

23rd March, 1995

MINUTES OF SPECIAL CONVOCATION

Thursday, 23rd March, 1995
9:30 a.m.

PRESENT:

The Treasurer, Blue, Bragagnolo, Brennan, Carey, Carter, Cullity, Curtis, Elliott, Epstein, Graham, Lamont, Lax, McKinnon, Murray, S. O'Connor, Richardson, Thom, Topp and Weaver.

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The reporter was sworn.

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IN PUBLIC

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Mr. Michael Brown introduced Mr. David Humphrey who would be acting as Duty Counsel.

DISCIPLINE COMMITTEE

Re: Ross HAINSWORTH - Edmonton

The matter was stood down to 2:00 p.m.

Re: John William NICHOLSON - Hamilton

The Secretary placed the matter before Convocation.

Ms. O'Connor and Mr. Thom did not participate.

Mr. Michael Brown appeared for the Law Society. No one appeared for the solicitor nor was the solicitor present.

Mr. Brown requested an adjournment on consent to the April Convocation in order to prepare a reply to the solicitor's factum which Mr. Brown had just received.

An adjournment was granted to the April Discipline Convocation peremptory to the Society.

Counsel retired.

Re: Jeffrey Mark LEVY - Toronto

The Secretary placed the matter before Convocation.

Ms. Graham did not participate.

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

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Ms. Budweth advised that the matter of the outstanding Complaint against the solicitor had concluded and an adjournment was requested on consent so that the two Reports could go before Convocation in April.

Convocation went briefly in camera and resumed in public.

An adjournment was granted to the April Discipline Convocation.

Counsel retired.

Re: George STRUK - Brampton

The Secretary placed the matter before Convocation.

Mr. Thom and Ms. O'Connor did not participate.

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

Mr. Sandler requested an adjournment on consent to the June Discipline Convocation as more time was needed to prepare additional documentation. He advised that the solicitor had given an Undertaking not to practice.

An adjournment was granted to the June Discipline Convocation.

Counsel and solicitor retired.

Re: Yaroslav MIKITCHOOK - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Lamont and Ms. Graham did not participate.

Mr. Neil Perrier appeared for the Society and Mr. Morris Singer appeared for the solicitor. The solicitor was not present.

Mr. Singer advised that he had recently been retained by the solicitor and that a Notice of Disagreement had been filed. An adjournment was requested on consent to the April Discipline Convocation to allow additional time to receive the transcript and prepare documentation.

An adjournment was granted to the April Discipline Convocation.

Counsel retired.

Re: Timothy David SALOMAA - Mississauga

The Secretary placed the matter before Convocation.

Ms. Christina Budweth appeared for the Society and Mr. Mark Wilson on behalf of Mr. Adair appeared for the solicitor. The solicitor was not present.

Mr. Wilson requested an adjournment on consent to the April Discipline Convocation to allow additional time to receive a copy of the transcript and prepare documentation.

An adjournment was granted to the April Discipline Convocation.

Counsel retired.

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Re: Steven Walter JUNGER - Toronto

The Secretary placed the matter before Convocation.

Messrs. Murray and Blue and Ms. Graham did not participate.

Ms. Georgette Gagnon appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Ms. Gagnon requested an adjournment on consent to the April Discipline Convocation as the solicitor was allowed 30 days to consider his position.

An adjournment was granted to the April Discipline Convocation.

Counsel retired.

Re: Anthony William KLYMKO - Toronto

The Secretary placed the matter before Convocation.

Ms. Richardson and Ms. Weaver did not participate.

Mr. Neil Perrier appeared for the Society and Mr. David Humphrey, Duty Counsel, appeared on behalf of the solicitor. The solicitor was not present.

Ms. Perrier requested an adjournment on consent to the April Discipline Convocation to allow the solicitor to complete certain matters in the interest of his clients and if this was not done then Mr. Perrier advised that the Society may reconsider its position on penalty.

Mr. Humphrey supported the adjournment and advised that the solicitor was receiving psychiatric treatment.

An adjournment was granted to the April Discipline Convocation.

Counsel retired.

Re: Peter David CLARK - Toronto

The Secretary placed the matter before Convocation.

Ms. Weaver and Ms. Graham did not participate.

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

Mr. Perrier requested an adjournment on consent to the April Discipline Convocation as the solicitor still had 30 days to consider his position. Mr. Perrier further advised that a family member was ill.

An adjournment was granted to the April Discipline Convocation.

Counsel retired.

Re: Martin Harold JACOBS - Toronto

The Secretary placed the matter before Convocation.

Messrs. Blue and Lamont and Ms. Graham withdrew for this matter.

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Mr. Neil Perrier appeared for the Society and Mr. Ernest DuVernet appeared for the solicitor who was present.

Mr. DuVernet requested a two month adjournment to allow time to prepare materials to support an application of permission to resign. Counsel advised that the solicitor was under a great deal of stress since his father's death and his mother was very ill. Counsel asked that a letter be filed concerning the illness of Mr. Jacobs' mother.

Counsel for the Society opposed the adjournment as the solicitor was unwilling to undertake not to practice law and had not made his annual filings since 1991.

There were questions from the Bench.

Mr. DuVernet made brief submissions in reply that the solicitor needed time to transfer his files over to another solicitor.

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

It was moved by Ms. Weaver, seconded by Mr. Brennan that the adjournment be denied and the matter proceed today.

Carried

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

The matter was stood down to later in the morning.

Re: Raymond Vincent DONOHUE - Sarnia

The Secretary placed the matter before Convocation.

Mr. Thom withdrew for this matter.

Ms. Kate Wootton appeared for the Society and Mr. David Humphrey, Duty Counsel, appeared on behalf of the solicitor. The solicitor was not present.

Mr. Humphrey spoke to the adjournment on the solicitor's behalf. He advised that the solicitor was in ill health as indicated in a letter from the solicitor's doctor and there was some risk in travelling.

Ms. Wootton made submissions opposing the adjournment that the matter had already been adjourned a number of times. She indicated that the letter from Mr. Donohue's physician was vague and that the solicitor was practising law on a part-time basis.

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

It was moved by Mr. McKinnon, seconded by Mr. Brennan that the adjournment be denied.

Carried

Counsel, Duty Counsel, the public and the reporter were recalled and informed of Convocation's decision that the adjournment was denied.

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Convocation had before it the Report of the Discipline Committee dated 22nd December, 1993, together with an Affidavit of Service sworn 2nd March, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th January, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 21st March, 1994 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Colin L. Campbell, Q.C., Chair
Stuart Thom, Q.C.
Marie Moliner

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

Stephen Foster
for the Society

RAYMOND VINCENT DONOHUE
of the City
of Sarnia
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 8, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 26, 1993, Complaint D188/93 was issued against Raymond Vincent Donohue alleging that he was guilty of professional misconduct.

The matter was heard in public on December 8, 1993 before this Committee composed of Colin L. Campbell, Q.C., Chair, Stuart Thom, Q.C. and Marie Moliner. Mr. Donohue attended the hearing and represented himself. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

Complaint D188/93

2. (a) During the period February, 1992 to February 24, 1993, he improperly drew money from his trust account in contravention of Section 14 of Regulation 708 under the Law Society Act, by operating his general account transactions through his trust account for the purpose of avoiding creditors.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D188/93 and is prepared to proceed with a hearing of this matter on December 8, 1993.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D/93 and admits the particular contained therein. The Solicitor also admits that the particular in the Complaint together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1956. He practises as a sole practitioner in Sarnia.

5. In February, 1992 Revenue Canada seized the Solicitor's general account for arrears of personal income tax.

6. In order to avoid transferring earned fees from his mixed trust account to his general account, the Solicitor began operating his law practice from his mixed trust account.

7. The Solicitor used his mixed trust account for payment of his general office transactions. The Solicitor's secretary would monitor billings to specific clients and keep track of the payment of office expenses against those amounts.

8. The following examples disclose that the Solicitor paid all types of expenses from his mixed trust account, including business taxes, errors and omissions insurance, rent and wages:

Cheque Details Payee	Amount	Client Ledger Account	Fee Billing
March 24th, 1992 City of Sarnia (Business Taxes)	\$ 108.99	Legere	February 24, 1992 \$267.50
September 17, 1992 LSUC (E&O Insurance)	\$1,321.45	Duncan	September 14, 1992 \$2,159.82
October 30, 1992 Rhonda Wilson (Wages)	\$ 428.88	Johnson	October 30, 1992 \$1,892.49
October 30, 1992 Roderick Brown (Rent)	\$ 600.00	Johnson	October 30, 1992 \$1,892.49
January 20, 1993 Muth Accounting Services (Accounting fees)	\$ 250.00	Kongas	January 7, 1993 \$872.20

9. The Solicitor handled all of his office transactions in this manner for a period of approximately one year.

10. On February 24, 1993 the Solicitor gave an Undertaking to the Law Society to remove any and all earned fees due to him from his trust account within one month as required by the Regulation 708 under the Law Society Act and not to write cheques relating to any office expenses from his mixed trust account.

V. DISCIPLINE HISTORY

11. On June 1, 1993, the Solicitor was the subject of an Invitation to Attend regarding his failure to reply to the Law Society regarding a complaint.

DATED at Toronto this 8th day of December, 1993."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Raymond Vincent Donohue be reprimanded in Convocation and that he pay costs in the amount of \$2,500.00 payable within 90 days from the date of this matter being dealt with by Convocation.

REASONS FOR RECOMMENDATION

The Solicitor admitted his misconduct in improperly drawing monies from his trust account by operating his general account transactions through his trust account for the purposes of avoiding creditors.

The Solicitor is 63 years of age and has been in practice for 38 years with no significant discipline history.

Upon being confronted with the practice, he made an immediate undertaking to cease, which has been honoured. He also recognized an obligation to the Society for the costs that it incurred in investigation and audit.

There has been no question whatsoever that the Solicitor was entitled to the money as it was earned and billed, but the effect of the practice was to avoid obligations to his creditors who had been pressing. The only excuse was the extreme financial situation of the Solicitor.

While the Committee was satisfied that given the exemplary history of the Solicitor it might be appropriate to deal with this matter in Committee, nevertheless, we were concerned that there was a need to warn the profession against this practice and to give public assurance.

A solicitor's trust account is a matter of trust between the solicitor and his clients. It is something which is not to be misused in any way for the benefit of the solicitor and the detriment of anyone else with whom he or she deals.

The Committee recognized that while these are difficult times for many lawyers, the public interest can only be served if the profession upholds its rules and principles. Accordingly, it is recommended that the Solicitor be reprimanded in Convocation.

