the Solicitor and obtained partial compensation for the difference in the purchase price from Mr. Sieber through the Solicitor. Mr. Behrens subsequently retained a new solicitor to assist him obtaining further compensation. The solicitor for Mr. Behrens reported the matter to the Law Society on his own initiative and contrary to Mr. Behrens' instructions who had tried to have the original complaint retracted. Mr. Behrens has now received payment for the full amount of the difference in the two purchase prices. The Solicitor has paid \$91,000 of that amount from his own funds.

18. The Solicitor did not report in writing to Mr. Sieber but did report to him verbally. This arrangement was at the request of Mr. Sieber.

19. The Solicitor billed Mr. Behrens' company \$6,150.00 for fees on the transaction and transferred that sum from trust to general as payment in the ordinary course. The Solicitor did not bill Mr. Sieber or Algonquin Farms on the matter.

#### Behrens-Jerome Property

20. In 1983, Mr. Behrens attempted to acquire additional land to expand his existing property (previously the Card property). He spoke to his neighbours and land agents in the area in an effort to purchase additional land but he was unsuccessful in his attempts. As a result, in the summer of 1983, he again consulted Mr. Sieber. In August of 1983, Mr. Sieber assisted Mr. Behrens with the purchase of another property, a 100 acre farm owned by Wayne and Phyllis Jerome.

21. Mr. Behrens instructed Mr. Sieber to make an offer of \$150,000.00 for the farm based on Mr. Behrens' knowledge of local land conditions, values and representations made by Mr. Sieber as to the quality and value of the land. Mr. Sieber conducted negotiations directly with the vendors and Mr. Behrens had no direct contact with the vendors. Mr. Behrens relied on Mr. Sieber to represent his interests. Mr. Sieber later falsely advised Mr. Behrens that Mr. Behrens had a binding agreement with the vendors for the sale of the property at that price.

22. Unknown to Mr. Behrens, Mr. Sieber had, through a corporation, entered into an Agreement in August 1983 to purchase the subject property for \$100,000.00. No Agreement of Purchase and Sale was prepared for or signed by Mr. Behrens until after Algonquin Farms completed its purchase of the property.

23. Mr. Sieber intended to purchase the property for \$100,000.00 through the corporation and resell it for \$150,000.00 to Mr. Behrens, thereby obtaining an intermediary profit of \$50,000.00.

24. Unlike the purchase of the Card property, however, Mr. Behrens ultimately decided to take title to the property in his own name rather than through a corporation. The two transactions did not close simultaneously because Mr. Behrens decided to become a landed immigrant in order to comply with the Land Transfer Tax Act requirements.

25. The first transaction occurred on December 7, 1983 when Mr. and Mrs. Jerome sold to a holding company at the direction of the Solicitor. The holding company was not otherwise involved in the transaction and later sold the property to Mr. Behrens on March 8, 1984. At all material times, the Solicitor believed that Mr. Sieber disclosed to Mr. Behrens that he was making a substantial profit on the resale of this land.

26. The Solicitor acted for Mr. Behrens and Mr. Sieber on the transactions. Mr. and Mrs. Jerome were represented by an independent solicitor.

27. The funds used to complete the transactions came from Mr. Behrens by way of an advance from Mr. Behrens to the Solicitor in trust of \$151,994.00 on November 17, 1983. The first transaction closed for an adjusted purchase of \$100,040.27 which the Solicitor paid from those funds to the solicitor for the vendor on December 7, 1983. The Solicitor properly applied the sum of \$1,590.73 towards disbursements. The Solicitor disbursed the \$50,000.00 balance to the benefit of Mr. Sieber as payment of his intermediate profit on the transaction. Of that \$50,000.00, \$20,000.00 was paid directly to Mr. Sieber. The remaining \$30,000.00 was paid to H.T.S. Ltd. a company jointly owned by Mr. Sieber, the Solicitor and another. These funds were credited to the benefit of Mr. Sieber in the books of H.T.S. Ltd. as a shareholder advance. H.T.S. was a land holding company in which Mr. Sieber was a shareholder. Mr. Sieber owed money to the company and as a result of his direction, the proceeds from the transaction were paid into H.T.S.

28. On April 18, 1984, James Lowry, a lawyer in the Solicitor's office acting at the request and under the direction of the solicitor, sent a reporting letter to Mr. Behrens regarding the transaction. That letter accurately reported the second transaction, that being the sale from 547912 Ontario Limited to Mr. Behrens. The reporting letter did not disclose the first transaction or the profit which was earned Mr. Sieber.

29. The Solicitor billed Mr. Behrens \$1,500.00 for fees in the transaction and transferred that sum from trust to general as payment on the ordinary course. The Solicitor did not bill Mr. Sieber or Algonquin Farms on the transaction.

30. Mr. Behrens takes the position that he lacked awareness of the undisclosed profit on this transaction. The Solicitor at all material times believed that Mr. Behrens knew that Mr. Sieber was making a substantial profit.

31. Mr. Behrens subsequently discovered that he had paid substantially more for the property than had been received by the vendors. This occurred about the same time as he discovered the facts with regard to the Card transaction. Mr. Behrens made a complaint to the Solicitor in or about August 1984. The matter was subsequently reported to the Law Society by Mr. Behrens' solicitor at that same time as the Card matter was reported, contrary to Mr. Behrens' instructions.

#### Compensation Made to Mr. Behrens

32. As outlined in paragraph 17, Mr. Behrens has received full compensation with respect to the Card transaction. The Solicitor has personally paid this sum to Mr. Behrens.

33. Mr. Behrens has also received full compensation for the difference in the purchase price in Jerome transaction. Compensation for both transactions came from the Solicitor in the amount of \$217,000 which reflected compensation for the amount of \$196,000 plus accumulated interest.

Personal Financial Relationship Between  
The Solicitor and Helmut Sieber

34. The Solicitor initially met Mr. Sieber in or about 1980 in the course of the matter in which the Solicitor was retained by Mr. Sieber to assist him in transferring family assets out of the country of Austria.

35. The agreement for remuneration was that Mr. Sieber would pay the Solicitor a substantial sum for these services. Mr. Sieber paid the Solicitor a portion of his fees at the time and agreed to pay the Solicitor the balance from profits that Mr. Sieber would earn on the sale of Canadian properties. Mr. Seiber also gave the Solicitor security for payment of the balance of the fees. The security was an assignment of a letter of credit which the Solicitor could call upon in order to recover the fees owing to him by Mr. Seiber.

36. The Solicitor acted for Mr. Sieber on a number of transactions involving the sale of Canadian farm properties during the years 1982, 1983 and 1984. Mr. Sieber earned significant profits on these transactions. Mr. Sieber then verbally directed the Solicitor to apply a portion of these profits towards payment of his outstanding obligations to the Solicitor.

37. Included in these amounts was a portion of the profits earned by Mr. Sieber on the Behrens transactions.

JOINT SUBMISSION ON PENALTY

38. Counsel for the Society is of the view that the type of misconduct evidence in this case warrants a significant sanction, but is not grave enough to require disbarment. After reviewing the facts with the Chair of Discipline, Counsel for the Society and Counsel for the Solicitor jointly submit that the Solicitor be suspended from practice for a period of six months. The parties believe that such a penalty properly balances the following factors in this case:

(a) the Solicitor's non-disclosure had serious consequences -- it enabled one client, Mr. Sieber, to make a profit of \$196,000.00 at the expense of the other client, Mr. Behrens, and enabled Sieber to pay substantial past fees owing to the Solicitor. However, the Solicitor had other security for payment of the past fees, namely, the letter of credit;

(b) Mr. Behrens expected that Mr. Sieber would earn something for his services on the transactions because Mr. Sieber was a well known farm broker in the area and Mr. Sieber did perform a service which was valuable to Mr. Behrens. Mr. Behrens just felt that Mr. Sieber had made too much profit;

(c) Mr. Behrens was very knowledgeable about the prices for farm properties in other parts of Canada and in California. Mr. Behrens completed the two transactions because he thought that the purchase prices were reasonable;

(d) Mr. Behrens himself never complained to the Society. The matter was reported to the Society by Mr. Behrens' Solicitor who felt obligated under the Rules of Professional Conduct to report Mr. Von Teichman's misconduct. When Mr. Behrens learned that the matter had been reported to the Society, he asked his Solicitor to withdraw the complaint;

(e) The Solicitor has fully compensated Mr. Behrens for the \$196,000.00 intermediate profit made by Sieber and for the accumulated interest on this amount.

(f) The Solicitor has co-operated with the Society in its investigations.



(g) The co-operation and participation by the Solicitor on a joint submission has saved the Law Society the expense and time of a hearing and has saved Mr. Behrens the inconvenience of having to travel from another jurisdiction in order to testify.

DATED at Toronto this 26th day of February, 1991."

On the basis of the Agreed Statement of Facts and the submissions by counsel, a finding of professional misconduct was made by the Committee.

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that the said Wolf Von Teichman be suspended for a period of six months.

#### REASONS FOR RECOMMENDATION

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In the Agreed Statement of Facts, counsel made a joint submission on penalty, namely that the Solicitor should be suspended from practice for a period of six months. The Committee recommends to Convocation that that penalty be imposed. The following are the reasons relied upon by the Committee in arriving at its recommendation:

1. The conduct of the Solicitor is of a serious nature. A penalty should be imposed reflective of the seriousness of the offence; and as a deterrent to other solicitors.
2. Suspension for a period of six months will result in a substantial disruption of the Solicitor's practice.
3. If the penalty of six months' suspension is imposed, the decision by Convocation will become public. The publicity in connection with these proceedings will be a source of great embarrassment to the Solicitor.
4. The Solicitor has ensured that all funds (together with interest) realized by Mr. Sieber, as a result of the "flipping", have been paid to Mr. Behrens.
5. Mr. Behrens did not initiate the complaint to the Law Society. The Solicitor whom Mr. Behrens contacted after he realized there had been a "flip" took the initiative to report the matter. When Mr. Behrens learned that discipline proceedings had been commenced against Mr. Von Teichman, he tried to stop the process. He has no complaint against the Solicitor.
6. The substantial admissions made by the Solicitor reflect appropriate remorse on his behalf.
7. The Solicitor has been well regarded and held in high esteem in his professional, business and cultural environments. He is active in the German community. He has been a member of the German Historical Society. He has been a member of the Board of Directors at St. George's College. He has been both Director and Shareholder of various companies which have been involved in bringing technology from Germany, the net effect of which has been to create jobs in Ontario. The Committee received a number of letters (collectively received as Exhibit 3), which attest to the regard and respect which the Solicitor enjoys.

8. If the Solicitor had not made the substantial admissions contained in the Agreed Statement of Facts, a lengthy hearing would have been required. Given Mr. Behren's position, he may have been a reluctant witness. Without his evidence, there would have been some difficulty in a Discipline Committee making a finding. The Solicitor has recognized that difficulty and notwithstanding, has facilitated the process by instructing his counsel to execute the Agreed Statement of Facts.

Wolf Von Teichman was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 26th day of March, 1971.

ALL OF WHICH is respectfully submitted

DATED this 8th day of April, 1991

"F. Kiteley"

There were no submissions by either counsel.

The Report was adopted.

It was moved by Mr. Lamek, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for 6 months be adopted.

There was a brief submission by the solicitor.

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

It was moved by Mr. Thom, seconded by Mr. Bragagnolo that the solicitor be suspended for 1 month.

Not Put

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

Carried

The motion made as to the recommended Penalty was lost.

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

Counsel and the solicitor retired.

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Re: PAUL HUBERT WATSON, Ottawa

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Ron Cohen appeared for the Society. Mr. Denis Power appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 22nd May, 1991, together with an Affidavit of Service sworn 19th June, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 31st May, 1991 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 20th June, 1991 (marked Exhibit 2). A brief containing submissions on behalf of the solicitor was filed as Exhibit 3. 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

Jeffery S. Lyons, Q.C., Chair  
Earl J. Levy, Q.C.  
Mrs. Netty Graham

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

Ronald Cohen  
for the Society

PAUL HUBERT WATSON  
of the Regional Municipality  
of Carleton-Ottawa  
a barrister and solicitor

Denis J. R. Power  
for the Solicitor

Heard: March 6, 1991

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 July 6, 1990, Complaint D107/90 was issued against Paul Hubert Watson alleging that he was guilty of professional misconduct. This complaint was withdrawn and was replaced with Complaint D107a/90 which was issued on March 4, 1991. On December 20, 1990, Complaint D235/90 was issued against Paul Hubert Watson alleging that he was guilty of professional misconduct.