The Committee also recommends that given the financial situation of the Solicitor, that the costs of the Society be fixed in the sum of \$2,500.00 payable within 90 days from the date of this matter being dealt with by Convocation.

Raymond Vincent Donohue was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 20th day of September, 1956.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of December, 1993.

Colin L. Campbell, Q.C.
Chair

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

There were no submissions and the Report was adopted.

It was moved by Mr. Topp, seconded by Mr. Carter that the Recommendation as to Penalty be adopted, that is, that the solicitor be reprimanded in Convocation and pay costs in the amount of \$2,500 within 90 days.

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Counsel for the Society made submissions that the solicitor be suspended until he appeared to receive his reprimand.

Mr. Humphrey, Duty Counsel, made submissions in support of a reprimand in absentia.

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

It was moved by Mr. Carey but failed for want of a seconder that the solicitor be reprimanded in absentia.

It was moved by Mr. McKinnon, seconded by Ms. Graham that the solicitor be reprimanded in Convocation and unless he appears at the April Discipline Convocation to be reprimanded that he be suspended until such time as he appeared to be reprimanded.

Carried

It was moved by Ms. Elliott, seconded by Ms. Weaver that the solicitor be suspended for a period of 1 month.

Withdrawn

The motion on the recommended penalty was not put.

Counsel, Duty Counsel, the public and the reporter were recalled and informed of Convocation's decision that the solicitor be reprimanded at the April Discipline Convocation and if he did not appear that he be suspended until he did appear to be reprimanded.

Counsel and Duty Counsel retired.

Re: Gabriele Monika HAUSER - Toronto

The Secretary placed the matter before Convocation.

Messrs. Thom, Lamont and McKinnon and Ms. Graham withdrew for this matter.

Ms. Christina Budweth appeared for the Society. Mr. Humphrey, Duty Counsel, appeared on behalf of the solicitor. The solicitor was present.

Mr. Humphrey spoke to the request of the solicitor for an adjournment so that she could attend court in Brampton on an urgent matter for a client.

Ms. Budweth opposed the adjournment.

There were questions from the Bench.

Convocation had before it the Report of the Discipline Committee dated 17th February, 1995, together with an Affidavit of Service sworn 8th March, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd February, 1995 (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

Netty Graham, Chair
Stuart Thom, Q.C.
Donald H. L. Lamont, Q.C.

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

Christina Budweth
for the Society

GABRIELE MONIKA HAUSER
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 14, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 10, 1994 Complaint D12/94 was issued and on October 17, 1994 Complaint D292/94 was issued against Gabriele Monika Hauser alleging that she was guilty of professional misconduct.

The matter was heard in public on November 14, 1994 before this Committee composed of Netty Graham, Chair, Stuart Thom, Q.C. and Donald H. L. Lamont, Q.C. The Solicitor was present at the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D292/94

2. a) She failed to reply to the Law Society regarding inadequacies found during an investigation of the member's books and records on April 22, 1993, despite letters dated April 13, 1994, May 31, 1994 and August 2, 1994 and a telephone conversation on April 28, 1994.

Complaint D12/94

2. a) She failed to reply to the Law Society regarding a complaint by Ram P. Singh, despite letters dated March 30, 1993, May 28, 1993, June 22, 1993, November 18, 1993 and a telephone message left on June 14, 1993 and June 16, 1993;

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- b) She failed to account for funds entrusted to her by her client, Ram P. Singh, with respect to a matrimonial matter.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D292/94 and is prepared to proceed with a hearing of this matter on November 14, 1994.

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 D292/94 and admits the particulars contained therein. The Solicitor further admits that the said particular constitutes professional misconduct.

IV. FACTS

4. The Solicitor is 43 years of age and was called to the Bar on April 10, 1986. She practises as a sole practitioner in Toronto.

5. On April 21, 1993, a Society examiner, Lorraine Campbell, attended at the Solicitor's office to examine her books and records.

6. By letter dated May 17, 1993 (Tab 1, Document Book), the Solicitor was advised of the following inadequacies discovered during the audit of her books, records and files:

- i) The Society confirmed that the Solicitor acts as sole executor and solicitor for an estate for which a separate bank account is maintained, however, books, records and accounts are not maintained. The Solicitor was requested to institute proper cash books and a trust ledger record from the inception of the estate. The Solicitor was then requested to provide the Society with a complete accounting of the estate funds including copies of the passbook or bank statements;
- ii) The Solicitor was advised that there were a number of inactive trust ledger accounts whose balance have remained unchanged over long periods. The Solicitor was requested to prepare a listing of trust ledger account balances and to review the same. The Solicitor was further requested to provide the Society with a copy of the next regular monthly trial balance of the clients' trust ledger showing the balances remaining after the review; and
- iii) The Solicitor was advised that her general receipts and disbursements journals were not posted up to date. The Solicitor was requested to provide to the Society copies of the general receipts and disbursements journals for the period from August 1, 1993 to present.

7. On August 18, 1993, the Solicitor telephoned the Law Society. The Solicitor left a message advising that her accountant had responded to the Society's letter about her filings, and that the inactive balances were all cleared up. The Solicitor stated that a list of assets of the estate had not been prepared as the house was the only asset. Finally, she advised that the receipts and disbursements were not posted up-to-date. A copy of the handwritten telephone note is at Tab 2 of the Document Book.

8. On August 18, 1993, a Society staff member, Zelia Melo, telephoned the Solicitor advising her that she had not responded to the Society's letter dated May 17, 1993. The Solicitor advised that she would have her accountant bring her records up-to-date, send in documentation regarding the estate, and send a copy of the most recent trust lists to show that the inactives have been cleared. The Solicitor further advised that she would forward her response by the end of next week. A copy of the handwritten telephone note is at Tab 3 of the Document Book.

9. By letters dated September 10, 1993 and September 20, 1993 (Tab 4, Document Book), the Solicitor confirmed her telephone conversation with Ms. Melo of the Society.

10. By letter dated April 13, 1993 (Tab 5, Document Book), the Solicitor was requested to provide to the Society a copy of the trust ledger and final accounting for the estate, a copy of the client listings as at February 28, 1994 and copies of general receipts and disbursements journals for the period August 1, 1992 to present.

11. On April 26, 1994, the Solicitor telephoned the Law Society and left a message. On April 27, 1994, Ms. Melo returned the Solicitor's call and left a message for her to call. That same day, the Solicitor returned Ms. Melo's call and left a message on her voice mail. A copy of the handwritten telephone note is at Tab 6 of the Document Book.

12. On April 28, 1994, Ms. Melo called the Solicitor and left a message with the receptionist to return her call. The Solicitor returned her call and advised that she prepared a complete response. A copy of the handwritten telephone note is at Tab 6 of the Document Book.

13. By letter dated May 31, 1994 (Tab 7, Document Book), the Solicitor was requested to respond in writing to the Society's letter dated April 13, 1994. The Solicitor did not respond to this letter.

By letter dated June 30, 1994, the Solicitor provided an interim accounting regarding the estate of George Stewart to Bradley Keenan of the Complaints Department in response to a complaint of a beneficiary Jane Gill. The Solicitor did not copy the Audit Department and the Audit Department did not receive a copy of the letter.

14. By registered letter dated August 2, 1994 (Tab 8, Document Book), copies of the Society's letter dated April 13, 1994 and May 31, 1994 were forwarded to the Solicitor. The Solicitor was reminded of her professional obligation to reply to all communications from the Society. The Solicitor was advised that should a written response not be received by the Society within 15 days, the matter would be referred to the Chair and Vice-Chair of the Discipline Committee. The Solicitor did not respond to this letter.

V. DISCIPLINE HISTORY

15. The Solicitor was found guilty of professional misconduct on March 19, 1991 with respect to her failure to report and failure to reply to the Law Society. The Solicitor was reprimanded in Committee.

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16. The Solicitor was found guilty of professional misconduct and reprimanded in Convocation on June 24, 1993 for her failure to reply to the Society regarding a complaint by Mr. Singh and others. The Solicitor was to enrol in the Practice Review Program and pay costs in the amount of \$1,250.00.

17. The Solicitor was found guilty of professional misconduct on September 28, 1993 for her failure to reply to the Society. The matter was heard in Convocation on April 21, 1994 at which time the Solicitor was suspended for one month commencing May 1, 1994.

DATED at Toronto this 14th day of November, 1994."

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D12/94 and is prepared to proceed with a hearing of this matter on May 31 and June 1, 1994.

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 D12/94 and admits the particulars contained therein. The Solicitor also admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1986. She practices as an associate at the firm of Hauser, Eyton-Jones.

Particular 2(a) She failed to reply to the Law Society regarding complaint by Ram P. Singh, despite letters dated March 30, 1993, May 28, 1993, June 22, 1993, November 18, 1993 and telephone messages left on June 14, 1993 and June 16, 1993;

Particular 2(b) She failed to account for funds entrusted to her by her client, Ram P. Singh, with respect to a matrimonial matter.

5. On or about April 4, 1991, Ram P. Singh retained the Solicitor on a matrimonial matter. Mr. Singh provided the Solicitor with his marriage documents, executed a retainer agreement and provided the Solicitor with a retainer in the amount of \$500.00 (Tab 1, Document Book).

6. By letter dated December 19, 1991 (Tab 2, Document Book), Mr. Singh filed a complaint against the Solicitor with the Law Society complaining about his difficulty in obtaining information from the Solicitor on the status of his matrimonial matter.

7. Under cover of letter dated January 14, 1992 (Tab 3, Document Book), the Law Society forwarded to the Solicitor a copy of Mr. Singh's letter of complaint. The Solicitor was requested to provide her comments to same within a period of two weeks. No response was received.

8. By letter dated February 27, 1992 (Tab 4, Document Book), the Solicitor advised the Society that she experienced difficulty in serving Mr. Singh's wife and required additional information from Mr. Singh.

9. By letter to the Solicitor dated March 30, 1992 (Tab 5, Document Book), Mr. Singh requested that she not proceed any further with his case and return his documents to him, and account to him for his retainer.

10. By letter dated April 7, 1992 (Tab 6, Document Book), the Law Society requested that the Solicitor provide further particulars regarding Mr. Singh's divorce and respond to Mr. Singh request for the return of his documents. The Solicitor was requested to respond to the Society within a period of two weeks. No response was received.

11. Under cover of letter dated June 16, 1992 (Tab 7, Document Book), the Law Society forwarded to the Solicitor a copy of its April 7, 1992 letter which remained unanswered. The Solicitor was reminded that Mr. Singh had terminated her services and requested an account. The Solicitor's response was requested forthwith. No response was received.

12. By registered mail dated September 3, 1992 (Tab 8, Document Book), the Law Society forwarded to the Solicitor a copy of its April 7, 1992 letter. The Solicitor was reminded of her professional obligation to respond to communications from the Society. The Solicitor was requested to provide her response to the Society within a period of seven days, or the matter would be referred to the Chair and Vice-Chairs of the Discipline Committee for instructions.

13. On November 12, 1992, a formal Complaint was sworn against the Solicitor for her failure to respond to the Law Society regarding Mr. Singh's complaint. The hearing proceeded on March 2, 1993 and the Solicitor was found guilty of professional misconduct. On the same day, the Solicitor forwarded a response to Mr. Singh's complaint to the attention of the Society's Discipline Counsel. The Solicitor failed to include an accounting for Mr. Singh's retainer of \$500.00. Although, the Solicitor's letter stated that she had forwarded a response directly to the Society's Complaints department; however, a response was never received by the Complaints department (Tab 9, Document Book).

14. By letter dated March 30, 1993 (Tab 10, Document Book), the Law Society requested that the Solicitor advise the Society whether or not she had accounted to Mr. Singh for his retainer. The Solicitor was requested to provide the Society with a copy of her account. No response was received.

15. By letter dated May 28, 1993 (Tab 11, Document Book), the Law Society reminded the Solicitor that its letter of March 30, 1993 remained unanswered. The Solicitor's response was requested forthwith.

16. On June 14, 1993, a Law Society staff member telephoned the solicitor and left a message for her to return the call. The call was not returned. A copy of the handwritten notes are at Tab 12, Document Book.

17. On June 16, 1993, a Law Society staff member telephoned the Solicitor and left a message for her to return the call. The call was not returned. A copy of the handwritten telephone notes are at Tab 12, Document Book.

18. By registered letter dated June 22, 1993 (Tab 13, Document Book), the Law Society forwarded to the Solicitor a copy of its May 28, 1993 letter. The Solicitor was reminded of her professional obligation to respond to communications from the Society. The solicitor was requested to provide her response to the Society within a period of seven days, or the matter would be referred to the Chair and Vice-Chairs of the Discipline Committee for instructions.

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19. On June 24, 1993, Convocation accepted the Discipline Committee's recommendation on penalty at the hearing held March 2, 1993 for the Solicitor's failure to respond to the Society and the Solicitor was reprimanded in Convocation.

20. By letter dated November 18, 1993 (Tab 14, Document Book), the Solicitor was advised that this matter had been referred to the Chair and Vice-Chairs of the Discipline Committee. The Solicitor was advised that they took the position that a formal discipline complaint be authorized for her failure to reply to the Society and for her failure to account to Mr. Singh. The Solicitor was advised, however, that the Chair and Vice-Chairs of the Discipline Committee were prepared to review the matter and reconsider their position if the Solicitor returned the \$500.00 to Mr. Singh. The Solicitor was requested to respond to the Society by no later than December 1, 1993. No response was received.

21. On February 10, 1994, a formal Complaint was sworn against the Solicitor for failing to respond to the Law Society and failing to account for Mr. Singh's retainer.

22. In a telephone conversation with Mr. Singh on March 25, 1994, he advised the Law Society staff member that the Solicitor had still not accounted to him for his retainer.

23. By letter dated April 13, 1994 (Tab 15, Document Book), the Law Society requested that the Solicitor advise whether she continued to hold Mr. Singh's retainer in trust and if she had rendered an account to Mr. Singh. No response was received.

V. DISCIPLINE HISTORY

24. On March 19, 1991, the Solicitor was found guilty of professional misconduct regarding Complaint D141/90 for failing to report and failing to reply to the Law Society. The Solicitor was reprimanded in Committee.

25. On March 2, 1993, the Solicitor was found guilty of professional misconduct regarding Complaint D172/92 for failing to reply to the Law Society regarding a complaint by Mr. Singh, among others. The matter was heard in Convocation on June 24, 1993 and the Solicitor was reprimanded in Convocation and ordered to enrol in the Practice Review Program of the Professional Standards Department and pay the Society's costs of \$1250.00.

26. On September 28, 1993, the Solicitor was found guilty of professional misconduct for failing to reply to the Law Society. A copy of the Committee's Report and Decision is attached at Tab 16, Document Book. The matter was heard in Convocation on April 21, 1994. Convocation did not accept the Committee's recommendation that the Solicitor be suspended for two month period; rather, Convocation ordered a one month suspension with no costs assessed against the Solicitor.

DATED at Toronto this 14 day of Nov, 1994."

RECOMMENDATIONS AS TO PENALTY

The Committee recommends that Gabriele Monika Hauser be suspended for a period of 3 months and pay the Society's costs in the amount of \$1,500.00.

REASONS FOR RECOMMENDATION

This Solicitor was called in 1986 and this is her fourth involvement in the discipline process. The matters before us this time involve two complaints with D292/94 dealing with issues of audit inadequacies in connection with an Estate for which the Solicitor acts as sole executor and solicitor. The Society attempted, on several occasions, to try to resolve these outstanding matters, to no avail. The Solicitor advised the Committee that she responded in full to both complaints, and on April 28, 1994 to Complaint D292/94, in particular. These responses were filed and entered as Exhibits 7 and 8 at the hearing and copies were supplied to the Law Society on the morning of the hearing. It is the Society's position that neither of these materials had been received by them. The Committee was very mindful of the facts as set out in the Agreed Statement of Facts for Complaint D292/94, that despite the Solicitor's position that she had responded in full, she did not re-submit the information or confirm its receipt by the Society despite the Society's letter of May 31, 1994 wherein she is being asked for the said information. Even with the threat of having the matter referred to the Chair and Vice-Chair of the Discipline Committee, she did not follow-up on the matter.

The materials as submitted on the morning of the hearing, will now be investigated further by the audit department so that the Society can be satisfied that the outstanding books and records information in connection with the Estate have in fact been dealt with according to the initial concerns as set out by the Society in May, 1993.

Your Committee was advised by Counsel for the Society of the concern in the manner in which the failure to respond in these particulars, dove tails with the last discipline hearing of September, 1993. That matter resulted in a suspension of one month and in light of that suspension, she still waited until this hearing date to advise that she had made full responses to the Society. These responses were filed as Exhibits 7 (response to Complaint D12/94) and 8 (response to Complaint D292/94) on the hearing date.

The panel was referred to the Reasons for Recommendation by the previous panel whereby they indicated as follows:

"Your Committee is seriously concerned with the issue of governability and with the serious lack of judgment shown by the Solicitor in her continuous failure to respond to the Law Society in a timely fashion"...

"...The patent necessity of solicitors responding to the Society is fundamental to the self governing status of our profession and the failure of solicitors to respond simply strikes at the heart of our discipline function."

This Committee agrees entirely with those comments and seriously considered finding the Solicitor to be ungovernable and making the recommendation to Convocation that she be disbarred.

Counsel for the Society advised that there is some indicia of the danger of this Solicitor being ungovernable and the signs are there in the discipline record. However, the Committee reluctantly agreed with the submissions made by Society's Counsel to recommend a suspension of three months.

23rd March, 1995

The materials submitted by the Solicitor on the morning of the hearing will now be reviewed and investigated by the audit department. The panel had some concern that in the event the Society needs to correspond with the Solicitor further in connection with these materials, she may follow her pattern to date of not responding or replying. In this regard, the Committee asked for and the Solicitor agreed to give an undertaking to the Society that she will respond promptly to all correspondence from the Society.

The Solicitor's evidence and submissions to the Committee was that she "was too busy". She made no apology for her conduct and appeared, generally, not to have any concept of the seriousness of these matters, despite her discipline history and despite the use of the term "ungovernable". She indicated that she intended to close down a large part of her practise at the end of this month, but did not elaborate except to say she does not intend to practise law for the next several months. It is hoped that the period of suspension being recommended and accepted by the Solicitor, will give her time to assess her role within the profession and for her to reflect on whether or not she wishes to be a lawyer.

We cannot bind a future discipline committee as to penalty, however, we are strongly of the view that this should be the Solicitor's last chance. One more strike - and she should be "out".

Gabriele Monika Hauser was called to the Bar on April 10, 1986.

ALL OF WHICH is respectfully submitted

DATED this 17th day of February, 1995

Netty Graham
Chair

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

There were no submissions and the Report was adopted.

It was moved by Mr. Topp, seconded by Mr. Brennan that the Recommendation as to Penalty be adopted, that is, that the solicitor be suspended for a period of 3 months and pay the Society's costs of \$1,500.

Counsel and Duty Counsel made brief submissions in support of the recommended penalty.

Mr. Humphrey requested that the suspension commence 15 days from today's date.

Mr. Topp amended his motion, seconded by Mr. Brennan that the commencement date be 15 days from today.

The Recommendation as to Penalty as amended was adopted.

Counsel, Duty Counsel and solicitor retired.

.....

Convocation took a brief recess at 11:10 a.m. and resumed at 11:20 a.m.

DISCIPLINE COMMITTEE

Re: Stanley David GOLDBERG - Toronto

The Secretary placed the matter before Convocation.

Mr. Blue, Ms. Lax and Ms. Graham withdrew for this matter.

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

The solicitor advised Convocation that the materials only came to his attention this morning and requested an adjournment to April.

Mr. Perrier opposed the adjournment and the matter should proceed today.

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

It was moved by Mr. Topp, seconded by Mr. Brennan that the matter be adjourned to the April Discipline Convocation.

Lost

It was moved by Mr. McKinnon, seconded by Ms. Weaver that the matter proceed today.

Carried

Counsel, the solicitor, the public and the reporter were recalled and informed of Convocation's decision that the matter would proceed today.

The matter was stood down until 12:15 p.m.

Re: Pasquale IANNETTA - Windsor

The Secretary placed the matter before Convocation.

Mr. Thom withdrew for this matter.

Mr. Michael Brown appeared on behalf of the Society and Mr. Douglas Crane appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 7th December, 1994, together with an Affidavit of Service sworn 19th December, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 15th December, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd March, 1995 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Kenneth E. Howie, Q.C., Chair
Stuart Thom, Q.C.
S. Casey Hill

23rd March, 1995

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

Stephen Foster
for the Society

PASQUALE IANNETTA
of the City
of Windsor
a barrister and solicitor

Douglas Crane
for the solicitor

Heard: May 4, 1994
September 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 6, 1993 Complaint D149/93 was issued and on January 12, 1994 Complaint D364/93 was issued against Pasquale Iannetta alleging that he was guilty of professional misconduct.