This matter was heard in public on March 6, 1990 before this Committee composed of Jeffery S. Lyons, Q.C., Chair, Earl J. Levy, Q.C. and Mrs. Netty Graham. Mr. Watson was in attendance and was represented by his Counsel Denis J.R. Power. Ronald Cohen appeared as Counsel for the Law Society.

DECISION

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

Complaint D107a/90

2. a) He failed to file with the Society within six (6) months of the termination of his fiscal years ending January 31, 1989 and January 31, 1990, a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act.

Complaint D235/90

2. a) He has failed to provide a reply to the Society regarding a complaint by Bentley G. Hicks, despite letters dated September 14th and October 5, 1990, and a telephone message left on September 26, 1990;

- b) He has breached an Undertaking given to the Society on February 27, 1990 whereby he is to reply to correspondence from the Society within two weeks of receipt, and to reply to telephone calls from the Society by the end of the second working day that he is in the office after receipt of the calls.

#### Evidence

The evidence before the Committee was contained in an Agreed Statement of Facts which is set out below:

#### "AGREED STATEMENT OF FACTS"

##### I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D107a/90 and D235/90 and is prepared to proceed with a hearing of these matters on March 6, 1991.

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

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

##### III. ADMISSIONS

3. The Solicitor has reviewed Complaints D107a/90 and D235/90 with his counsel, Denis Power, and admits the particulars contained therein.

##### IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1964 and is a sole practitioner practising in Stittsville and Ottawa.

##### Complaint D107a/90

5. The Solicitor's fiscal year end is January 31st. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal years ending 1989 and 1990.

6. As the Solicitor did not file his Form 2 or 3 for the fiscal year ending January 31, 1989, he was subject to a late filing penalty of \$5.00 per day. When this levy amounted to \$600.00 he was subject to suspension pursuant to Section 36 of the Law Society Act. In order to avoid suspension the Solicitor paid the late filing fees in respect of the 1989 filing and continued in the practice of law. However, he did not file the required Forms. In respect of the filings for the year ending January 31, 1990, the Solicitor was subject to a late filing penalty of \$10.00 per day, to a maximum of \$1,500.00. The maximum has been reached and the Solicitor is subject to suspension pursuant to Section 36 of the Law Society Act. As a Form 3 is a report of a public accountant respecting the compliance of the Solicitor's books and records with the regulations, the Society has no way of verifying that the Solicitor is maintaining books and records save for arranging for an audit examiner to attend at the Solicitor's practice thereby substantially increasing the costs of the audit branch.

7. On November 8, 1990 the Solicitor's Forms 2 and 3 for the year ending January 31, 1989 were received by the Law Society. These have been reviewed by the Society's Audit Department and are in order.

##### Complaint D235/90

8. On February 27, 1990 the Solicitor signed an Undertaking to the Law Society as follows:

- a) To reply to correspondence from the Audit and Discipline Departments of the Law Society within two weeks of my receipt of such correspondence;

- b) To reply to telephone calls from the Audit and Discipline Departments of the Law Society by the end of the second working day that I am in the office after the receipt of such telephone calls.

A copy of the Undertaking is attached to this document and marked as Schedule "A".

9. The Law Society received a letter dated August 21, 1990 from the complainant, Bentley G. Hicks, of Ottawa. According to the letter, the complainant had retained Mr. Watson in January, 1987 in relation to a custody/access dispute. In his letter, the complainant referred to difficulties he had experienced in making contact with the Solicitor and also complained of the quality of service that he had received.

10. By letter dated September 14, 1990, the Law Society wrote to the Solicitor and enclosed a copy of the complainant's letter. The letter invited a response within a period of two weeks.

11. No reply having been received, on September 26, 1990 a staff member employed by the Law Society telephoned the Solicitor's office. The staff member was advised that the Solicitor was away and left a message asking him to telephone her. No reply having been received, a registered letter dated October 5, 1989 was mailed to the Solicitor. The letter drew to his attention the rule of professional conduct obliging lawyers to respond promptly to communications from the Law Society. The letter advised that if there were no response within a period of 7 days, the matter would be referred for disciplinary proceedings.

12. No reply has been received, nor has any extension of time been requested, nor has any explanation been provided by the Solicitor for his lack of response.

#### V. PAST DISCIPLINE

13. A Complaint was sworn against the Solicitor on April 29, 1988 with respect to a failure to respond to communications from the Law Society and failure to serve a client in a conscientious, diligent and efficient manner. On August 30, 1988 the Solicitor was Reprimanded in Committee.

14. A further Complaint was sworn on August 3, 1989 with respect to the Solicitor's failure to reply to communications from the Law Society and with respect to his failure to report to a client in a timely manner following completion of a real estate transaction. On February 27, 1990 the Solicitor was Reprimanded in Committee upon his giving the Undertaking.

DATED at Toronto this 6th day of March, 1991

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that the said Paul Hubert Watson be Reprimanded in Convocation.

#### REASONS FOR RECOMMENDATION

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Mr. Watson was called to the Bar in 1964. With his past record he has displayed what we have said before to be ungovernable. He has been before the Law Society on two previous occasions. These occasions were August 30, 1988 and February 27, 1990. On both occasions, a reprimand in Committee and on February 27, 1990 he gave an Undertaking to the effect that he would answer all correspondence and telephone calls and the complaints.

20th June, 1991

This Committee, accepts an Undertaking which has been signed by Mr. Watson dated March 6, 1991. In this Undertaking there is reference to Mr. Watson receiving treatment with an accredited psychiatrist or psychologist and to continue such treatment as long as it is recommended by that therapist. Also the Committee would ask that a report be received from the psychiatrist or psychologist or both prior to this matter being dealt with at Convocation.

We ask that the Law Society counsel report to Convocation at a time this matter is dealt with on items 1 and 2 which is the matter of dealing with correspondence and telephone calls. As to the Books and Records, in particular, the complaint set forth in D107a, the filing of the Statutory Declaration that has to be completed by a public accountant, signed by the member according to section 16(2) of the Law Society Act, that if that has not been put in the hands of the Law Society by the time this matter reaches Convocation, that the Solicitor be suspended until such event takes place.

Further, that if there is no psychiatric and/or psychologist's report available to Convocation at the time that this matter is dealt with, then it would be the recommendation of this tribunal that a suspension be imposed, the length of time to be determined by Convocation.

Paul Hubert Watson was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1964.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of May, 1991

"J. Lyons"  
Jeffery S. Lyons, Chair

It was moved by Mr. Lamek, seconded by Mr. Murray that the Report be adopted.

Carried

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

There were submissions made by both counsel. Mr. Power referred Convocation to the letters contained in the Brief.

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

The recommendation as to Penalty was adopted.

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

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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Re: WILLIAM DAVID KEYS, Ottawa

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

20th June, 1991

Mr. Ron Cohen appeared for the Society. Mr. P. Webber appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 22nd May, 1991 together with the Affidavit of Service sworn 19th June, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor 20th June, 1991 (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

Jeffery S. Lyons, Q.C., Chair  
Earl J. Levy, Q.C.  
Mrs. Netty Graham

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

Ronald Cohen  
for the Society

WILLIAM DAVID KEYS  
of the City  
of Ottawa  
a barrister and solicitor

Paul A. Webber  
for the Solicitor

Heard: March 6, 1991

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 November 28, 1989, Complaint D92/89 was issued against William David Keys alleging that he was guilty of professional misconduct.

The matter was heard in public on March 6, 1991 before this Committee composed of Jeffery S. Lyons, Chairman, Earl J. Levy and Mrs. Netty Graham. Mr. Keys was present at the hearing and was represented by Paul A. Webber. Ronald Cohen acted as counsel for the Law Society.

DECISION

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The following particulars of professional misconduct and conduct unbecoming were admitted and found to have been established.

Complaint D92/89

Professional Misconduct

- 2(a) In or about December of 1986, he borrowed \$30,000.00, more or less, from his client, Richmond Olson.
- (b) In or about April of 1988, he borrowed a further \$20,000.00 from Richmond Olson without disclosing the precarious nature of his financial situation.

- (c) For the fiscal years ending November 30th, 1987, November 30th, 1988 and November 30th, 1989, he filed Forms 2/3 with the Society which failed to disclose his indebtedness to Richmond Olson.
- (d) (ii) On or about April 10th, 1991 he attempted to mislead the Law Society auditor by stating that he had made disclosure of his liabilities to the financial institutions which had advanced him funds, in response to a question whether he had made full and frank disclosure.

Conduct Unbecoming

- 3(a) He executed a series of documents respecting transactions at various financial institutions in order to obtain loans or credit without disclosing the true state of his financial situation thereby misleading the financial institutions.

Evidence

The evidence before the Committee was contained in an Agreed Statement of Facts which is set out below:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

L. The Solicitor admits service of Complaint D92/89 and is prepared to proceed with a hearing of this matter on March 6, 1991.

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 D92/89 and admits the particulars contained therein.

IV. FACTS

4. The Solicitor was educated at the Universities of Western Ontario and Ottawa. Upon completion of the Bar Admission Course, he was called to the Bar in April, 1982. He was employed in a nonlegal capacity from 1982 to 1984 and employed as an associate by Robert McKinley in 1984 and 1985. In 1985, he became an associate with McKimm, McFarlane, Barristers and Solicitors, and remained with that firm until it merged with Fraser & Beatty in 1986. He remained with that firm until he was advised in February, 1989, that his services were no longer required. The Solicitor is currently employed as in-house counsel with a public company in a "high technology" industry.

5. The complainant, Richmond Olson, is a retired federal public servant. He was called to the Alberta Bar. He joined the Federal Department of Justice in 1954 where he practised as a barrister and solicitor until 1972. Since then he has undertaken a number of private and public activities.

6. The complainant was and is a close personal friend of Ward McKimm, who was the senior partner of McKimm, McFarlane until its merger with Fraser & Beatty. Thereafter he shared office space with that firm. The complainant and Mr. McKimm practised together at Justice until the latter entered private practice in 1959. Thereafter Mr. McKimm performed legal services for the complainant when requested to do so, but generally without fee. The complainant also referred clients to Mr. McKimm, for whom legal services were performed for fees.



7. The Solicitor and the complainant met, and came to know each other while the Solicitor was employed with McKimm, McFarlane. In particular, at times when Mr. McKimm was absent from the office, enquiries from the complainant were referred to the Solicitor. The Solicitor characterizes the relationship as that of "friends", but does not dispute that a solicitor/client relationship existed at the relevant times. The complainant acknowledges that he and the Solicitor were acquainted prior to December, 1986, but states that they were not friends.

8. In the fall of 1986, the complainant sought the services of Mr. McKimm with respect to the discharge of a mortgage held by the complainant to secure a loan made by him to one Horvath, who was a personal friend of both the complainant and Mr. McKimm. As the latter was absent from the Fraser & Beatty office, the matter was referred to the Solicitor. The Solicitor prepared a mortgage discharge for Mr. Olson, as mortgagee, in connection with the mortgage from Horvath. A sum in excess of \$136,000.00 was paid by Horvath to Fraser & Beatty in trust on December 18, 1986 to discharge the debt. In December, 1986 and January, 1987 the Solicitor reported to Mr. Olson in respect of the mortgage as well as a promissory note between Mr. Horvath and Mr. Olson. A fee of \$100.00 plus a disbursement of \$20.00 were billed to the complainant by the Solicitor. The sum of \$120.00 for fees and disbursements was deducted from monies paid by Fraser & Beatty to the complainant or paid out on his direction. The \$100.00 fee had been recovered by the complainant from Horvath in the calculation of the funds necessary to repay the mortgage.

9. Consultations between Mr. Olson and the Fraser & Beatty firm in Ottawa leading to the execution of a Will began in early 1988. Discussions began, and continued with another solicitor at Fraser & Beatty, Karen Zypchen. A file was opened in June, 1988 showing the Solicitor as responsible and billing lawyer, and Ms. Zypchen as the opening lawyer. The Will was prepared by Ms. Zypchen and executed in February, 1989, subsequent to the Solicitor's departure from Fraser & Beatty.