The matters were heard in public on May 4, 1994 before this Committee composed of Kenneth E. Howie, Q.C., Chair, Stuart Thom, Q.C. and S. Casey Hill and on September 12, 1994 before Kenneth E. Howie, Q.C. and Stuart Thom, Q.C. The Solicitor was present at the hearing and was represented by Douglas Crane. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

Complaint D149/93

2. a) He failed to serve his clients, Luigi and Andrea Iannetta, in a conscientious, diligent and efficient manner, by failing to carry out their instructions to pursue a foreclosing action on their behalf.
- b) He failed to discharge with integrity his duties owed to his clients, Luigi and Andrea Iannetta, in that he misled his clients by;
 - i) periodically advising them, between October of 1988 and the spring of 1992, that he had commenced and was pursuing foreclosure proceedings on their behalf when in fact no such proceedings were commenced until the spring of 1992;
 - iii) informing them that their foreclosure proceedings had been completed when in fact they had not;
 - iv) falsifying an Abstract page from the Land Registry Office in order to corroborate his assertion that foreclosure proceedings had been completed;

23rd March, 1995

- d) He failed to discharge with integrity his duty owed to his client, Joseph M. Takacs, in that he misled his client by periodically advising him, between November of 1990 and June of 1992, that court proceedings were being pursued on his behalf when in fact such proceedings had not been initiated.

Complaint D364/93

2. a) He failed to serve his clients, Luigi and Andrea Iannetta, in a conscientious, diligent and efficient manner, by failing to issue a statement of claim of a construction contract dispute which arose in September, 1987;
- b) He failed to discharge with integrity his duty owed to his clients, Mr. and Mrs. Iannetta, in that he misled them by advising them in the summer or fall of 1991 that he had issued a statement of claim and had obtained a judgment in this matter only against Francis Hurst.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D149/93 and D364/93 and is prepared to proceed with a hearing of these matters on May 3 and 4, 1994.

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 D149/93 and D364/93 and admits the particulars contained therein. The Solicitor also admits that the particulars in the Complaint together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1984. He practises as an associate in the firm of Gatti, Hulka, Iannetta, & Laing in Windsor, Ontario.

Complaint D149/93

Particulars a) and b) - Failure to serve and misleading Luigi and Andrea Iannetta

5. From the time of his call to the Bar, the Solicitor acted on various personal and corporate legal matters for Luigi and Andrea Iannetta. The Solicitor and Luigi Iannetta and distant cousins.

6. On or about October 29, 1987, the Iannettas sold a parcel of land to Gottenu Developments ("Gottenu"). The Solicitor acted for the Iannettas on this transaction. A copy of page one of the Transfer is attached at Tab 1 of the Book of documents.

7. The sale price was \$290,000.00 plus the additional consideration of the transfer of title to four developed lots in the first phase of the subdivision once it was registered. An Option Agreement was entered into in regard to the transfer of the four lots. The Solicitor's firm prepared a draft Document General respecting the Option Agreement it was not registered on title. A copy of the draft Document General and Option Agreement is attached at Tab 1(a) of the Book of Documents.

8. Gottenu paid the sum of \$90,000.00 on closing and the Iannettas took a mortgage back for the remaining \$200,000.00 at an annual interest rate of 10% per annum and semi-annual payments representing accrued interest only. The mortgage was for a term of three years. A copy of the mortgage is attached at Tab 1(b) of the book of Documents.

9. Gottenu defaulted on the first semi-annual mortgage payment which was due in April, 1988. The Iannettas received, through the Solicitor, the payment with interest arrears some ten to fifteen days late.

10. Gottenu defaulted on the second semi-annual mortgage payment which was due in October, 1988. The Iannettas contacted the Solicitor in early November, 1988 and after discussing various mortgage remedies they instructed him to commence foreclosure proceedings.

11. About one or two months later, the Solicitor told the Iannettas that he had commenced foreclosure proceedings with respect to the default.

12. The Solicitor had not commenced any foreclosure proceedings at this time.

12(a). The Solicitor states that he had contacted the mortgagors' solicitor and then had direct contact with the mortgagors regarding the default.

13. In July, 1989 the Solicitor paid to the Iannettas the amount of \$22,342.93. The Solicitor told the Iannettas that he had finally received this money from Gottenu in payment of the October, 1988 and April, 1989 mortgage payments plus accrued interest.

14. The Solicitor had not received this money from Gottenu. The payment came by way of a second mortgage placed on the residence of the Solicitor and his wife Anna Vannelli.

15. Gottenu defaulted on the mortgage payment due in October, 1989. The Iannettas contacted the Solicitor in November, 1989 about the default.

16. The Solicitor told the Iannettas that he would commence foreclosure proceedings.

17. In December, 1989 or January 1990 the Solicitor told the Iannettas that he had commenced the foreclosure proceedings.

18. The Solicitor had not commenced the foreclosure proceedings.

19. The Solicitor continued to assure the Iannettas that the foreclosure proceedings were progressing and finally, in December, 1991, the Solicitor advised the Iannettas that he had foreclosed and recovered their property for them.

20. The Solicitor had not foreclosed on the property.

21. The Iannettas began pressing the Solicitor to provide them with some form of documentation showing that the Solicitor had foreclosed on the mortgage. The Solicitor agreed to provide them with a letter confirming the foreclosure. A copy of the letter is attached at Tab 2 of the Book of Documents.

22. The Iannettas were increasingly concerned that they were not receiving any tax bills from the city since the time of the foreclosure.

23. In the Spring of 1992, the Iannettas attended at the Solicitor's office and told him they wanted this matter completely resolved within one month or they would retain another lawyer to take it over.

24. The Solicitor then told the Iannettas that he would go to city hall and inquire into the matter of the taxes.

25. The Solicitor reported to the Iannettas that he had been to city hall and that there was some \$20,000.00 in back taxes outstanding. The Iannettas state that they told the Solicitor that this did not matter and that they would pay back the taxes. The Solicitor states that the Iannettas requested him to determine what portion of the tax arrears would relate to their period of ownership as they did not believe they were responsible for all the tax arrears.

26. Mrs. Iannetta then told the Solicitor that she wanted to see something concrete in her hands proving that the foreclosure had been completed and that the property was in their name again.

27. The Solicitor gave to Mr. Iannetta at his shop a photocopy of the Land Titles Abstract for the property covered by the mortgage. The document contained an entry that the Iannettas were again the owners of the property. The document is attached at Tab 3 of the Book of Documents.

28. This photocopy of the Land Titles Abstract was a document which the Solicitor had falsified in order to corroborate his assertion that foreclosure proceedings had been completed.

29. In June, 1992 the Solicitor did commence foreclosure proceedings with respect to the property.

30. On August 8, 1992 the subsequent mortgagee on the property, Central & Guarantee Trust Company, paid the sum of \$283,400.00 into Court in redemption of the Iannettas mortgage. This amount represented all the principal, interest and arrears of interest due to the Iannettas under the mortgage plus an additional \$450.00 representing costs of the foreclosure action.

31. The Solicitor did not advise the Iannettas of this payment into Court at this time.

32. The Solicitor telephoned Mrs. Iannetta and told her that "they" (the Solicitor states that he said the mortgage company and Mrs. Iannetta says she understood the "developers") wanted to buy the property back at \$260,000. Mrs. Iannetta told the Solicitor that it was worth three times that now. Mrs. Iannetta states that the Solicitor said that he would get an appraisal done and the Solicitor denies this. The Solicitor states that the Iannettas' lot was not as valuable as the Iannetta's contend.

33. The Iannettas became very concerned and on or about September 8, 1992 Mrs. Iannetta decided to go to city hall and look into the tax situation. She was informed by the clerk that the Iannettas did not appear as the owners and that city hall had recently received notice to send the tax bills to an address in Alberta.

23rd March, 1995

34. Mrs. Iannetta then attended at the registry office. The Registrar advised her that the signature of the Registrar on her document was a forgery and that the instrument number showing the Iannettas as owners was for an instrument unrelated to their property.

35. Mrs. Iannetta immediately attended at the Solicitor's office and asked him to explain the falsified document.

36. The Solicitor admitted the document was a forgery. Mrs. Iannetta asked him why he had done this and the Solicitor said that he did not know. The Solicitor then told Mrs. Iannetta that the \$22,342.93 interest payment in July, 1989 had been made with money he obtained by taking out a mortgage on his and his wife's house. The Solicitor advised Mrs. Iannetta that all of the mortgage monies plus all arrears of interest had been paid into Court and that the monies could be paid out of court upon the expiry of another forty-eight hours.

37. Mrs. Iannetta told the Solicitor that she would have him disbarred for his conduct. The Solicitor offered to give Mrs. Iannetta the address of the Law Society to report this matter.

38. Mrs. Iannetta demanded the immediate return of her files. The Solicitor complied.

39. The Iannettas subsequently received the monies that were paid into Court to redeem their mortgage plus the \$450.00 legal costs.

40. The four developed lots were never transferred to the Iannettas notwithstanding the registration of the subdivision and this is the subject matter of ongoing civil litigation.

Complaint D149/93

Particulars c) and d) - Misleading Joseph M. Takacs

41. In August or September, 1990, Joseph M. Takacs retained the Solicitor's firm to act on his behalf in a collection matter. The Solicitor took carriage of the file on October 17, 1990.

42. On October 30, 1990, Mr. Takacs spoke by telephone with the Solicitor and requested a progress report and the Solicitor advised that he needed a few days to research the matter.

43. In early November, 1990 Mr. Takacs spoke by telephone with the Solicitor and instructed him to send out a letter of demand, in the name of his son, in connection with the collection. The Solicitor states that he told Mr. Takacs that the matter was statute barred but Mr. Takacs does not recall this.

44. By letter of demand dated November 21, 1990 (Document Book, Tab 4), the Solicitor demanded payment of \$40,000.00 plus interest from Maple Leaf Racquet Court and Mr. Joseph Shriner. The Solicitor sent a copy of the letter to Mr. Takacs.

45. On or about January 3, 1991 Mr. Takacs spoke by telephone with the Solicitor who stated that he would be issuing a claim the next day. The Solicitor told Mr. Takas that the defendants would have 60 days to respond.

46. Subsequently Mr. Takacs spoke by telephone with the Solicitor who stated that the claim had been issued and served on the defendants. In fact, no claim had been issued.

23rd March, 1995

47. Mr. Takacs attempted on numerous occasions to contact the Solicitor to obtain a progress report on the matter and the Solicitor did not respond in a timely fashion. When he did respond, he advised Mr. Takacs that the action was going ahead.

48. In the spring of 1991 Mr. Takacs advised the Solicitor that he did not wish to be caught in the delays caused by discoveries and he wanted a decision on his entitlement to the monies as soon as possible. The Solicitor and Mr. Takacs discussed the possible option of a motion for Summary Judgment and the Mr. Takacs instructed the Solicitor to proceed with that avenue. In October, 1991 Mr. Takacs spoke by telephone with the Solicitor who advised him that the motion had been argued and a decision had been reserved.