Particular 2(a)

10. The Statement of Trust Funds dated January 19, 1987 in relation to the Horvath matter referred to above, indicated that approximately \$136,000 was paid to Mr. Olson in connection with the payout and discharge of the Horvath mortgage and the payout of the Horvath promissory note. The funds were delivered to the complainant at the Fraser & Beatty offices. On the same date the complainant issued a cheque drawn on his personal bank account dated December 18, 1986 and payable to W. David Keys in the amount of \$30,000. The Solicitor deposited the cheque into his personal bank account.

11. The complainant maintains that he wished to invest some of the recovered funds and that the Solicitor suggested he could use the amount for investment and that he would guarantee a 12% annual return. According to the complainant the Solicitor was content to invest on that basis with any surplus return going to the Solicitor.

12. The Solicitor maintains that the complainant offered to loan money for the Solicitor's unrestricted use.

13. A promissory note dated December 18, 1986 was signed by the Solicitor wherein he promised to pay the complainant the sum of \$30,000 with interest at the rate of 12% in instalments of interest only in the amount of \$300 on the first day of each month. The balance was to be repaid in full on January 2, 1988.

14. The Solicitor did not advise the complainant to obtain independent legal advice nor did the complainant request it. The Solicitor did not report to Mr. Olson on the results of the transaction nor did he provide Mr. Olson with any disclosure in respect of his financial situation. The complainant did not request disclosure of the Solicitor's financial situation nor a report on the transaction in any formal sense. The funds were used by the Solicitor to repay some personal debts and for other personal matters. Between January 1, 1987 and April 1, 1988 the Solicitor made monthly interest payments of \$300.00 to Mr. Olson. No demand for the repayment of principal was made.

Particular 2(b)

15. During 1987 the Solicitor's financial position was seriously deteriorating. The Solicitor began to co-habit with his wife-to-be in June, 1987 and was married in November, 1987. The wedding was expensive. The Solicitor's wife-to-be had quit her job prior to the wedding but expenses were not reduced. During 1987 expenses significantly exceed income and by December, 1987 the Solicitor's financial position had reached serious proportions. As of April, 1988 the Solicitor had gross monthly income of approximately \$6,800. Monthly expenses exceeded monthly revenue by approximately \$800. Liabilities, excluding the debt to the complainant for \$30,000 and contingent liability for income tax estimated at \$20,000 were then approximately \$46,000.

16. Mr. Olson maintains that on April 1, 1988 he offered to increase the amount of the funds available to the Solicitor for investment under the same terms as in December, 1986. The sum of \$20,000 was discussed.

17. The Solicitor maintains that on April 1, 1988 Mr. Olson offered the Solicitor, at a chance meeting in the lobby of the Solicitor's office building, without request, a further \$20,000.00 loan under the same conditions as specified in the promissory note of December 18, 1986.

18. No disclosure was requested and no discussions took place with respect to the Solicitor's financial situation. At no time during the discussions about the further \$20,000.00 did the Solicitor disclose his precarious financial situation. Independent legal advice was not discussed.

19. Mr. Olson maintains that on April 1, 1988 the Solicitor advised him that his investments had been successful and that he was quite happy with the returns to him. He also maintains that on at least two occasions since December, 1986 he had asked the Solicitor if he was sure that he was making enough to make it worth his while. The Solicitor does not agree that this was discussed.

20. On April 11, 1988 Mr. Olson issued a cheque of that date in the amount of \$20,000.00 payable to David Keys. The Solicitor deposited that cheque into his personal bank account. The \$50,000.00 then owing was secured by a second promissory note. This promissory note was prepared and signed by the Solicitor and dated April 11, 1988. The Solicitor thereby promised to pay Mr. Olson \$50,000.00 with interest at the rate of 12% payable in monthly instalments of \$500.00 on the first day of each month with the outstanding balance to be repaid in full on April 1, 1989. The first promissory note was returned by Mr. Olson to the Solicitor.

21. During the period from May 1, 1988 to February 1, 1989 the Solicitor provided Mr. Olson with the monthly payments as specified.

22. On February 23, 1989 the Solicitor filed an Assignment in Bankruptcy. His statement of affairs disclosed assets of \$600 and liabilities of \$102,000.00, including the debt of \$50,000 to Richmond Olson. On March 1, 1990, the Solicitor was granted an absolute discharge in bankruptcy.

Particular 2(c)

23. Pursuant to Section 16 of the Regulation made under the Law Society Act a solicitor is required to make annual filings within six months of a solicitor's year end. On August 26, 1987 the Solicitor swore a Form 2 declaration declaring that during the 12 month period preceding that declaration or since his last filing with the Society he had not been indebted for borrowed money either directly or indirectly to a client or to a person or a corporation who at the time of borrowing was or had been his client or a client of a firm of which he was then a member. This declaration failed to disclose his indebtedness of \$30,000.00 to Richmond Olson.

24. On September 19, 1987 the Solicitor swore a similar declaration. This declaration failed to disclose his indebtedness of \$30,000.00 to Richmond Olson. On October 13, 1988 and October 3, 1988 the Solicitor declared similar declarations without disclosing his indebtedness of \$50,000.00 to Mr. Olson. A similar declaration was declared October 4, 1989 which failed to disclose this indebtedness.

25. The Solicitor maintains that he was aware that another part of the proceeds of the Horvath transaction was advanced by way of a loan to another member of the firm (like Mr. McKimm a close personal friend of the complainant's), and that the declarations of that member also failed to disclose the indebtedness.

26. The Law Society became aware of the advance referred to in the preceding paragraph during the investigation of the Solicitor. An investigation was undertaken concerning this advance which disclosed that the advance was an increase of a mortgage loan dating from 1982. The increase was negotiated in November, 1986, just prior to the complainant's becoming a client of the firm. The advance itself took place, as noted, in December, 1986 from part of the proceeds of the Horvath transaction. That member subsequently undertook to the Law Society not to borrow money from clients except as allowed under the Rules of Professional Conduct.

Particulars 2(d)(ii) and 3(a)

27. The Solicitor had negotiated a loan from the Continental Bank in the amount of \$20,000. In July, 1986, the Solicitor borrowed \$9,000 from the Canadian Imperial Bank of Commerce ("CIBC"). In December, 1986, as referred to above, the Solicitor borrowed \$30,000 from Richmond Olson. On March 19, 1987 the Solicitor applied for Personal Overdraft Protection on his accounts at the Bank of Montreal. While he disclosed his indebtedness to the CIBC, the Solicitor failed to disclose his indebtedness to the Continental Bank (the outstanding balance on the loan then being approximately \$15,000) and his indebtedness to Mr. Olson in the sum of \$30,000.

28. On April 20, 1987 the Solicitor borrowed \$10,000 from the Bank of Montreal. On September 21, 1987 the Solicitor renewed and increased his first loan of July, 1986 from the CIBC. In his CIBC Loan Application dated September 21, 1987 the Solicitor disclosed his indebtedness to Continental, stating it to be \$10,000.00, but failed to disclose his indebtedness to Richmond Olson of \$30,000.00 and his indebtedness to the Bank of Montreal in respect of the April, 1987 \$10,000.00 loan.

29. On April 4, 1988 the Solicitor signed a Personal Loan Service Application from the Bank of Montreal to renew the April, 1987 loan from that bank. On this application the Solicitor failed to disclose his outstanding indebtedness to the Continental Bank as well as his indebtedness to Mr. Olson in the amount of \$30,000.

30. On April 11, 1988 the Solicitor's indebtedness to Richmond Olson increased by \$20,000 to \$50,000 as referred to above.

31. On June 29, 1988 the Solicitor prepared and signed a Customer's Financial Statement and Information Sheet to support his loan with the CIBC. In that document the Solicitor failed to disclose his outstanding indebtedness to Richmond Olson for \$50,000.00 and his indebtedness to the Bank of Montreal which then stood at approximately \$8,000.00.

32. On April 10, 1989 the Solicitor met with Law Society auditor, William Kennedy. During their discussions the Solicitor stated that, in connection with his debts to the Bank of Montreal and CIBC, he had provided disclosure concerning his personal financial situation when requested to do so by those institutions, in response to a question as to whether or not he had made full and frank disclosure. During the course of the investigation, the Solicitor gave Mr. Kennedy written authority to secure the records of the institutions and expressly admitted that the Olson loans were not disclosed.

V. PENALTY

33. This is the Solicitor's first appearance before the Discipline Committee.

34. The parties jointly submit that the rights and privileges of the Solicitor be suspended for a period of six months.

DATED at Toronto this 6th day of March, 1991.

RECOMMENDATION AS TO PENALTY

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The Committee recommends that the said William David Keys be suspended for a period of three (3) months.

REASONS FOR RECOMMENDATION

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The Solicitor was called to the Bar, in April, 1982. In 1985 he became an associate with McKimm, McFarlane, Barristers and Solicitors, and remained with that firm until it merged with Fraser, Beatty in 1986. He remained with that firm until February, 1989, when he was advised that his services were no longer required.

He is now employed as an in-house counsel with a high technology public company.

In an Agreed Statement of Facts, the Solicitor met the complainant who was a retired Federal public servant but was previously employed with the Federal Department of Justice as a Barrister and Solicitor until 1972.

The Solicitor and complainant met and came to know each other while the Solicitor was employed at McKimm, McFarlane. When Mr. McKimm was absent from the office the complainant was generally referred to the Solicitor. The Solicitor does characterize the relationship as friends, but does not dispute that the solicitor/client relationship existed at all relevant times.

In the fall of 1986, the complainant sought the services of Mr. McKimm, with respect to a discharge of mortgage held by the complainant to secure a loan made by him to one Mr. Horvath, a personal friend of both the complainant and Mr. McKimm.

As Mr. McKimm was absent from the office, the matter was referred to the Solicitor. The Solicitor prepared a discharge in connection with a mortgage and the sum of approximately \$136,000 was paid by Mr. Horvath to the Law Firm in Trust on December 18, 1986. A fee was charged with respect to the transaction.

20th June, 1991

A promissory note dated December 18, 1986 was signed by the Solicitor in which, he promised to pay the complainant the sum of \$30,000.00 which was part of the funds received from the discharge of the mortgage at a rate of 12% per annum. The amount of \$300.00, which represented interest, was to be paid on the first day of each month. The balance was to be paid in full on January 2, 1988. At no time did the Solicitor advise the complainant to obtain independent legal advice nor did the complainant request it.

During 1987, the Solicitor's financial position deteriorated due to certain expenses which exceeded his income. Also liabilities, excluding the debt of \$30,000.00 and a contingent liability of approximately \$20,000.00 for income tax, was approximately \$46,000.00.

On April 1, 1988 the complainant offered to increase the amount of funds available to the Solicitor for investment on the same terms as on December, 1986. A further promissory note on the same terms and conditions as set forth on December 18, 1986 in the amount of \$20,000.00 was entered into on April 11, 1988. The payments were to be \$500.00 to be paid on the first day of each month, with the outstanding balance to be repaid in full on April 1, 1989.

Since the promissory note was increased to \$50,000.00 the first promissory note was returned by the complainant to the Solicitor.

No independent legal advice was ever discussed.

At no times did the Solicitor disclose his precarious financial situation.

On February 23, 1989, the Solicitor filed an Assignment in Bankruptcy which disclosed assets of \$600.00 and liabilities of \$102,000.00 including the debt of \$50,000.00 to the complainant. Pursuant to Section 16 of the Regulation of The Law Society Act, solicitors are required to make an annual filing within six months of solicitors' year end.

On August 26, 1987 the Solicitor swore a Form 2 Declaration, declaring that during the twelve (12) month period preceding that declaration, or since his last filing with the Society, he had not been indebted for borrowed money directly, or indirectly, to a client or to a person or a corporation, who at the time of borrowing was, or had been his client, or a client of a firm of which he was then a member. This declaration failed to disclose his indebtedness of \$30,000.00 to the complainant.

On September 19, 1987 the Solicitor swore a similar declaration. This declaration failed to disclose his indebtedness of \$30,000.00 to the complainant.

On October 3, 1988 and October 13, 1988, the Solicitor declared similar declarations without disclosing his indebtedness of \$50,000.00 to the complainant. A similar declaration was declared October 4, 1989 which failed to disclose this indebtedness.

Further the Solicitor had negotiated various loans from the Continental Bank and the Canadian Imperial Bank of Commerce and also the Bank of Montreal. During these various loan applications the Solicitor failed to disclose any indebtedness to other banks, as well as to the complainant.