49. Thereafter, Mr. Takacs continued to ask the Solicitor if anything was happening on the action and the Solicitor would respond that nothing had happened.

50. Mr. Takacs asked the Solicitor whether some steps should be taken to obtain the judge's decision. The Solicitor responded that there might be an adverse decision from the judge if they pressured him for a decision.

51. Finally, the Solicitor told Mr. Takacs that he would go to the Courthouse and ask the co-ordinator to request the judge to render his decision.

52. During January and February, 1992 Mr. Takacs made numerous attempts to contact the Solicitor about this matter and the Solicitor did not respond in a timely fashion.

53. On February 24, 1992 Mr. Takacs sent a facsimile transmission to the Solicitor requesting that his records and material be prepared to be picked up. A copy of the facsimile transmission is attached at Tab 5 of the Book of Documents.

54. On February 25, 1992 the Solicitor telephoned Mr. Takacs and advised him that he had been dealing with some personal problems and a heavy case load and that he had let Mr. Takacs' matter slide.

55. During March, 1992 Mr. Takacs made numerous attempts to contact the Solicitor about this matter and the Solicitor did not respond in a timely fashion.

56. On March 17, 1992 Mr. Takacs sent a further facsimile transmission to the Solicitor indicating that he was imposing a March 31, 1992 deadline for the resolution of his action. A copy of the facsimile transmission is attached at Tab 6 of the Book of Documents.

57. On April 7, 1992 Mr. Takacs sent a facsimile transmission to the Solicitor stating that he would be at the Solicitor's office on Wednesday, April 8, 1992 to pick up his documents. A copy of the facsimile is attached at Tab 7 of the Book of Documents.

58. The Solicitor telephoned Mr. Takacs and agreed that he would pick up his documents on Thursday, April 9, 1992. On that day Mr. Takacs attended at the Solicitor's office to pick up the documents but after some discussion it was agreed that the file would remain with the Solicitor.

59. On or about May 11, 1992 Mr. Takacs spoke by telephone with the Solicitor who advised him that he was expecting a reply from the judge.

60. Mr. Takacs states that on June 23, 1992 he attended at the Courthouse to verify the status of his file. He was told that there was no record of any claim having been commenced on his behalf.

23rd March, 1995

61. Mr. Takacs immediately telephoned the Solicitor. The Solicitor told Mr. Takacs he would get back to him with the Action No. The Solicitor did not call back.

62. The following morning the Solicitor attended at the office of Mr. Takacs. The Solicitor told Mr. Takacs that he had lied about commencing the action. The Solicitor returned Mr. Takacs' file and provided him with the name, phone number and address of the Law Society.

63. Subsequently, Mr. Takacs retained other counsel to proceed with the necessary motion in this matter. The motion was unsuccessful.

Complaint D364/93

64. On or about February, 1987, Mr. and Mrs. Iannetta retained Sancon Construction Ltd. to provide materials and services relating to the construction of their home located at 6220 Disputed Road, Windsor, Ontario. In or about the summer of 1987, the Iannettas also retained Francis Hurst, carrying on business as Ebony Floor Sanders to install and finish hardwood flooring at their residence.

65. The Iannetta were not satisfied with the workmanship of Sancon construction Ltd. and its subcontractors and Ebony Floor Sanders. They retained the Solicitor for the purpose of terminating the Sancon contract and commencing litigation as against Sancon and Francis Hurst to claim damages suffered as a result of the defective workmanship.

66. By letter dated September 2, 1987 (Document Book, Tab 8), the Solicitor terminated the Sancon Construction Ltd. contract.

67. The September 2, 1987 letter refers to a February 26, 1987 agreement as between the Iannettas and Sancon Construction Ltd. The Iannettas state that they did not execute this agreement and in fact entered into a subsequent agreement wherein the total consideration was \$5,000. The Iannettas state that they provided the Solicitor with a copy of this subsequent agreement but the Solicitor states that he never received it.

68. By letter dated September 15, 1989 (Document Book, Tab 9), the Solicitor confirmed that he was proceeding with the preparation, issuance and service of Statements of Claim as against Sancon Construction and Francis Hurst.

69. The Solicitor confirmed thereafter to the Iannettas that the Claims had been issued and served as against the Defendants.

70. Mrs. Iannetta repeatedly called the Solicitor for information respecting the status of these Claims. In conversations in the summer or early fall of 1991, the Solicitor advised Mrs. Iannetta that he was successful in obtaining Judgment as against the Defendant Frances Hurst and was proceeding to enforce Judgment as against the Defendant Frances Hurst. At that time, Mrs. Iannetta and the Solicitor discussed the possibility of garnishing Francis Hurst's wages as a means of collecting on the Judgment.

71. It was only after Mrs. Iannetta attended at the Solicitor's office to obtain her complete file in or about September of 1992, that she discovered that in fact no such Claims were issued and served against Sancon Construction Ltd. and Ebony Floor Sanders.

72. The Solicitor states that he did prepare draft claims in this matter and also retained the services of a local engineering firm to review the alleged deficiencies in the work and that the Solicitor bore the cost of the report.

V. DISCIPLINE HISTORY

73. The Solicitor has no previous discipline record.

DATED at Toronto this 4th day of May, 1994"

ADMISSIONS

The Solicitor admits that the particulars in the complaint, together with the facts set out in the agreed statement of facts, constitute professional misconduct.

RECOMMENDATION AS TO PENALTY

The Solicitor should be suspended for a period of one month and pay the Society's expenses in the amount of \$3,000.00.

REASONS FOR RECOMMENDATION

Rule 2 of the Rules of Professional Conduct is a cardinal rule of professional behaviour. It directs that the lawyer should serve the client in a conscientious, diligent and efficient manner. It is incontrovertible that the Solicitor failed to do so in the three instances detailed in the agreed statement.

With regard to the Gottenu foreclosure, he delayed taking action as instructed by his clients from November 1988 to June 1992. With regard to the action against Sancon Construction Ltd., he took no action from September 1989 to June 1992, and in the matter of the collection from Maple Leaf Racquet Court from August 1990 to February 1992. During these periods, he repeatedly told his clients that he had taken action which he had not taken, or was about to take action which he did not do. He also falsified a land registry certificate purporting to show that the foreclosure had been completed, which was not the case.

It is the opinion of the Committee that these repeated and sustained departures from responsible professional conduct can not be passed over lightly and called for a penalty which, in the public interest, would offer reasonable assurance that they would not happen again.

By way of explanation and exculpation for the Solicitor's behaviour, counsel led evidence regarding his family and social relations in the community. He is a member of a large "family" of relatives towards whom he felt a perhaps inordinate sense of responsibility. This may have carried some implication that he neglected his practice obligations in an effort to meet their demands on his time and services. It also appeared to be the case, as often happens in many situations, that having fallen behind in some activity, it was difficult for him to rectify his default. The Committee recognized that for some such reasons, the Solicitor found himself in a stressed condition.

Dr. Orchard, who provided a lengthy report on the Solicitor's mental condition, found no evidence of delusional thinking. The Committee took note of the comment in Gavin MacKenzie's treatise on Lawyers and Ethics that "Evidence that a lawyer's misconduct occurred during a period of stress ... may also be of doubtful value in mitigation of penalty".

23rd March, 1995

The Committee was presented with extensive oral and written evidence regarding the Solicitor's character and reputation, all of which spoke of him in highly favourable terms. In most instances, the commentator was aware of the Solicitor's difficulties with the Law Society. Again, referring to Mr. MacKenzie's article, he remarks that the discipline hearing should not be transformed from a deliberate process into a referendum among members of the profession. The regrettable fact is that notwithstanding the regard in which the Solicitor was held in his community, he did in fact misconduct himself as alleged in the complaint.

The Committee was not unimpressed with the fact that in order to satisfy the demands of the clients (Mr. & Mrs. Iannetta) and rather than tell them of his failure to do as he had said he had done and would do, he placed a mortgage on his own house, with his wife's consent, and paid the monies from that mortgage to Mr. and Mrs. Iannetta. At this point in time, he has not recovered these funds, although the Iannettas recovered the full amount of their mortgage, including interest.

Pasquale Iannetta was called to the Bar on the 12th day of April, 1984.

ALL OF WHICH is respectfully submitted

DATED this 7th day of December, 1994

Kenneth E. Howie, Q.C.
Chair

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

There were no submissions and the Report was adopted.

It was moved by Mr. Blue, seconded by Mr. Carey that the Recommendation as to Penalty be adopted, that is, that the solicitor be suspended for a period of 1 month and pay the Society's expenses in the amount of \$3,000.

There were brief submissions by Mr. Brown in support of the penalty.

Mr. Crane advised that the solicitor had paid the fine and that there were many character references in support of the solicitor.

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

It was moved by Mr. Cullity, seconded by Ms. Curtis that the solicitor be suspended for a period of 6 months.

It was moved by Mr. McKinnon, seconded by Ms. Elliott that the solicitor be suspended for a period of 3 months.

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

Counsel for the solicitor requested an adjournment to the April Discipline Convocation in order to prepare further material.

Mr. Brown did not oppose the request for an adjournment.

Counsel waived the requirements for a quorum composed of those Benchers present in Convocation.

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

Convocation voted to grant the adjournment.

Counsel, the solicitor, the public and the reporter were recalled and informed of Convocation's decision to grant an adjournment to the April Discipline Convocation.

Counsel and the solicitor retired.

CONTINUATION OF THE STANLEY DAVID GOLDBERG MATTER

Mr. Perrier appeared for the Society and Mr. Humphrey, Duty Counsel, appeared for the solicitor.

Convocation had before it the Report of the Discipline Committee dated 6th January, 1995, together with an Affidavit of Service sworn 15th February, 1995 by Ron Hoppie that he had effected service on the solicitor by registered mail on 10th February, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd March, 1995 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Kenneth E. Howie, Q.C., Chair
Ian Blue, Q.C.
Netty Graham

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

Neil Perrier
for the Society

STANLEY DAVID GOLDBERG
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: October 19, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 21, 1994 Complaint D447/93 was issued against Stanley David Goldberg alleging that he was guilty of professional misconduct.

The matter was heard in public on October 19, 1994 before this Committee composed of Kenneth E. Howie, Q.C., Chair, Ian Blue, Q.C. and Netty Graham. The Solicitor attended the hearing and represented himself. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D477/93

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending January 31st 1993, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation made pursuant to the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D447/93 and is prepared to proceed with a hearing of this matter.

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 D447/93 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 24, 1972. He practices as a sole practitioner in Toronto.

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 year ending January 31, 1993, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. A Notice of Default in Annual Filing, dated August 11, 1993 was received by the Solicitor. A copy of the Notice is attached as Tab 1 of the Document Book.

7. By registered mail, the Solicitor received a Second Notice of Default in Annual Filing dated September 15, 1993. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to

Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A copy of the Society's Second Notice and Acknowledgement of Receipt of a Registered Item card is attached as Tab 2 of the Document Book. The Solicitor did not respond to this correspondence.

8. The late filing fee began to accrue on October 8, 1993.

9. The Solicitor received a Third Notice of Default in Annual Filing by registered mail, dated January 13, 1994. The Solicitor was advised that his name would go before Convocation on February 25, 1994 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on February 24, 1994. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. A copy of the Society's Third Notice is attached as Tab 3 of the Document Book.

10. On February 24, 1994, the Solicitor notified the Law Society that the annual filings would be delivered within 14 days. A copy of the note is attached as Tab 4 of the Document Book.

11. The Solicitor paid to late filing fee on April 21, 1994.

12. 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.

13. To date, the Solicitor as not yet mailed the required forms.

V. DISCIPLINE HISTORY

14. On June 21, 1991, the Solicitor was found guilty of professional misconduct for his failure to reply and failure to honour a financial obligation. He was reprimanded in committee.

15. On December 11, 1991, the Solicitor was found guilty of professional misconduct for his failure to reply to the Society and failure to comply with his undertaking. He was reprimanded in committee.

DATED at Toronto this 12th day of October, 1994."

RECOMMENDATIONS AS TO PENALTY

The Committee recommends that the Solicitor be reprimanded in Convocation and pay costs in the amount of \$1,000.00.

REASONS FOR RECOMMENDATIONS

The Committee, in reaching its decision of penalty, is mindful of several factors. First, the Committee notes the curriculum vitae of Mr. Goldberg indicating that he's been at the Bar since 1972, but had no discipline difficulties until 1991. Second, Mr. Goldberg had been in practice with partners and became a sole practitioner in 1991. Since 1991, however, Mr. Goldberg's conduct in the mind of the Committee, has begun to show signs of ungovernability.

23rd March, 1995

Ungovernability, of course, is a serious matter which can lead to disbarment and it might be appropriate in other circumstances to accede to Mr. Perrier's request that the penalty be one month's suspension. We note, however, that Mr. Goldberg is a sole practitioner and that a penalty of one month's suspension would be more burdensome for him than for someone who is a partner in a law firm and put him to expenses which are heavy and onerous, considering that there has been no one harmed by this activity and that he has now complied with the Committee's request.

The Committee would like it to be clear that it is concerned about the chain forged in the last three years, since 1991. The Solicitor has been before two discipline committees and has been reprimanded twice, it has not appeared to have had an effect. The reprimand in Convocation, if Convocation agrees to that, would be published throughout Ontario. The Committee hopes that that will have the effect of making the Solicitor understand that when the Law Society phones, you must answer immediately and that forms and documents are required by the Law Society in an effort to protect the public, and must be filed in a timely manner.

Stanley David Goldberg was called to the Bar and admitted as a solicitor on the 24th day of March, 1972.

ALL OF WHICH is respectfully submitted

DATED this 6th day of January, 1995

Ian A. Blue, Q.C. (for the Committee)

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

There were no submissions and the Report was adopted.

It was moved by Mr. Topp, seconded by Mr. Brennan that the Recommendation as to Penalty be adopted, that is, that the solicitor be reprimanded in Convocation and pay costs in the amount of \$1,000.

Both Counsel and Duty Counsel made submissions in support of the recommended penalty.

The motion for the recommended penalty was adopted.

The solicitor was reprimanded by the Treasurer.

Counsel, Duty Counsel and the solicitor retired.

CONTINUATION OF THE MARTIN HAROLD JACOBS MATTERS

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

The solicitor spoke on his own behalf and requested an adjournment to the April Discipline Convocation. He advised that he was willing to give an Undertaking not to practice and assist counsel and Staff Trustee in disposing of his files. He further requested an adjournment because of his mother's ill health.

Mr. Perrier did not take a position.

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

It was moved by Mr. Topp, seconded by Mr. Brennan that the adjournment be granted.

Carried

It was moved by Ms. Elliott, seconded by Ms. Curtis that the adjournment be denied.

Not Put

Counsel, the solicitor, the public and the reporter were recalled and informed of Convocation's decision to adjourn the matter to the April Discipline Convocation peremptory to the solicitor and that the solicitor give an Undertaking not to practice and to co-operate with the Staff Trustee.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:40 P.M.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

Acting Treasurer (Colin McKinnon), Blue, Bragagnolo, Brennan, Carey, Carter, Cullity, Curtis, Elliott, Graham, Lamont, Lax, Peters, Richardson, Thom, Topp and Weaver.

.....

DISCIPLINE COMMITTEE

Re: Ross HAINSWORTH - Edmonton

Mr. Michael Brown appeared on behalf of the Society and Mr. Marrocco appeared on behalf of the solicitor who was present.

Messrs. Thom and Cullity withdrew for this matter.

Mr. Hainsworth was sworn and examined in-chief by Mr. Marrocco.

Mr. Brown cross-examined Mr. Hainsworth and was re-examined by Mr. Marrocco.

His Honour Judge Otter was sworn and examined in-chief by Mr. Marrocco.

There was no cross-examination of Judge Otter.

Mr. Marrocco made submissions for a lesser penalty than disbarment.

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

There were questions from the Bench.

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

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

Carried

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

Counsel and Mr. Hainsworth retired.

Re: Glenn Edward Joseph SANDBERG - Sudbury

The Secretary placed the matter before Convocation.

Ms. Curtis and Ms. Richardson withdrew for this matter.

Mr. Brown appeared for the Society and Mr. Alexander Toffoli appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 19th January, 1995, together with an Affidavit of Service sworn 15th February, 1995 by Ron Hoppie, that he had effected service on the solicitor by registered mail on 14th February, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 8th March, 1995 (marked Exhibit 2), together with the Notice of Acceptance signed by the solicitor on 9th March, 1995 (marked 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

Carole Curtis, Chair
Denise E. Bellamy
Nora Richardson

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

Stephen Foster
for the Society

GLENN EDWARD JOSEPH SANDBERG
of the City
of Sudbury
a barrister and solicitor

P. Zylberberg
for the solicitor

Heard: July 6, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 25, 1993 Complaint D298/93 was issued against Glenn Edward Joseph Sandberg alleging that he was guilty of professional misconduct.

The hearing was heard in public on July 6, 1994 before this Committee composed of Carole Curtis, Chair, Denise E. Bellamy and Nora Richardson. The Solicitor was present at the hearing and was represented by Mr. P. Zylberberg. Stephen Foster appeared on behalf of the Law Society.

DECISION

The following particulars of conduct unbecoming were found to have been established:

Complaint D298/93

2. a) On December 18, 1992, he was convicted of uttering a forged document contrary to Section 368(1)(a) of the Criminal Code of Canada.
- b) On or about August 8, 1990, he failed to disclose the true state of his financial situation on a loan application to Beneficial Canada Inc.
- c) On or about August 10, 1990, he made an assignment in bankruptcy and failed to disclose to the Trustee in Bankruptcy the true state of his financial affairs.

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

3. a) He failed to file with the Society within six months of the termination of his fiscal year ending December 31st, 1992, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation made pursuant to the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D298/93 and is prepared to proceed with a hearing of this matter on July 6, 1994.

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 D298/93 and admits the particulars contained therein.

IV. FACTS

Particular 2(a) - Conviction of uttering a forged document

4. The Solicitor attended the Bar Admission Course in London, Ontario during 1988 and 1989.

5. On November 24, 1989, the Solicitor became a new patient of Dr. Keith Ferguson, a physician in London, Ontario. The Solicitor requested of Dr. Ferguson medication to remedy his sleeping difficulties. Dr. Ferguson prescribed sixty tablets of a prescription drug known as halcion. Dr. Ferguson did not make any notation on the prescription sheet for any repeat dosages.

6. On November 24, 1989, the prescription sheet was presented to one George Scribbins, a pharmacist employed by Dean Russell Pharmacy in London, Ontario. At this time, the prescription sheet had been altered to allow for three repeats of the prescription. In fact, the Solicitor received these repeat prescriptions on November 28, 1989, December 6, 1989 and December 15, 1989.

7. The Solicitor revisited Dr. Ferguson on January 9, 1990. At this time he advised Dr. Ferguson he was running out of the drug previously prescribed to him and requested a similar prescription. On January 9, 1990, Dr. Ferguson issued a second prescription for the same drug. Dr. Ferguson did not authorize any repeats of this second prescription which he issued to the Solicitor.

8. On January 9, 1990, the Solicitor presented this second prescription sheet to George Scribbins at the Dean Russell Pharmacy. Again, the prescription sheet had been altered to allow for three further repeats of the prescribed drug. Mr. Scribbins filled the prescription and gave the drugs to the Solicitor.

9. Later that day, the Solicitor telephoned Mr. Scribbins advising that according to the label he received with the drugs, there was no provision to have the prescription repeated. As a result, Mr. Scribbins examined the prescription sheet issued by Dr. Ferguson and discovered the ink used to signify the doctor's authorizing a repeat of the drug was different than that of the ink used to write out the prescription.

10. Consequently, Mr. Scribbins contacted Dr. Ferguson who revealed he had not authorized any repeats on the prescription issued to the Solicitor.

11. From the information he received from Dr. Ferguson, Mr. Scribbins examined the initial prescription sheet issued on November 24, 1989 and discovered the ink in the pen used to write out the prescription differed from the ink in the pen used to indicate the doctor's authorizing repeats of the prescribed drug.

12. The matter was subsequently turned over to the London City Police Department who laid two charges of uttering a forged document against the Solicitor. The two charges of uttering forged documents related to the Solicitors's presenting the altered prescription sheet to Mr. Scribbins on November 24, 1989 and again on January 9, 1990.

13. The Solicitor went on to successfully complete the Bar Admission Course in June, 1990 in London, Ontario and began the practise of law in the City of Subury, Ontario. He was arrested and arraigned on these matters subsequent to his being called to the Bar on June 22, 1990.

14. On December 18, 1992, the Solicitor appeared before The Honourable Justice C. Misener in London, Ontario where he pleaded guilty to one count of uttering a forged document and was sentenced to a fine of \$500 and probation for a period of six months. The second count of uttering a forged document was withdrawn by the Crown. A copy of the Certificate of Conviction is attached at Tab 1 of the Document Book. A copy of the Reasons for Sentence of the Honourable Justice C. Misener is attached at Tab 2 of the Document Book.