Subsequently, the Solicitor met with the Law Society auditor and during discussions the Solicitor advised that he had provided full disclosure to the Bank of Montreal and the CIBC concerning his personal financial situation. However, he did give written authorization to the auditor to secure the records from the various institutions and did admit that the loans to the complainant were not disclosed.

20th June, 1991

It was advanced by counsel on behalf of the Solicitor that the first loan could be at best characterized as a remote solicitor/client relationship, as he was not really the lawyer for the complainant; that the complainant was a solicitor himself and was aware of independent legal advice and further, that the Solicitor was not improvident at the time the first loan of \$30,000.00 was advanced.

At the time of the second loan the Solicitor did not disclose his improvident situation although it appears that the complainant willingly offered to loan funds to the Solicitor.

Further, the annual filings in particular, the Form 2 Declaration, did not refer to the loan because in the Solicitor's opinion he did not feel they had developed a solicitor/client relationship.

It should be noted that there was a similar transaction involving another solicitor in the office, which was an increase of a mortgage loan, but it was negotiated in November, 1986, just prior to the complainant becoming a client of the Law Firm. However, it should be pointed out that the other lawyer was aware of the loans made to the Solicitor by the complainant.

As counsel of the Law Society has argued there is an absolute prohibition against borrowing funds from a client without independent legal advice or full disclosure and further, that in accepting funds in the amount of \$20,000.00 with respect to the increased promissory note on April 11, 1988 with no realistic payment, the misconduct was further compounded.

On the basis of the facts as set out above and particularly, in view of the fact that was an admitted solicitor/client relationship; that there was no independent legal advice given to the complainant; that he did not advise the complainant as to his improvident financial situation at the time of the borrowing on April 11, 1988; and further, that he did provide full disclosure to the CIBC, the Continental Bank and the Bank of Montreal with respect to certain loans, and that he also did not disclose to the auditor of the Law Society that he had made a full and frank disclosure to the banks at the time he made applications for certain loans.

Accordingly, with respect to the complaints set forward in Complaint D92/89 which has been admitted by the Solicitor, this Committee has found that same has established professional misconduct on behalf of the Solicitor.

However, the circumstances should be mitigated to the extent that there was more than a solicitor/client relationship with the complainant who was a practising member of the Bar until 1972 and that the complainant had a close relationship with Mr. McKimm, an associate of the Solicitor. Further the second loan was made on April 11, 1988, in the amount of \$20,000.00 at which time the Solicitor was facing financial difficulties, was encouraged by the complainant.

In all the circumstances, this Committee recommends the suspension of the rights and privileges of the Solicitor for a period of three months.

William David Keys was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 14th day of April, 1982.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of May, 1991

"J. Lyons"  
Jeffery S. Lyons, Chair

20th June, 1991

It was moved by Mr. Lamek, seconded by Mr. Murray that the Report be adopted.

Mr. Cohen asked that the Report be amended on page 1 by inserting the following sentence before 2(d) (ii): "On or about April 10th, 1989, he attempted to mislead the Society's audit investigator by falsely stating that:".

The Report as amended was adopted.

It was moved by Mr. Lamek, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for 3 months be adopted.

There were no submissions by either counsel.

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

It was moved by Mr. Topp but failed for want of a seconder that the solicitor be suspended for a period of 6 months.

The recommendation as to Penalty was adopted.

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

Counsel and the solicitor retired.

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Re: DONALD RICHARD MANTZ, London

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Robert Conway appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 27th May, 1991 together with the Affidavit of Service sworn 19th June, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail dated 4th June, 1991 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Harvey T. Strosberg, Q.C., Chair  
D. Jane Harvey  
John Douglas Thoman, Q.C.

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

DONALD RICHARD MANTZ  
of the City  
of London  
a barrister and solicitor

J. Robert Conway  
for the Society

Not Represented  
for the Solicitor

Heard: October 16, 1990

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

The DISCIPLINE COMMITTEE begs leave to report:

DECISION

THE CHARGE

1. DONALD RICHARD MANTZ was charged with professional misconduct.

2. The following particulars were provided:

- (a) between the years 1983 and 1989 he grossly neglected the interests of several clients, continuously misled those clients about the status of their matters in order to cover up his neglect, and then failed to respond to requests from the Society's Insurance Adjusters and Counsel that he contact them to discuss the claims arising from his gross neglect. An estimated thirteen clients were affected, and following are some examples:

Kelly

- (i) he failed to follow the instructions of his client, Donald Kelly, to commence legal proceedings against the Bank of Nova Scotia and Deloitte, Haskins & Sells Limited;
- (ii) throughout the period from in or about April, 1984 until in or about June, 1989, he misrepresented to his client, Donald Kelly, that legal proceedings had been commenced against the Bank of Nova Scotia and Deloitte, Haskins & Sells Limited, as instructed by Donald Kelly, and that such proceedings were progressing towards trial;

Ireland

- (iii) he failed to follow the instructions of his client, Barry and Carolyn Ireland, to commence legal proceedings against the Crop Insurance Commission of Ontario and certain of the Commission's employees;
- (iv) throughout the period from in or about February, 1986 until in or about January, 1989, he misrepresented to his clients, Barry and Carolyn Ireland that legal proceedings had been commenced against the Crop Insurance Commission of Ontario and certain of the Commission's employees, as instructed by the Irelands, and further, that such proceedings were progressing towards Examinations for Discovery; at one point he also misrepresented that there were settlement negotiations;

Chambers

- (v) he failed to follow the instructions of his clients, Carolyn Stevenson and Ken Chambers, to commence legal proceedings on three separate matters: the first was against Investors Syndicate, the second was against Commercial Union Assurance Company of Canada and T.V. Young Insurance Agencies Limited, and the third was against Larry Brennan Bailiff Services and Storey Auctions;



- (vi) throughout the period from 1982 until 1986, he misrepresented to his clients, Carolyn Stevenson and Ken Chambers, that the legal proceedings referred to in particular (e), above, had been commenced and were progressing towards trial.

3. On October 16, 1990, the Solicitor appeared before the Discipline Committee in public pursuant to Section 9 of the Statutory Powers Procedure Act. The Solicitor admitted that he was guilty of professional misconduct. He also admitted the facts set out below.

FACTS

Particulars (i) and (ii)  
Kelly

4. Russell Kelly owned and operated a farm in the area of Brussels, Ontario.

5. As a result of default on mortgages registered against the farm, the mortgagee, the Bank of Nova Scotia exercised its right under a general assignment of book debts to appoint a receiver ("Deloitte's") to take possession of Mr. Kelly's and related assets. One of the assets seized was a quantity of harvested corn.

6. Mr. Kelly was subsequently able to strike a deal with the Bank and Deloitte's whereby he bought back the farm and the related assets, including the corn which had been seized. Mr. Kelly effected the purchase through a numbered company, but for the sake of convenience we shall continue to refer to the purchaser as Mr. Kelly.

7. Mr. Kelly paid for the corn in May, 1983 and received a Bill of Sale from Deloitte's. The Bank and Deloitte's were unable to deliver the corn, however, because in the meantime it had been seized by one of Mr. Kelly's execution creditors.

8. On the consent of all parties, the corn was sold in August, 1983 and the \$37,172.76 sale proceeds were interpleaded. Mr. Kelly then instructed the Solicitor to apply to the Court for a declaration that he had acquired priority to the corn over the creditors who had obtained the Interpleader Order. The Court dismissed Mr. Kelly's application in February, 1984.

9. Mr. Kelly then instructed the Solicitor in April, 1984 to commence proceedings against the Bank and Deloitte's on account of their failure to deliver the corn for which he had paid them. Mr. Kelly valued his claim at \$37,172.76 i.e., that being the amount for which the corn was sold in August, 1983.

10. The Solicitor prepared a Writ and Statement of Claim against the Bank and Deloitte's in April, 1984, but did nothing thereafter.

11. During the next five years, the Solicitor repeatedly concealed his neglect by falsely telling Mr. Kelly that the matter was progressing towards trial. Following are examples to how he misled Mr. Kelly about the status of the matter:

- (1) April/84 to July/87;

from time to time during this three-year period the Solicitor falsely told Mr. Kelly that delays were attributable to the fact that the Bank's Solicitor had not yet replied to a letter from the Solicitor on a particular issue or aspect of the case. The Solicitor told Mr. Kelly on each occasion that he would prod the Bank's lawyer for a reply. In fact, the Bank's lawyer had not even been told that proceedings were contemplated;

on other occasions during this period the Solicitor falsely told Mr. Kelly that additional delay had been caused because that the case had been transferred to Toronto or back to London;

(2) July-Aug/87;

the Solicitor falsely told Mr. Kelly that he was to be examined for Discovery on July 10, 1987. No appointment had been scheduled because proceedings had not even been commenced, and they were never commenced;

the Solicitor even took Mr. Kelly to the Courthouse on July 10 for the purported Examination for Discovery. The Solicitor then falsely explained away the non-attendance of the Bank's lawyer by saying that the Bank's lawyer must have had to return to Toronto;

the Solicitor falsely told Mr. Kelly that the Bank's lawyer had waived Discovery of Mr. Kelly;

(3) Aug/87 to March/89:

the Solicitor falsely told Mr. Kelly that the case was on the trial list or was being scheduled for hearing;

(4) May 1/89:

when Mr. Kelly requested the Solicitor's assurance that the Writ and Statement of Claim had been filed and served, the Solicitor falsely replied "definitely";

the Solicitor falsely told Mr. Kelly that a status hearing was scheduled for June 15, 1989;

(5) June 15/89:

the Solicitor falsely told Mr. Kelly that the status hearing had been cancelled because the Bank had a new lawyer, and the new lawyer was looking into trial dates;

(6) November 21/89:

when confronted by Mr. Kelly's new lawyer that the Statement of Claim had not been filed with the Court, the Solicitor falsely stated that he thought it had been filed by another lawyer.

12. Mr. Kelly subsequently retained another lawyer and on November 28, 1989 that lawyer filed and served the Statement of Claim which the Solicitor had drafted 5 1/2 years earlier. The Statement of Claim has been served on the Bank, but it has not yet been served on Deloitte's.

Particulars (iii) & (iv)  
Ireland

13. Barry and Carolyn Ireland operated a farm near Wingham, Ontario. One of their crops was white beans.

14. The Irelands' white bean crop was insured against certain perils under a contract with a provincial government agency, the Ontario Crop Insurance Commission ("the O.C.I.C."). A portion of their 1984 white bean crop was damaged by weed infestation, and they submitted a claim under the insurance contract. Their claim was valued at \$5,826.41.

15. The O.C.I.C. disallowed the Irelands' claim. The Irelands then took the matter to arbitration as provided in the insurance contract. The Arbitration Board allowed the Irelands' claim at \$1,175.96, a difference of \$4,650.45 from the amount claimed. The Solicitor represented the Irelands in the proceedings before the Arbitration Board in May, 1985.

16. The Solicitor then received instructions from the Irelands sometime between July, 1985 and February, 1986 to commence an action against the O.C.I.C. and some of its employees for alleged bad faith in denying the Irelands' insurance claim. Such an action had little chance of success because the whole issue of the Irelands' entitlement to indemnity under the insurance policy had been considered by the Arbitration Board.

17. The Solicitor prepared a Notice of Action and a Statement of Claim, but he did not file them with the Court or take any other steps to advance the Irelands' claim.

18. The Solicitor continuously misled the Irelands during the next three or four years about the status of their intended proceedings against the O.C.I.C. He falsely told them that he was pursuing the matter and that there were ongoing settlement negotiations. He also falsely told them that he had to obtain a Court Order to compel two of the Defendants to attend for Examination for Discovery and that he had subsequently examined the Defendants for Discovery.

19. Any claim which the Irelands might have had against the O.C.I.C. was prescribed in 1985 -- the limitation period was six months. The Irelands have retained another lawyer to advise them on whether they should commence action against the Solicitor in negligence.