15. Three factors of mitigation were submitted to the court by the Solicitor's counsel, Mr. Norman Peel, Q.C.:

- a. The Solicitor, while proceeding through the Bar Admission Course in the fall of 1989, became afflicted with the flu which was the original reason for his visit to Dr. Ferguson. Apparently, the flu persisted.
- b. By December, 1989, the Solicitor's grandmother, being gravely ill, had to be cared for by the Solicitor's family.
- c. Combined with the stresses and pressures of the Bar Admission Course, the Solicitor was emotionally in trouble and was not able to sleep. He commenced taking sleeping medication.

15(a) In his reasons for sentence, the judge included the following comments:

I just hope, Mr. Sandberg, that this does not interfere with your ability to practice law. Anyone who cannot understand this offence then simply hasn't lived and I wouldn't want anyone to infer from that that I ever took anything stronger than an aspirin tablet, because I haven't. I'm even afraid of anything that's got codeine in it, so no one needs to think that I, at one time -- that I sit here as some reformed drug addict. I might sit here as some reformed something but it's not to do with drugs. I simply say again one who can't understand how these things happen just hasn't lived. That's all. They've been sending too much time in the ivory tower. And I only express the hope, Mr. Sandberg, that if you ever become a Crown prosecutor, or worse or better (depending on how you look at it) a judge, you remember that there are an awful lot of good people who run afoul in the criminal law on one occasion and really don't need a particular penalty to specifically deter them from repeating, nor do they need to be dealt with on some vague notion that there's a large number of people out there waiting to measure the penalty and see whether it's worth it to repeat the crime. Just remember that, if you ever get in a position of having to deal with members of the public who find themselves in that position, whether your position be that of a Crown prosecutor or, as I say, worse or better, a judge.

Particular 2(b)- Failed to disclose the true state of his financial situation on loan application

Particular 2(c)- Made an assignment in bankruptcy and failed to disclose to the Trustee in Bankruptcy the true state of his financial affairs

16. On August 7, 1990, the Solicitor executed a Promissory Note (Document Book, Tab 3) payable to Beneficial Canada Inc. for a loan in the amount of \$5,088.00, representing \$3,146.42 loan principal, plus interest and administrative charges.

17. On August 8, 1990, the Solicitor executed a Credit Statement (Document Book, Tab 4) with regard to the above loan certifying that he had no debts and liabilities in excess of \$100.00 other than those listed on the Credit Statement itself, and further warranting a total list of assets. The debts and assets listed were as follows:

23rd March, 1995

Debts: CIBC (Elm) \$25,000
Thunder Bay Obligation \$3,500

Assets: 1984 Fiero - \$1,400
All HG - \$15,000
Property in (USA) - (U.S.) \$20,000

18. As part of the Credit Statement, the Solicitor attested to the following:

"I hereby represent and warrant to you that a full, complete and correct list of all my debts and other claims against me of \$100.00 or more is as follows".

19. The Solicitor was further asked on the form again to initial the document as follows:

"I have no debts and liabilities in excess of \$100.00 other than those listed hereon. I certify that I have not been instructed by the Lender to which I have made application for a loan to list only certain debts and assets. Instead my instructions have been to list all outstanding debts and liabilities as well as my assets."

19(a). The form also advised the Solicitor of the following:

"Please note that in connection with this credit application a consumer report containing credit information or personal information may be obtained by the prospective creditor."

20. On August 9, 1990, a cheque (Document Book, Tab 5), issued by Beneficial to Glenn Sandberg in the amount of \$3,146.42 was cleared at the Royal Bank of Canada, having been endorsed by the Solicitor. These were the net proceeds of the loan from Beneficial.

21. On August 10, 1990, the Solicitor made an Assignment in Bankruptcy (Document Book, Tab 6).

22. He swore on the Statement of Affairs that he had furniture and household effects which were exempt from bankruptcy proceedings, and "shares in Suen, Ng, Sandberg & Associates Ltd." of an unknown value, as well as an estimated tax refund due, again of an unknown value. A copy of the Statement of Affairs is attached at Tab 7 of the Document Book.

23. The Solicitor also executed a further Pertinent Information document as part of the bankruptcy proceedings, advising that he sold a 1984 Pontiac Fiero on "August 1990" for \$1,400.00 with funds paid to "the secured creditor". A copy of the Pertinent Information Relating to the Affairs of a Bankrupt form is attached at Tab 8 of the Document Book.

24. Also on August 10, 1990, the Solicitor executed a Statement of Liability (Document Book, Tab 9) as part of the Bankruptcy Application listing 8 creditors for a total indebtedness of \$50,200.00.

25. The Solicitor continued to pay Beneficial the repayment due on the loan after he made the Assignment in Bankruptcy, but began to default in November of 1992. It was at that point Beneficial's solicitor looked into Mr. Sandberg's finances and discovered the bankruptcy.

26. Beneficial began a suit for \$500 remaining on the loan in Small Claims Court, alleging fraud among other things. That suit was settled without trial and Beneficial was fully paid.

27. In May, 1992, the Solicitor was discharged from bankruptcy.

Particular 3(a) - Failed to file Forms

28. The Solicitor practised law as an associate of the firm Zito Associates from January 1, 1992 to September 30, 1992.

29. The Solicitor's Form 2 filing was due on November 30, 1992.

30. The Law Society sent notices of default in filing to the Solicitor on July 7, 1993 and August 13, 1993 (Document Book, Tab 10).

31. The Solicitor called the Law Society on August 19, 1993. A copy of the handwritten note to file is attached at the Book of Documents, Tab 11.

32. The Solicitor's filing was not received by the Law Society and Complaint D298/93 was issued on October 25, 1993.

33. On October 29, 1993 the Law Society received the Solicitor's Form 2 and his covering letter dated October 26, 1993 (Book of Documents, Tab 12) stating:

"Thank you for the additional 'Form 2 Certificate'. Eventually we'll get it right."

DATED at Toronto this 6 day of July, 1994."

The Solicitor admitted the allegations contained in complaints 2(a) (uttering a forged document) and 2(d) (fail to file). The Solicitor did not admit complaints 2(b) (failing to disclose true state of his financial situation) and 2(c) (failing to disclose to Trustee in Bankruptcy). The Solicitor testified with respect to those complaints and with respect to the reasons for failing to file.

After having read the Agreed Statement of Facts and having heard the sworn evidence of the Solicitor, the Committee made findings against the Solicitor on all four counts. The Committee concluded that the Solicitor had indeed failed to disclose the required information. In ascribing the level of culpability to be attached to the failure to disclose, the Society urged us to find that the Solicitor's explanations were simply not credible whereas the Solicitor's counsel urged us to find that the Solicitor was simply extremely careless. We have accepted the Society's position.

The Committee had the opportunity to hear the Solicitor and to make observations while he was testifying. The Committee did not find the Solicitor's explanations consistent with his declared lack of intention to mislead. Indeed, his explanations, coupled with his behaviour at the time in question, put the matter beyond carelessness or recklessness. The Committee concluded that the Solicitor's behaviour was dishonest and that he had specifically intended to mislead in both situations at the material times. The intent carried on to the hearing date when the Solicitor appears to have been caught in cross-examination.

For example, the Committee was especially troubled by the rather "slippery" way in which the Solicitor made use of the legal concept of guaranteeing a bank loan, a concept that the Committee believes is fairly well understood by the public, and should certainly be by the legal profession. The Solicitor, furthermore, is a lawyer with four years experience who, before going to law school, had worked in the private business sector until he reached the age of 27. He also had much experience borrowing money from banks, friends and family.

The specific illustration which gave rise to the Committee's concern centred around a bank loan belonging to the Solicitor's mother. She had borrowed \$3,000 from the bank to give to the Solicitor while he was taking the bar admission course. He told his mother that he would pay her back. During his examination-in-chief and in his cross-examination, he characterized this so

called undertaking to pay his mother back as having guaranteed his mother's bank loan. Specifically, the Solicitor perpetuated this at various times during his testimony. He stated the following in his examination-in-chief by his counsel, Mr. Zylberberg:

Q: "...estimate as accurately as you can what those debts were"

A: "...there was a loan that I had guaranteed for my mother at her bank..."

Q: "And what was it that was not on that list you told me about?"

A: "There was the obligation to my family ... the more formal bank loan which my mother had taken and which I had guaranteed"

Q: "Do you remember any of the people you went to?"

A: "...I went to Central Guaranty in Thunder Bay where my mother had the loan which I guaranteed..."

Q: "Now, you had guaranteed a loan for your mother at Central Guaranty Trust in Thunder Bay?"

A: "Correct"

Q: "What did you believe to be your obligations in respect to that at that time?"

A: I believed that I would have to continue to pay the obligation to my mother, regardless of what would have happened with Central Guaranty. It is essentially her loan and if I stopped paying it, they would of course look to her, the obligation being one to the immediate family, I believe to be again outside the sphere of the bankruptcy ... even though it was not my loan on paper, I would have had to list the fact that I was a guarantor and that I had an indebtedness to the principal borrower, my mother."

Under cross-examination by Mr. Foster, the Solicitor had the following to say about this guarantee:

Q: "...you said that there was some things that should have been in there, but weren't and you mentioned the guarantee of your mother's obligation at the bank?"

A: "Yes".

Q: "Could you tell us how much that was?"

A: "It was about \$3,000 ... I knew that ... if my mother defaulted, they would look to me."

Upon further cross-examination by Mr. Foster, the following was ascertained:

Q: "I'm just trying to get a sense here. The obligation you had was to the bank. Is that not correct? That's who you signed the guarantee with, to the bank, so that if your mother defaulted, you would then cover the loan?"

A: "No."

Q: "I'm sorry. I didn't understand."

A: "It was my mother's loan."

Q: "At the bank."

A: "With the bank."

Q: "Your mother had borrowed some money from the bank, \$3,000?"

A: "For me."

Q: "Oh, the money was for you."

A: "That's right."

Q: "She had borrowed the money from the bank for you?"

A: "That's right."

Q: "And you had guaranteed the loan with the bank? You had signed the document ..."

- A: "No."
Q: "...guaranteeing her borrowing the money?"
A: "No. I guaranteed her to the bank. In other words, I guaranteed that the money would be there every month for the loan payment to be honoured." (emphasis added)
Q: "Did you sign something?"
A: "No."