Particulars (v) & (vi)  
Chambers

20. Ken Chambers and Carolyn Stevenson retained the Solicitor in or about 1982 to assume carriage of Mr. Chambers' pending divorce action and to commence legal proceedings in respect of the following three other matters:

- (1) to sue for the loss suffered by Ms. Stevenson as a result of the alleged improvident sale of her former home at 55 Edward Street by the Mortgagee. Ms. Stevenson claimed that the sale price obtained by the mortgagee was \$20,000.00 less than the fair market value;
- (2) to sue the insurer under the policy covering Ms. Stevenson's former home at 55 Edward Street. Ms. Stevenson alleged that certain household effects had been stolen from 55 Edward Street while the mortgagee was in possession of those premises prior to the sale under the mortgage. Ms. Stevenson valued her claim at the full policy limit of \$29,400.00;
- (3) to sue a bailiff and auctioneer for the alleged wrongful seizure and sale of chattels belonging to Mr. Chambers. Ms. Stevenson operated a business from leased premises. Mr. Chambers was storing certain chattels on those premises. The bailiff took possession of the chattels under a landlord's distress warrant, and arranged for them to be sold by action. Mr. Chambers valued this claim at \$5,000.00;

21. The Solicitor exchanged correspondence with the various opposing parties of their counsel from 1982 through 1985. However, the Solicitor did not commence proceedings for any of the claims.

20th June, 1991

22. During the seven years in which he had the brief for these matters, the Solicitor continuously misled Ms. Stevenson and Mr. Chambers about the status of the claims whenever they enquired. For example, he advised them that the claim against the mortgagee was set for trial in London, and that Siskind, Cromarty were acting for the mortgagee (when in fact no action existed); and, he advised them that settlement negotiations were proceeding with the insurance company and their solicitors, Lerner & Associates to settle the claim for theft coverage (when in fact, he had been advised by Lerner & Associates in writing on June 5, 1985, that any claim was barred under the policy because it was not reported until 1984, over three years after the alleged loss).

23. The Solicitor not only concealed his neglect of the civil matters by verbal misrepresentations to Mr. Chambers and Ms. Stevenson, he also wrote a letter to a third party regarding the actions which was calculated to give the false impression that the matters were pending before the courts.

24. The letter in question was written to assist Mr. Chambers in his application for immigration to the United States. Mr. Chambers had to demonstrate to the U.S. Immigration authorities that he was financially stable and able to support himself, and he felt that his application would be enhanced by a letter from the Solicitor indicating the recovery sought in the three civil matters. The letter, which was dated March 26, 1986, is attached to this Agreed Statement of Facts as Appendix "A".

25. Ms. Stevenson and Mr. Chambers only discovered the true status of their claims after the Society investigated the letter of complaint they sent in August, 1989.

26. Mr. Chambers has consulted another solicitor on the merits of suing the Solicitor on account of his neglect of three civil matters. However, he has not yet made a decision, because he does not have the funds to cover a retainer.

#### FAILURE TO CO-OPERATE WITH ERRORS & OMISSIONS

27. From August, 1989 to June, 1990 the Society's Errors & Omissions Department received notice of ten potential claims against the Solicitor. Those are in addition to the three examples summarized in this Agreed Statement of Fact.

28. The Society appointed an Adjuster to investigate some of the claims and a Counsel to others. Initially, the Solicitor responded to requests from the Adjuster and from Counsel for information, but for most of the above period he ignored them. The Solicitor's non-responsiveness seriously impeded the Adjuster and Counsel in their investigations. After these proceedings were commenced the Solicitor was persuaded by the Society's Audit Counsel to provide the information requested by the Adjuster and by the Counsel appointed by Errors & Omissions.

29. The present estimate of all potential claims against the Solicitor is \$176,600.00, calculated as follows:

Kelly	\$37,000
Ireland	4,600
Chambers	55,000*
Alderman	5,000*
Igercich	5,000*
Monteyne	5,000
Nakagawa	10,000
De Boer	5,000*
Sigmund/Grosvenor Flowers	20,000*
Rushinko	10,000*
Sereda	10,000*
Schellenbach/Kingsmount	5,000*
Schellenbach/Kingsmount	<u>5,000*</u>

\$176,600

The potential claims marked with an \* are those in which the Solicitor contends that the client cannot prove any damages, or in a few cases, that the damages provable by the client are less than the estimate given herein. The total of the estimates marked with an \* is \$120,000.00. The Society's ultimate exposure on these and the remaining claims -- the latter being estimated at \$56,600.00 -- has not yet been ascertained.

#### FINDING OF PROFESSIONAL MISCONDUCT

30. On the basis of the admission and the facts set out above the Committee finds the Solicitor guilty of professional misconduct.

#### RECOMMENDATIONS AS TO PENALTY

31. The Solicitor and the Society agree that the Solicitor's gross neglect, his continuous and protracted dishonesty in concealing his neglect, and his disregard of his obligation to assist the Society's Adjuster and Counsel, warrant termination of his membership in the Society. However, the Committee is asked in a joint submission to recommend that the Solicitor be permitted to resign rather than be disbarred. The reasons given for seeking this recommendation are set out in paragraphs 32 to 38.

32. The Solicitor made no personal financial gain as a result of his misconduct. On the contrary, he could suffer losses in the form of insurance deductibles totalling as much as \$60,000.00 to \$75,000.00 if clients pursue claims against him in negligence.

33. The Solicitor sought counselling under the "LINK" programme in 1990. Through that he gained insight into the causes of the course of misconduct described herein.

34. The Solicitor now believes that one of the contributing factors to his gross neglect of his clients' matters was his strong reluctance to say "No" to clients whose cases he felt lacked merit. He believes that the reluctance stemmed from the fact that he set unrealistic standards for himself, because he was a perfectionist and because he believed that his family and his community also had very high expectations of him as a lawyer. He believed that he could and should meet his own standards as well as the expectations of his family and of his community, even to the extent of taking on cases which he felt had little merit.

35. The Solicitor now realizes that another contributing factor was overwork. From August, 1987 to around May, 1988 the Solicitor assumed the additional responsibility of managing the practice of a colleague who took a leave of absence. The Solicitor now feels that the additional workload was too much, and that it exacerbated his problem in dealing with the troublesome files referred to in the preceding paragraph and led to more cover-up.

36. Looking back on the events described herein, the Solicitor now feels that commencing in 1985 he began a gradual slide towards a "work paralysis" which reached a peak around December, 1988 and remained there until around June, 1989. As this "paralysis" progressed, so did the Solicitor's neglect of client matters, which necessitated even more cover-up of his neglect.

37. The Solicitor co-operated fully during the Discipline investigation, and has resumed co-operating with the Society's Adjuster and Counsel with respect to the Errors & Omissions claims. He has also begun responding to enquiries from new solicitors retained by the clients in order to assist the new solicitors in becoming familiar with the files.

38. The Solicitor withdrew from the practice of law on February 1, 1990 and since that time he has been engaged in private business. He does not wish to resume practice.

39. For the reasons set out in paragraphs 32 to 38 the Committee recommends to Convocation that the Solicitor be permitted to resign. A joint submission by counsel for the Society and the Solicitor should be accepted by a Discipline Committee unless the joint submission is clearly wrong, or counsel for the Society misapprehended the evidence.

Donald Richard Mantz was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 14th day of October, 1979.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1991

"Harvey T. Strosberg"  
Harvey T. Strosberg, Q.C.,  
Chair

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

Carried

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

Carried

A signed letter of resignation from the solicitor was entered as Exhibit 3.

Counsel retired.

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Re: THOMAS JAMES GRACE, Ottawa

Mr. Lamek placed the matter before Convocation.

Mr. Feinstein did not participate.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 24th May, 1991 together with the Affidavit of Service sworn 19th June, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail 31st May, 1991 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Colin D. McKinnon, Q.C., Chair  
J. Douglas Thoman, Q.C.  
Mrs. Netty Graham

20th June, 1991

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

Gerald R. Morin, Q.C. and  
Dianne Nicholas  
for the Society

THOMAS JAMES GRACE  
of the City  
of Ottawa  
a barrister and solicitor

Steven J. Greenberg  
for the Solicitor

Heard: April 2, 1991

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 March 1, 1990, Complaint D34/90 was issued against Thomas James Grace alleging that he was guilty of professional misconduct and of conduct unbecoming a barrister and solicitor.

On March 28, 1991, an Amended Complaint was issued against the Solicitor.

The matter was heard in public on April 2, 1991 before this Committee composed of Colin D. McKinnon, Q.C., Chair, J. Douglas Thoman, Q.C. and Mrs. Netty Graham.

Mr. Grace was not present at the hearing but was represented by counsel, Steven J. Greenberg. Gerald R. Morin, Q.C. and Dianne Nicholas appeared as counsel for the Law Society.

By agreement of counsel, the original Complaint dated March 1, 1990 was made Exhibit A to the proceedings and on agreement was sealed so as to protect the names of clients. The original service papers upon the Solicitor together with all endorsements upon the record have been gathered together as Exhibit 1(a). Exhibit 1(b) is the Amended Complaint which was heard in public.

At the hearing, Mr. Greenberg acknowledged that the Amended Complaint had been reviewed in its entirety with the Solicitor. He informed the Committee that the Solicitor had chosen to be absent from the hearing and had acknowledged so in writing, as evidenced by Exhibit 2.

#### DECISION

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The following particulars of professional misconduct and conduct unbecoming a barrister and solicitor were admitted and found to have been established:

##### Amended Complaint D34/90

- 2.(a) He engaged in a pattern of actively soliciting retainers from persons in particular criminal matters at the Court House and elsewhere in and about the City of Ottawa, Ontario. In some cases, those persons were already represented by other counsel. A list of persons who will be referred to in evidence, including references where those persons were already represented by other counsel, is as follows:

1. James Bond (Sharon Rosenberg, Counsel)
2. Harschand Dipchand (Robert Wakefield, Counsel)
3. Rick Malette (Michael Edelson, Counsel)
4. Francois Zuger
5. Ronald Murray (Murray Ages, Counsel)

- (b) On or about April 15, 1988, while acting as duty counsel at the Legal Aid Office in the City of Ottawa, he counselled Lynn Marie Brosseau to breach a condition of her recognizance, namely that she report to the Ottawa police station every Saturday.
- (c) On or about September 4, 1988, he breached his duty of confidentiality to his client, Ida Datillo, by volunteering without her permission, to testify and thereafter testifying about previous legal proceedings involving Ida Datillo. He made this voluntary offer and gave this testimony in a show cause hearing arising from a matter in which Ivan Pecnik had been charged criminally with assaulting his client Ida Datillo.
- (d) During the period 1987 to 1989, more or less, he engaged in the following unprofessional conduct with regard to his client, Steven Stenhouse:

Using narcotics and restricted drugs provided by his client Stephen Stenhouse.

#### Conduct Unbecoming

- 3.(a) During 1988, he illegally used narcotics, the possession of which was illegal in the circumstances, in the company of several clients.

#### Evidence

The whole of the evidence before the Committee on the issue of professional misconduct and of conduct unbecoming a barrister and solicitor was in the form of the following Agreed Statement of Facts, which was admitted as Exhibit 3 in the hearing.

#### "AGREED STATEMENT OF FACTS

- 1. Thomas James Grace is a barrister and solicitor who resides in the City of Ottawa and practised law as a sole practitioner, exclusively in the area of criminal law.
- 2. On March 1st, 1990, the Affidavit of Howard S. Maker, staff lawyer for the Law Society of Upper Canada, was sworn and provides particulars of the charges against Thomas J. Grace, Barrister and Solicitor, of the City of Ottawa.
- 3. The complaint alleges that Mr. Grace is guilty of professional misconduct in that:
  - a) He engaged in a pattern of actively soliciting retainers from persons, in particular criminal matters at the Court House and elsewhere in the City of Ottawa, Ontario. In some cases those persons were already represented by other counsel. A list of persons who will be referred to in evidence, including references where those persons were already represented by other counsel, is as follows:
    - 1. James Bond (Sharon Rosenberg, Duty Counsel)
    - 2. Harchand Dipchand (Robert Wakefield, Counsel)
    - 3. Rick Malette (Michael Edelson, Counsel)
    - 4. Francois Zuger
    - 5. Ronald Murray (Murray Ages, Counsel)
  - b) On or about April 15th, 1988, while acting as duty counsel at the Legal Aid Office in the City of Ottawa, he counselled Lynn Marie Brosseau to breach a condition of her recognizance, namely that she report to the Ottawa Police Station every Saturday.



- c) On or about September 4th, 1988, he breached his duty of confidentiality to his client Ida Datillo, by volunteering, without her permission, to testify and thereafter testifying about previous legal proceedings involving Ida Datillo. He made this voluntary offer and gave this testimony in a show cause hearing arising from a matter in which Yvan Pecnik had been charged criminally with assaulting his client Ida Datillo.
- d) During the period 1987 to 1989, more or less, he engaged in the following unprofessional conduct with regard to his client, Stephen Stenhouse:
  - 1. Using narcotics and restricted drugs provided by his client Stephen Stenhouse.

4. It is further alleged in the complaint of Howard S. Maker, that Mr. Thomas James Grace is guilty of conduct unbecoming a barrister and solicitor in that:

- a) During 1988 he illegally used narcotics, the possession of which was illegal in the circumstances, in the company of several clients.

The parties have agreed to the following statements of facts. The facts will follow the same order as the complaint of Howard Maker. For the purpose of this hearing, Thomas Grace does not contest the truth of any of the statements set out below.

#### ALLEGATIONS PERTAINING TO SOLICITATION OF RETAINERS

##### COMPLAINT OF SHARON ROSENBERG

5. On April 25, 1988, Sharon Rosenberg made a written complaint to Mr. Michael Neville, President of the Defence Lawyers' Association, with regard to an incident that occurred while she was duty counsel in number 6 court (guilty plea court), on April 20th, 1988. Ms. Rosenberg states that she was present in number 5 court (remand court) when an unrepresented accused by the name of James Bond advised the court he wished to plead guilty. He was subsequently transferred to the guilty plea court where Ms. Rosenberg was duty counsel that morning. Subsequent to receiving disclosure, Ms. Rosenberg met Mr. Bond in the cell block at approximately 9:45 a.m. at which time he confirmed that he wished to be represented by her as duty counsel.

6. Shortly thereafter, Ms. Rosenberg was advised by the Assistant Crown, Mr. B. Dandyk, that Mr. Grace had approached him with respect to Mr. Bond.

7. Ms. Rosenberg advised Mr. Grace that she was acting as duty counsel and inquired as to when Mr. Grace had spoken with Mr. Bond. Mr. Grace responded that he was a friend of the family, through his sister, and that he was acting for free.

8. When Mr. Bond was subsequently brought into the courtroom for plea, Ms. Rosenberg discussed the matter with him. Mr. Bond advised her that he did not request to see Mr. Grace, that his family did not know Mr. Grace, and that he still wished to be represented by Ms. Rosenberg as duty counsel.

9. Ms. Rosenberg's complaint and version of the facts is confirmed by Sergeant John Williams, Court Liaison Officer, who was present in courtrooms number 5 and 6.

10. Sergeant Williams has, on numerous occasions, observed Mr. Grace leave the courtroom when an unrepresented accused indicated that he or she wished to enter a guilty plea. These matters are routinely transferred to courtroom number 6 which is the plea court. When these individuals then appeared in courtroom number 6 for plea, Mr. Grace would frequently have become the solicitor of record.

11. Sergeant Williams, having observed Mr. Grace on a daily basis for an extended period, is of the opinion that Mr. Grace appeared to prey on people who appear to have psychiatric problems.

COMPLAINT OF RICHARD MALETTE

12. On April 22nd, 1988, Mr. Michael Edelson, criminal lawyer in the City of Ottawa made a complaint in writing to Michael Neville, President of the Defence Lawyers' Association. This incident involved Mr. Edelson's client, Richard Malette, who had been his client for approximately nine years.

13. On March 23rd, 1988, Mr. Edelson was contacted by Mr. Richard Malette and advised that Mr. Malette had been arrested by the Gloucester Police Force on charges of Possession for the Purpose (Cannabis Resin) and Possession for the Purpose (Cocaine) and Simple Assault. Mr. Edelson advised his client that he would see him the following day in courtroom number 5 (remand court) to determine whether the Crown would seek to show cause with respect to these charges.

14. Upon attending courtroom number 5 in the morning of March 24th, 1988, Mr. Edelson observed Mr. Grace conversing with his client at the prisoners' dock in the courtroom. Mr. Edelson approached Mr. Grace to advise him that Mr. Malette was a longstanding client of his and had contacted Mr. Edelson the evening previous. Mr. Grace stated to Mr. Edelson that Mr. Malette's mother had called him and asked him to deal with the matter.

15. Mr. Malette confirms that he has been a client of Mr. Edelson for years. Upon his arrest, he left a message with Mr. Edelson notifying him that he would be appearing in courtroom number 5 (remand court) the following day. He states that he subsequently received a telephone call at the police station from Mr. Grace who indicated that he was a lawyer and inquired whether Mr. Malette needed representation. Mr. Malette advised Mr. Grace that he was represented by Mr. Michael Edelson. Mr. Malette states that he was again approached by Mr. Grace in Courtroom number 5 the following day and again asked whether he wished to be represented by Mr. Grace. Mr. Malette states that his mother could not possibly have advised Mr. Grace of his arrest as his mother was not, at that time, aware of his whereabouts and he had not been in contact with his mother for a considerable period of time.

REPORT OF INVESTIGATOR PETER CAMPBELL INVOLVING JEAN FRANCOIS ZUGER

16. In November of 1988, the Law Society retained the services of Peter Campbell, investigator, to observe Mr. Grace's activities at the Court House over a number of days. Mr. Campbell submitted a report dated December 5th, 1988 in which he reports that, on November 8th, 1988, he attended at the Court House and observed an accused by the name of Mr. Jean Francois Zuger advise the Court that he was unhappy with his solicitor and would be seeking a new solicitor. This took place in courtroom number 5 (remand court). When Mr. Zuger left the courtroom, he was followed closely by Mr. Grace. Mr. Campbell observed Mr. Grace strike up a conversation with Mr. Zuger in the hallway and further observed the two of them then go to the cafeteria for coffee. Mr. Grace and Mr. Zuger sat together until approximately 12:00 noon. The Court information indicates that on November 9th, 1988, i.e., the following day, Mr. Grace appeared, as counsel, for Mr. Zuger with respect to the charge.

COMPLAINT OF RONALD MURRAY

17. The Law Society's investigation into Mr. Grace's activities was suspended in November of 1988 when counsel for the Society was advised that Mr. Grace had taken a leave of absence from practice and would be absent for an undisclosed period of time. In March of 1989, further complaints were received by the Society and the investigation resumed. The services of Mr. Campbell, investigator, were again retained. Mr. Campbell has provided a report of his observations of Mr. Grace's activities at the Ottawa Court House on March 23rd, March 28th and March 29th, 1989.

18. On March 29th, 1989, Mr. Campbell observed Mr. Grace approach an accused person by the name of Ronald Murray, who was awaiting sentence and was represented by Mr. Murray Ages. Mr. Murray had been sitting outside of courtroom number 9 awaiting sentencing with regard to a conviction for theft under \$1,000.00. Mr. Grace sat down on a chair near Mr. Murray and entered into a conversation with him. Mr. Murray informed Mr. Grace that he was awaiting sentencing and was concerned that he would be incarcerated. Mr. Grace asked for, and then reviewed a copy of the pre-sentence report. Mr. Grace expressed the opinion, after reviewing the pre-sentence report, that Mr. Murray would not be incarcerated. Mr. Grace suggested to Mr. Murray that he seek native spiritual counselling and he provided Mr. Murray with a copy of his business card. Mr. Murray was subsequently interviewed by the investigator Peter Campbell and Mr. Grace's business card was turned over. Mr. Murray advised Mr. Campbell that, after speaking to Mr. Grace, he was prepared to switch lawyers from Mr. Ages to Mr. Grace if he could have obtained a postponement of his sentencing hearing. Mr. Murray indicated to the investigator that he did not wish to cause any trouble for Mr. Grace and subsequently asked the investigator to disregard some of his previous remarks.

Page 9.

19. Mr. Murray Ages, counsel for Mr. Murray, states that on the morning of March 29th, 1989, he was accompanied by his student-at-law, Sally Keilty and attended at courtroom number 9 for the sentencing of his client, Mr. Ronald Murray. Mr. Ages states that Mr. Murray arrived late for the sentencing and was asked by Mr. Ages to wait outside the courtroom and review the pre-sentence report and advise Mr. Ages of its accuracy. Sally Keilty, student-at-law, indicates that she observed Mr. Grace seated next to Mr. Murray outside of courtroom number 9 with Mr. Murray's presentence report in his hands. When she requested that Mr. Murray follow her into the courtroom, as court was reconvening, she observed that Mr. Grace and Mr. Murray were still talking and that Mr. Murray had Mr. Grace's business card in hand.

20. At the conclusion of Mr. Murray's sentencing, Mr. Grace entered the courtroom and he and Mr. Murray exchanged nods. This was observed by Mr. Ages who directed his client to go to the second level of the courthouse to awaiting signing of his probation order. When Mr. Ages confronted his client, Mr. Murray, he admitted that Mr. Grace had given him his business card. Mr. Grace's business card was turned over to Mr. Ages and Mr. Murray agreed to sign his name on the back of the card. Mr. Murray indicated that he had never met Mr. Grace before and that he had been reading his pre-sentence report when Mr. Grace sat down beside him and initiated conversation. Mr. Murray confirmed to Mr. Ages that Mr. Grace has reviewed his PSR and indicated to him that if he (Mr. Grace) were acting for Mr. Murray, there would not be a sentence involving jail time. Mr. Murray did not ask for the business card but accepted it when it was offered by Mr. Grace.

STATEMENT OF BOB RYAN

21. In a statement dated November 23, 1988, Constable Bob Ryan who worked as Court Liaison officer in courtroom number 5 (remand court) up to September 1988 indicates that, on a number of occasions, he has observed Mr. Grace approach individuals who were in custody and present in the prisoners' dock of the courtroom. He advises that Mr. Grace has never been duty counsel in remand court. He further states that he has observed, on numerous occasions, Mr. Grace approach individuals who had previously indicated to the court that they had not retained counsel.

COMPLAINT OF ROBERT WAKEFIELD INVOLVING HARCHAND DIPCHAND

22. The Society received a complaint from Robert Wakefield, criminal lawyer in the City of Ottawa concerning an accused by the name of Harchand Dipchand who was charged with the first degree murder of a relative. At that time, Mr. Grace was representing Mr. Dipchand with respect to another charge involving an assault and had represented him originally on the first degree murder charge arranging a psychiatric remand.

23. Mr. Dipchand, while a patient at the Royal Ottawa Hospital for a psychiatric assessment, met with and retained Robert Wakefield to represent him with respect to the murder charge. Mr. Dipchand states that Mr. Grace continued to visit him while he was at the Royal Ottawa Hospital for assessment. Mr. Dipchand states that Mr. Grace became very emotional when he was advised that Mr. Dipchand had retained the services of Robert Wakefield. After Mr. Wakefield had been retained, Mr. Grace continued to visit Mr. Dipchand at the Royal Ottawa Hospital stating that he was there to visit him as a friend while at the same time attempting to convince Mr. Dipchand that he had a winning case. Mr. Grace was notified by Mr. Wakefield that he (Wakefield) was now solicitor of record. Nonetheless, Mr. Grace continued to have contact both with the psychiatrist as well as with Mr. Dipchand. Mr. Wakefield requested that Mr. Grace deliver to him any documents he had in his possession with respect to Mr. Dipchand's case and advised him that he was no longer to communicate with his client.

24. While Mr. Dipchand remained in the Royal Ottawa for psychiatric assessment, Mr. Dipchand states that Mr. Grace advised him that he had spent a considerable amount of time talking about this case with Mr. Arthur Cogan, a well-known, criminal lawyer in the City of Ottawa and that Mr. Cogan was interested in the case and would be in court. Mr. Dipchand states that, following this conversation with Mr. Grace in which Mr. Grace advised him that his case was a "winner" and in the belief that Mr. Cogan would become involved in the case, he decided to again retain the services of Mr. Grace and to discharge Mr. Wakefield. Mr. Grace removed from his briefcase a Direction, which had already been written up in Mr. Grace's handwriting, in which Mr. Dipchand advises Mr. Wakefield that he is retaining the services of Mr. Grace. Mr. Dipchand signed this Direction on September 29th, 1987.

25. Mr. Dipchand was subsequently transferred to the Ottawa-Carleton Regional Detention Centre he states that he realized he had made a serious mistake and attempted on several occasions to communicate with Mr. Wakefield. As Mr. Grace was by then solicitor of record, Mr. Wakefield refused to speak with Mr. Dipchand. Mr. Dipchand then wrote a letter to Mr. Wakefield on October 20, 1987 in which he indicated "I feel as though I was forced by Mr. Grace to sign the document informing you that I no longer required your services. Please be assured that being of sound mind, I'm definitely requiring your services as my legal counsel".

26. Mr. Cogan states that Mr. Grace worked in his office for approximately one year after his call to the bar but that his employment was terminated by Mr. Cogan. Mr. Cogan states that he has no recollection of Mr. Grace coming to his office to discuss the Dipchand file with him. Mr. Cogan categorically denies that he ever assisted Mr. Grace on any matter and specifically not on the Dipchand matter. Mr. Cogan states that he has been advised that Mr. Grace has attempted to meet with clients of other solicitors and has used Mr. Cogan's name as a hook in order to convince these accused persons to switch counsel. Mr. Cogan has notified Mr. Grace, in writing, that this improper conduct should cease.

ALLEGATIONS THAT MR. GRACE COUNSELLED LYNN MARIE BROSSAU TO BREACH HER RECOGNIZANCE

27. On April 20, 1988, Bob Selkirk, barrister and solicitor, made a complaint to Mr. Michael Neville with respect to Lynn Brosseau, who was charged with a breach of Section 195.1 of the Criminal Code. Ms. Brosseau states that she met Mr. Grace at the Legal Aid office on Lisgar Street in the City of Ottawa on Friday, April 15, 1988, after she had failed to appear for one of her court appearances. Mr. Grace was, at that time, duty counsel at the Legal Aid Clinic at that location. Mr. Grace advised her that he would represent her. Ms. Brosseau advised Mr. Grace, at that time, that she had previously been released on a recognizance and that one of the conditions of her bail was that she report to the Ottawa Police every Saturday. She advised Mr. Grace that she had been unable to report on the two previous Saturdays. Mr. Grace advised her of the consequences of not reporting the next day and indicated to her "I shouldn't say this, but I wouldn't report now, because if you do they will put you in jail." He did not advise her to immediately turn herself in to the authorities. Relying on that advice, Miss Brosseau did not report the next Saturday and was eventually charged with breach of recognizance for her failure to report. Mr. Grace's advice to Ms. Brosseau was based on his belief that if she reported as required by the terms of her recognizance on the following day, Saturday April 16, 1988, she would be arrested and detained under the warrant which had been issued for her failure to appear in Court on April 15, 1988.

28. Miss Brosseau also states that on one occasion, Mr. Grace approached her and a friend of hers and attempted to solicit a retainer.

29. Sergeant Martel, one of the arresting officers with respect to the breach of recognizance, states that upon Miss Brosseau's arrest, she indicated to the police that she had been advised by Mr. Thomas Grace not to report to the Ottawa Police on Saturday April 16, 1988 as required by the terms of her bail. She indicated to the officers that Mr. Grace had advised her that she would be kept in custody if she did present herself to report. Sergeant Martel states that it is not the practice of the Ottawa Police.

BREACH OF DUTY OF CONFIDENTIALITY TO IDA DATILLO

30. On September 8th, 1988, the Society was advised by Peter Beach, criminal lawyer in the City of Ottawa, that Mr. Grace had testified on behalf of the defence during a show cause hearing into an assault charge. A former client of Mr. Grace's was the complainant. The accused, Yvan Pecnik, former common-law husband of the complainant, was represented by Mr. James Harbic who called Mr. Grace as a witness for the defence at the accused's show cause hearing.

31. At the show cause hearing, Mr. Grace offered to provide testimony about Ms. Datillo which was of assistance to the accused in his attempts to obtain release at the show cause hearing. Mr. Harbic had secured a subpoena for Mr. Grace.

32. At the show cause hearing, Mr. Grace testified that he had represented Ms. Datillo before three Mental Health Review Boards. He also testified that there had been some question, in previous proceedings before Family Court Judge Sheffield relating to a custody matter, as to whether Ms. Datillo was capable of making an oath. Mr. Grace also made a statement, to the fact that the judge in that proceeding had found Ms. Datillo's behaviour to be "bizarre".

33. Hillary McCormack, the Crown Attorney present at the show cause hearing, attempted to interrupt Mr. Grace's evidence and questioned whether he had obtained a waiver of solicitor-client privilege from Ms. Datillo. Mr. Grace responded that the evidence he was giving was a matter of public record. In fact, Mental Health Review Board hearings are not matters of public record.

COMPLAINT OF STEPHEN STENHOUSE RELATING TO CONDUCT UNBECOMING A SOLICITOR

34. In May 24th, 1989, Mr. Stephen Stenhouse made a sworn declaration that Mr. Thomas Grace and he had consumed drugs together on a number of occasions during the period of March 1988 until approximately the summer of 1988.

35. Mr. Stenhouse states that he was present at the Court House in Ottawa on August 27th, 1988, with respect to a first appearance on a fraud charge, when he was approached by Mr. Grace who asked him whether he had a lawyer. When he responded that he did not, Mr. Grace indicated that he would represent him. This is the first time Mr. Stenhouse learned that Mr. Grace was a Solicitor. Mr. Stenhouse already knew Mr. Grace and had met and consumed drugs with him at a night club in March of 1988.

36. Mr. Stenhouse states that on that same day, they consumed cocaine together at Mr. Stenhouse's home. Mr. Stenhouse and Grace subsequently consumed drugs together while Mr. Grace was solicitor of record for Mr. Stenhouse.

PARTICULARS OF CONDUCT UNBECOMING A BARRISTER AND SOLICITOR INVOLVING CONSUMING DRUGS IN THE PRESENCE OF CLIENTS

37. At a meeting held with counsel for the Law Society on June 19, 1989, Mr. Grace disclosed that he had used cocaine and marijuana in the company of several of his clients. Mr. Grace also admitted that some members of the Ottawa criminal sub-culture were aware that he had used cocaine. According to Mr. Grace, this problem stemmed from a mistaken desire to befriend clients, better understand them and thereby better defend them. Mr. Grace admits that he consumed cocaine and marijuana with clients from time to time.

DATED at Ottawa this 21st day of March, 1991."

Mr. Greenberg informed the Committee that the Agreed Statement of Facts had been reviewed on numerous occasions with the Solicitor who had participated in its drafting and in changes suggested to bring it to final form before the Committee.

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Thomas James Grace be disbarred.

REASONS FOR RECOMMENDATION

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It was submitted by Mr. Greenberg that the Solicitor admitted all of the particulars of the Complaint and had himself suggested that the proper penalty was one of disbarment. The Committee had regard to the fact that the recommended penalty of disbarment was based upon a joint submission.

In our considered view, the penalty recommended by both parties is the only proper penalty in the circumstances. The particulars established disturbingly serious instances of professional misconduct and of conduct unbecoming a barrister and solicitor. The Committee is of the view that there is no other appropriate penalty but that recommended jointly by the parties.

Thomas James Grace was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 4th day of February, 1956.

ALL OF WHICH is respectfully submitted

DATED this 24th day of May, 1991

"Colin McKinnon"

Colin D. McKinnon, Q.C. Chair

It was moved by Mr. Lamek, seconded by Mr. Murray that the Report be adopted.

Carried

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

There were no submissions.

The recommendation as to Penalty was adopted.

Counsel retired.

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Re: BRIAN ALLEN SHERMAN, Richmond Hill

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

Mr. Ron Cohen appeared for the Society. No one appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 28th May, 1991 together with the Affidavit of Service sworn 19th June, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail 4th June, 1991 (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor 20th June, 1991 (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

Roger D. Yachetti, Chair  
C. Bruce Noble  
Maurice Cullity

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

Ronald Cohen  
for the Society

BRIAN ALLEN SHERMAN  
of the Town  
of Richmond Hill  
a barrister and solicitor

Not Represented  
for the Solicitor

Heard: January 29, 1991

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 September 13, 1990, Complaint D151/90 was issued against Brian Allen Sherman alleging that he was guilty of professional misconduct and on November 12, 1990, Complaint D202/90 was issued against Brian Allen Sherman alleging that he was guilty of professional misconduct.

The matter was heard in public on January 29, 1991, before this Committee composed of Roger D. Yachetti, Chair, C. Bruce Noble and Maurice Cullity. The Solicitor was in attendance and was not represented by counsel. Ronald Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D151/90

- 2(a) He has failed to provide a reply to the Society regarding a complaint by Bernard J. Rodrigue despite letters dated November 22, 1989 and March 28, 1990 and telephone messages on February 15, February 22, March 7, March 8 and July 23, 1990;
- (b) He has failed to comply with an Undertaking given to the Society dated March 30, 1988 to promptly reply to Society communications in the future.

Complaint D202/90

- 2(a) His rights and privileges as a member of the Society having been suspended on May 25, 1990 for non-payment of the Society's Errors and Omissions Insurance levy for the period January through June, 1990, the Solicitor engaged in the practice of law.



Evidence

The entirety of the evidence before the Committee on the issue of professional misconduct was in the form of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D151/90 and D202/90, and is prepared to proceed with a hearing of these matters on January 15, 1991.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D151/90 and D202/90 and admits the particulars contained therein.

IV. FACTS

4. The Solicitor was called to the Bar on March 29, 1977. He practises as an associate in Richmond Hill.

Complaint D151/90

5. A Complaint was sworn January 25, 1988 respecting Mr. Sherman's apparent failure to reply to correspondence and telephone calls from the Society. In consideration of the Law Society foregoing a formal discipline hearing at that time, the Solicitor undertook on March 30, 1988 to respond promptly to all Law Society correspondence as required, and in the case of written correspondence, within three weeks in any event. In consideration of the Undertaking, the Complaint was withdrawn on April 6, 1988.

6. The complainant in this matter is a solicitor practising in Brandon, Manitoba. By letter dated October 27, 1989 the complainant wrote to the Society concerning an account for \$52.34 dated April 26, 1989 that had been issued to the Solicitor's law firm.

7. By letter dated November 22, 1989 the Society wrote to Earl J. Winemaker enclosing the correspondence from the complainant. Mr. Winemaker practises at the firm of Winemaker, Sherman & Todd with the Solicitor. A reply was requested within a period of two weeks.

8. By letter dated November 27, 1989 Mr. Winemaker advised the Society that he had had no dealings with the complainant and had given the Society's letter to the Solicitor for his attention.

9. No reply having been received, on February 15, 1990 a Society staff member called the Solicitor's office to enquire about a response. The Solicitor did not return the telephone call. Telephone messages were also left for the Solicitor on February 22, March 7, March 8, and July 23, 1990. No response was received to these telephone messages.

10. A second letter dated March 28, 1990 was delivered to the Solicitor by courier. Accompanying that letter were the original letter of complaint and account, the Society's original letter to Mr. Winemaker and Mr. Winemaker's letter to the Society. In this letter, the Solicitor was advised that the matter would be referred for disciplinary proceedings if a reply were not received within two weeks of the date of that letter.

11. The complainant's account was paid in full on January 8, 1990.

Complaint D202/90

12. The Solicitor's rights and privileges as a member of the Society were suspended on May 25, 1990 for non-payment of the Society's Errors & Omissions insurance levy for the period January through June, 1990. A registered letter dated May 29, 1990 was sent to the Solicitor advising him of his suspension, and notice of the suspension was published in the Ontario Reports. On October 25, 1990 the Solicitor paid the outstanding Errors & Omissions levy of \$1,085 and he was reinstated on that date.

13. The Solicitor's practice is primarily litigation. Despite the suspension, he continued to engage in the practice of law on an ongoing basis from the time of his first suspension on May 25, 1990 up to the date of reinstatement, October 25, 1990. For this five month period the Solicitor, among other things, practised out of his office and met with clients, reviewed legal files and carried on his practice as usual.

V. PENALTY

14. The Solicitor was Reprimanded in Committee on May 1, 1990 for his failure to reply to communications from the Law Society.

15. The Solicitor submits that he be Reprimanded in Convocation and pay a fine in the amount of \$3,000.00 and agrees to co-operate with the Professional Standards Programme Practice Review, and implement the recommendations of such review.

16. The Society joins in that submission.

DATED at Toronto this 14th day of January, 1991

RECOMMENDATION AS TO PENALTY

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The Committee recommends that the said Brian Allen Sherman be reprimanded in Convocation, and;

1. pay a fine in the sum of \$3,000.00, and
2. co-operate with the Professional Standards Practice Review by implementing the recommendations made.

REASONS FOR RECOMMENDATION

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The Solicitor was called to the Bar in March of 1977, and has experienced previous difficulties with the discipline process, as set out in paragraphs 5 and 14 of the Agreed Statement of Facts.

The professional misconduct established in regards to Particular 2(a) of Complaint D151/90 is of a relatively minor nature, involving, as it does, the non-payment of an account in the sum of \$52.34, for which the Solicitor was responsible. However, the professional conduct established in both paragraphs 2(b) of Complaint D151/90 and 2(a) of complaint D202/90, are of a much more serious nature, as they suggest that the Solicitor tends to be ungovernable. He gave an Undertaking to his governing body, which he did not honour, and he engaged in the full practice of law, knowing that he was under suspension for the non-payment of a required levy for a period of five months.

20th June, 1991

The Solicitor testified that at the time of these violations, he was under a great deal of personal stress, both in regards to his personal life and his law practice. In regards to his personal life he was preoccupied with his wife's serious illness which was first diagnosed in the fall of 1988, and which resulted in two subsequent surgical procedures. There were three young children at home at the time. In regards to his practice, the distraction of his wife's illness prevented him from properly attending to a burgeoning law practice and, ironically, cash flow problems resulting from an inability to close out files properly. We are satisfied that the stress that the Solicitor was undergoing contributed very substantially to the misconduct established

The penalty of a reprimand in Convocation, a fine in the amount of \$3,000.00, and the Solicitor's referral to the Professional Standards Programme Practice Review was put forward as a joint submission. Were it not for the mitigating circumstances previously outlined, we would have considered a more serious penalty. However, in all of the circumstances, we are satisfied that the joint submission is an appropriate one, as it recognizes both the seriousness of the misconduct and the influence of the mitigating factors outlined.

Brian Allen Sherman was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 29th day of March, 1977.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1991

"Roger Yachetti"  
Roger D. Yachetti, Chair

It was moved by Mr. Lamek, seconded by Mr. Murray that the Report be adopted.

There were no submissions.

The Report was adopted.

It was moved by Mr. Lamek, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded in Convocation with a fine of \$3,000 and conditions, be adopted.

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

It was moved by Mr. Topp but failed for want of a seconder that the fine be reduced to \$1,000.

The Recommendation as to Penalty was adopted.

Counsel, the solicitor, the reporter and the public were recalled and advised of Convocation's decision. The solicitor was further advised that he had 21 days to pay the fine.

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

.....

20th June, 1991

Re: SIDNEY GEORGE ISAAC, North York

Mr. Topp placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society. Mr. M. Reiter appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 28th May, 1991 together with the Affidavit of Service sworn 19th June, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail 4th June, 1991 (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor 20th June, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert J. Carter, Q.C., Chair  
Laura L. Legge, Q.C.  
Stuart Thom, Q.C.

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

Ken Jones  
for the Society

SYDNEY GEORGE ISAAC  
of the City  
of North York  
a barrister and solicitor

Not Represented  
for the Solicitor

Heard: November 27, 1990  
November 28, 1990  
February 26, 1991

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 June 7, 1990, Complaint D90/90 was issued against Sidney George Isaac, alleging that he was guilty of professional misconduct.

The matter was heard in public on November 27 and 28, 1990 and on February 26, 1991, before this Committee composed of Robert J. Carter, Q.C., Chairman, Laura L. Legge, Q.C., and Stuart Thom, Q.C. Mr. Isaac was in attendance and was not represented on November 27 and 28, 1990. Mr. Isaac appeared with his counsel, M. Reiter on February 26, 1991. Ken Jones appeared as counsel on behalf of the Law Society.

DECISION

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

20th June, 1991

- 2a) He failed to file with the Society within six (6) months of the termination of his fiscal years ending January 31, 1985, January 31, 1986, January 31, 1987, January 31, 1988 and January 31, 1989 a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act.

#### REASONS

Following the solicitors admission of the particulars of the professional misconduct and an admission that those particulars constituted professional misconduct, we found the complaint established. We then heard from him that he had not practiced law since 1986 but had only been involved in the management of family property. We became concerned about both his attitude toward the society in what appeared to be a flagrant disregard of filing rules and his ability to practice law by virtue of his absence since 1986. The matter was before a committee on August 1st, 1990, and adjourned until November 27th, 1990 to permit the preparation and filing of the forms. They were not yet filed. The matter was adjourned to November 28th, 1990, to permit the solicitor to deliver the forms or provide his accountant to explain why they were not completed.

On November 28th, 1990, the solicitor attended with the filings for 1990, 1989, 1988 and indicated he needed a further 30 days to complete the earlier ones. Counsel for the society agreed that all was in order or could be completed in 30 days. The committee again expressed its concern about the solicitors ability to practice caused by the time away from practice and indicated that we were going to recommend to convocation that the solicitor be suspended until he satisfactorily completed the Bar Admission Course.

Prior to that recommendation being completed the solicitor requested a further hearing so he could be represented by counsel. Counsel for the society concurred in this request.

On February 26th, 1991, the solicitor appeared with counsel. It was suggested that the solicitor would practice only in the area of real estate and related areas, areas which he remained familiar with because of his property management activities. It was suggested that if he so restricted his practice it would not be necessary for him to complete the Bar Admission Course.

We had some reservations as to how that restriction could be enforced but with the concurrence of counsel for the Society we proposed to recommend that the solicitor be reprimanded and fined \$1,000.00. The issue then was whether that would be in committee or in Convocation. We decided that if it took place in Convocation this would properly express the serious view the committee took of the matter.

#### PENALTY

For the above reasons we recommend that the solicitor be fined \$1,000.00 and be reprimanded in Convocation.

DATE: May 28th, 1991

"R. Carter"  
Robert J. Carter, Q.C.

The matter was stood down.

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20th June, 1991

Re: BRADFORD WILMOT MORSE, Ottawa

Mr. Lamek placed the matter before Convocation.

Mr. Scott withdrew from Convocation.

Mr. Lamek and Mr. Topp did not participate.

The reporter was sworn.

Mr. Robert Conway appeared for the Society. Mr. G. Hunter appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 23rd May, 1991 together with the Affidavit of Service sworn 19th June, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail 31st May, 1991 (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor 17th June, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Mary P. Weaver, Q.C., Chair  
Bernard Shaffer, Q.C.  
Netty Graham

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

J. Robert Conway  
for the Society

BRADFORD WILMOT MORSE  
of the City  
of Ottawa  
a barrister and solicitor

G. Hunter  
for the Solicitor

Heard: January 16, 1991  
May 22, 1991

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 September 26, 1990, Complaint D156/90 was issued against Bradford Wilmot Morse, alleging that he was guilty of conduct unbecoming a barrister and solicitor.

The hearing was heard in public on January 16, 1991 and May 22, 1991 before this Committee composed of Mrs. Mary P. Weaver, Q.C., Chair, Mr. Bernard Shaffer, Q.C. and Mrs. Netty Graham. Mr. Morse attended the hearing on January 16, 1991 but was not present at the May 22, 1991 hearing. Mr. Morse was represented by Mr. G. Hunter. J. Robert Conway appeared on behalf of the Law Society.

### DECISION

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The following particular of conduct unbecoming was found to have been established:

2. a) in or about the month of September, 1986, he executed an agreement of purchase and sale regarding 252 Stewart Street in the City of Ottawa, knowing that the agreement falsely depicted that he was purchasing the property at arm's length for \$189,000.00, more or less, and knowingly also that the false agreement would be used to obtain mortgage financing for the purported purchase.

### RECOMMENDATION AS TO PENALTY

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The Committee recommends that the said Bradford Wilmot Morse be suspended for a period of three months.

### REASONS FOR RECOMMENDATION

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The conduct of the Solicitor was dishonest. The evidence is that he knowingly signed a false document. It is his evidence that his motive was to assist a friend to obtain financing from a lending institution that the friend could not otherwise obtain. As the evidence unfolded, it became apparent that his concern was that in participating in the scheme his financial position not be at risk. The only other matter of concern was satisfied by an enquiry to his friend and his friend's ready assurance that the scheme was proper. This conduct also demonstrates that at least he was wilfully blind as to the affect of his participation in the scheme and demonstrates that the Solicitor lacked integrity in his assessment of this transaction.

We accept the submission of Counsel for the Law Society that the conduct is a serious breach of the first and most basic rule of professional conduct namely Rule 1:

#### RULE 1

The lawyer must discharge with integrity all duties owed to clients, the court, the public and other members of the profession.

#### COMMENTARY

1. Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. ...
2. Dishonourable or questionable conduct on the part of the lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice as a whole. ..."

We accept the submission of Counsel for the Law Society that "signing a false real estate document in order to help another to extricate himself from a financial difficulty is an act of extreme recklessness and possibly even wilfull blindness."

20th June, 1991

Your Committee considered the submissions of Counsel for the Solicitor that:

1. There is no previous discipline record.
2. The Solicitor helped Mr. McCaughey as a friend (there was no evidence that at the time of the signing of the agreement that there was any benefit to be gained by Mr. Morse).
3. There is little likelihood of repetition.
4. The Solicitor is not a practitioner but that he is an academic and that he relied solely on the representations of Mr. McCaughey, his friend and colleague.
5. There was no evidence that the Solicitor's signature on the document induced Royal Trust to lend the money.
6. That he was unsophisticated in real estate matters, that he was naive, that he was stupid, and that he failed in his professional obligations.
7. That his conduct does not cast disrepute upon the profession.

We have accepted submissions 1, 2 and 3.

We have accepted submissions 4, 5 and 6 but feel they do not assist the Solicitor insofar as the penalty is concerned.

With regard to the seventh submission, in the eyes of the public, the evidence before us was two articles published in the Law Times in which the Solicitor declared that he was innocent of all wrongdoing. It was common ground between both Counsel that there were reports concerning this conduct published in the Ottawa press.

The public expects the Law Society to make a full investigation of all solicitors under criminal investigation together with the conduct of all other solicitors connected with the matter. That obligation extends to making all of the facts known and bringing to the attention of all of the profession, both practising, academic and those otherwise engaged, but particularly to the public, that this is a serious breach of conduct and reflects directly upon the integrity of the profession and the administration of justice as a whole. The Solicitor knowingly signed a false document which was used by his friend and colleague to obtain a loan dishonestly.

Until at least the end of the hearing, the Solicitor was of the view that he was innocent of all wrongdoing in participating in the scheme. We have reviewed the authorities submitted to us by Counsel with regard to the range of penalties that are appropriate. The message here is so important that the appropriate penalty must be of significant severity. We therefore recommend a suspension of three months.

Bradford Wilmot Morse was called to the bar and admitted as a solicitor of the Supreme Court of Ontario on the 19th day of October, 1979.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of May, 1991

"M. Weaver"

Mary P. Weaver, Q.C., Chair



Counsel for the Society advised Convocation that the Report be adopted on the basis of Exhibit 1 only without referring to the Decision which was on a separate sheet. Mr. Conway said the reasons for decision were not in issue.

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

It was moved by Mr. Rock, seconded by Mr. Bragagnolo that the matter be adjourned in order to obtain a formal decision of the Committee incorporating the reasons of the Committee for its decision.

Lost

The Report was adopted.

Counsel, the solicitor, the reporter and the public were recalled.

It was moved by Mr. Lamek, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for 3 months be adopted.

Convocation had before it written submissions by both counsel.

Counsel took questions from the Bench.

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

The recommendation as to Penalty contained in the Report was voted on and lost.

It was moved by Mr. Bragagnolo, seconded by Mr. Copeland that the solicitor be reprimanded in Convocation.

Carried

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

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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#### RESUMPTION OF THE SIDNEY GEORGE ISAAC MATTER

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

There were no submissions by either counsel.

The Report was adopted.

It was moved by Mr. Topp, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded in Convocation with a fine of \$1,000 be adopted.

Counsel for the solicitor sought a reprimand in Committee including the fine of \$1,000.

Counsel for the Society supported the penalty recommended by the Discipline Committee.

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

20th June, 1991

It was moved by Mr. Rock, seconded by Ms. Chapnik that the solicitor be reprimanded in Committee and pay the costs of \$1,000.

Carried

The penalty recommended by the Discipline Committee was voted on and lost.

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

The solicitor was asked to waive the original committee and consent to Convocation sitting as a Committee. The solicitor consented.

Counsel, the reporter and the public withdrew.

Convocation adjourned and reconstituted as a Committee. After the solicitor signed the waiver of appeal the reprimand was administered.

The solicitor retired.

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CONVOCATION ADJOURNED AT 5:00 P.M.

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Confirmed in Convocation this *27th* day of *September*, 1991.

  
Treasurer