Upon questioning by the Committee, the following interaction took place:

- Q: (Ms. Curtis) "Was your name anywhere on the loan document?"
A: "No...I guaranteed to my mother that the loan would be paid. I was her guarantor rather than the bank's." (emphasis added)

The Committee cannot accept that the Solicitor, given his legal experience, his experience with banks, and his business acumen, did not - at all times, including on the witness stand - completely understand the true legal meaning that would normally be ascribed to the words "guarantor" or "guarantee" especially used in conjunction with "bank loan". The Committee did not believe the Solicitor, nor did it believe him when he testified that he had indeed disclosed the true state of his financial situation on a loan application to Beneficial Canada Inc. Instead, the Committee found that he under-estimated his debt by about half and that he grossly overstated his assets. The Committee also found that the Solicitor had failed to disclose to the Trustee in Bankruptcy the true state of his financial affairs, and specifically, the Committee rejected his evidence that he did not know that the \$3,000 loan with Beneficial, taken out just before he filed for bankruptcy, had to be declared to the Trustee in Bankruptcy. The Committee also rejected his evidence that he thought that financial obligations to one's family were not required to be disclosed to the Trustee. The Solicitor said he had taken a debtor-creditor course in third year law school and mistakenly believed the above to be the law. Interestingly, the Solicitor made no attempt to clarify his mis-understanding of the law with the Trustee in Bankruptcy, who would have been in an easy position to clarify. This resulted in an advantage to his family.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Glen Edward Joseph Sandberg be suspended for a period of six months.

REASONS FOR RECOMMENDATION

Counsel for the Society asked for a suspension of between six to twelve months; counsel for the Solicitor suggested a severe reprimand in Convocation or, if there was to be a suspension, a suspension of thirty days. The Committee concluded that a suspension would be appropriate in this case, and that the proper range for these circumstances would be six to nine months.

The Committee felt that a suspension was clearly required, particularly because of the cumulative effect of the four counts, three of which involved dishonesty. The Committee was assisted in this conclusion by the case of Bolton v. Law Society. The Weekly Law Reports, 25 March 1994, 512 at 518 where the English Court of Appeal stated as follows:

23rd March, 1995

There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention.

Particularly is this so where a criminal penalty has been imposed and satisfied. The Solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. (emphasis added)

And at page 519:

All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they intrust will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make the suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.

The Committee recommends the lower range of the penalty because of the mitigating factors that were disclosed during the hearing. These included the following:

1. the Solicitor admitted most of the facts in dispute, thereby saving the Law Society the time and expense of proving all the facts. Most of the documents in question were provided by the Solicitor himself;
2. The Solicitor practices in a smaller community in which any suspension will be public and difficult for him;
3. The Solicitor is a sole practitioner;
4. The most serious incidents occurred over four years ago;
5. The Solicitor has made a name for himself as a competent lawyer in his community. Exhibit #4 contained about a dozen letters supporting the Solicitor, although it should be pointed out that very few of the writers were aware of the exact allegations facing the Solicitor. The supporting letters were from a police officer, colleagues in Sudbury, clients and friends. The Committee was particularly impressed with and influenced by the letter from Det. Sgt. Michael McKinny of the Sudbury Regional Police.

23rd March, 1995

Glenn Edward Joseph Sandberg was called to the Bar on the 22nd day of June, 1990.

ALL OF WHICH is respectfully submitted

DATED this 19th day of January, 1995

Denise E. Bellamy
(for the Committee)

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

There were no submissions and the Report was adopted.

It was moved by Mr. Bragagnolo, seconded by Ms. Elliott that the Recommendation as to Penalty be adopted, that is, that the solicitor be suspended for a period of 6 months.

Mr. Toffoli made submissions in support of the penalty and requested that the suspension commence on June 15, 1995 in order that the solicitor could represent a client in a trial scheduled for June 12.

Mr. Brown made submissions in support of the penalty and asked that the suspension commence 1 month from today's date.

Mr. Carter did not participate.

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

It was moved by Mr. Blue but failed for want of a seconder that the solicitor be suspended for a period of 12 months.

It was moved by Mr. Bragagnolo, seconded by Mr. Carey that the suspension follow on completion of the trial scheduled to end June 15.

Lost

It was moved by Mr. Topp, seconded by Mr. Blue that the solicitor be given 15 days to make arrangements to transfer his practice.

Not Put

It was moved by Ms. Lax, seconded by Ms. Elliott that the date of the commencement of the suspension be 1 month from today's date.

Carried

Counsel, the solicitor, the public and the reporter were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 6 months commencing April 23, 1995.

Convocation took a brief recess and resumed in public.

Re: David Mayer ROVAN - Toronto

The Secretary placed the matter before Convocation.

Ms. Richardson withdrew for this matter.

23rd March, 1995

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

Convocation had before the Report of the Discipline Committee dated 15th February, 1995, together with an Affidavit of Service sworn 8th March, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd February, 1995 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd February, 1995 (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

K. Julaine Palmer, Chair
Nora Richardson
Michael G. Hickey, Q.C.

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

Georgette Gagnon
for the Society

DAVID MAYER ROVAN
of the City
of Toronto
a barrister and solicitor

Alan Price
for the solicitor

Heard: December 7, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 22, 1993 Complaint D186/93 was issued against David Mayer Rován alleging that he was guilty of professional misconduct. This complaint was withdrawn and replaced with Complaint D186a/93 issued on December 6, 1994.

The matter was heard in public on December 7, 1994 before this Committee composed of K. Julaine Palmer, Chair, Nora Richardson and Michael G. Hickey Q.C. The Solicitor was present at the hearing and was represented by Alan Price. Georgette Gagnon appeared on behalf of the Law Society.

DECISION

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

Complaint D186a/93

2. a) he failed to serve his client Mrs. Bluma Sauber, by not adequately protecting her interests in respect of a mortgage transaction on or about September 1, 1989;
- b) during 1989 he improperly commissioned affidavits sworn in connection with the transfers of various units at 28 Cosburn Avenue, City of Toronto, including:
 - i) an affidavit of age and residence sworn by Murray Kates and Frances Stein in connection with the transfer of Suite 301, 28 Cosburn Avenue, City of Toronto;
 - ii) an affidavit of residence under section 116 of the Income Tax Act and of principal residence under the Family Law Act and the Planning Act sworn by Jack Schwartz in connection with the transfer of Suite 301, 28 Cosburn Avenue, City of Toronto;
 - iii) an affidavit of residence under section 116 of the Income Tax Act and of principal residence under the Family Law Act and the Planning Act sworn by Alexander Richman in connection with the transfer of Suite 301, 28 Cosburn Avenue, City of Toronto;
 - iv) an affidavit of Land Transfer Tax dated August 24, 1989 sworn by Lorne Stone.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D186a/93 and is prepared to proceed with a hearing of this matter on December 7, 1994.

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 D186a/93 and admits the particulars contained therein. The Solicitor also admits that the particulars in the Complaint together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1974.

5. The Solicitor practices in association with another solicitor and practises primarily in the areas of criminal and real estate law.

The Development Project

6. The Solicitor acted on behalf of a number of investors in the development of a twelve-unit condominium complex at 28 Cosburn Avenue (the "Cosburn property"), in the City of Toronto.

7. The Solicitor also acted for the investors on the sale of the individual units of the Cosburn property condominium.

8. The documentation, including various affidavits, of age and residence, relating to these sales was signed by the vendors in advance at the vendor's insistence (Document Book, Tab 1). As each unit was sold, the pre-signed documents were used by the Solicitor. Eleven of the twelve units were sold in this way.

9. The Solicitor did not take the necessary steps to reaffirm that the contents of the affidavits were accurate at the time he commissioned them for purposes of closing.

10. The Solicitor admits that this constitutes professional misconduct.

The Transfer and Financing of Unit 301

11. One of the investors, Barry Stein ("Stein"), eventually admitted that he misused approximately \$200,000.00 of the funds which arose from the development of the property.

12. In addition to misusing funds, Stein improperly transferred one of the units into the name of a Mr. Lorne Stone, whom he alleged to be his son.

13. By Agreement of Purchase and Sale (Document Book Tab 2) Lorne Stone purported to purchase Unit 1, Level 3 (Suite 301) of the Cosburn property for \$89,000.00.

14. However, both the Transfer and the attached Land Transfer Tax Affidavit state that the consideration is \$114,000.00 and not the correct \$89,000.00 (Document Book Tab 3)

15. The Solicitor acknowledges that Lorne Stone, who he believed to be Steins' son, was not in the Solicitor's presence when he signed the Land Transfer Tax Affidavit which was commissioned by the Solicitor.

16. The Solicitor and his secretary, Helena, both state that the discrepancy between the \$89,000.00 purchase price and the \$114,000.00 indicated in the Transfer and Land Transfer Tax Affidavit was simply a mistake.

17. The Solicitor admits that he improperly commissioned this affidavit and that this constitutes professional misconduct.

Mortgage Financing of Suite 301

18. First mortgage financing was secured through Lorna Berofsky, a client of Mr. Hacker who practises in association with the Solicitor. On September 1, 1989 a Charge in the amount of \$77,000.00 in favour of Lorna Berofsky in trust was registered on title to Suite # 301 as instrument # D136080 (Document Book Tab 4).

19. Second mortgage financing was arranged through Barry Stein from Mrs. Blemah Sauber. The Solicitor acted for Mrs. Sauber on this transaction.

20. Mrs. Sauber issued a cheque dated October 18, 1989 in the amount of \$30,000.00 payable to David Rovani In Trust (Document Book Tab 5).

21. On November 15, 1989 a charge in the amount of \$30,000.00 in favour of Blemah Sauber was registered on title to Suite # 301 as instrument # D149256 (Document Book Tab 6).

22. Stein defaulted on the first mortgage and a Notice of Sale under Mortgage dated September 18, 1990 on behalf of Lorna Berofsky in trust was issued by Mr. Hacker (Document Book Tab 7).

23. Eventually Mrs. Sauber exercised her right of redemption and became the registered owner of Suite 301 by a Transfer registered as instrument # D255940 on May 15, 1991 (Document Book Tab 8).

24. The Solicitor admits that he failed to adequately protect Mrs. Sauber's interests in this transaction and that he should have taken additional steps to explain the risks involved in lending \$30,000.00 on a second mortgage on a property which had sold for \$89,000.00 and on which there was a first mortgage for \$77,000.00. The Solicitor admits that this constitutes professional misconduct.

V. DISCIPLINE HISTORY

25. The Solicitor has no previous discipline record.

VI. JOINT SUBMISSION ON PENALTY

26. The Society and the Solicitor jointly submit that the appropriate penalty in this matter is a Reprimand in Convocation.

27. The Society and the Solicitor make this Joint Submission on Penalty with the advice of a Bencher at a Pre-Hearing Conference of this matter held on March 31, 1994.

DATED at Toronto this 7th day of December, 1994."

RECOMMENDATION AS TO PENALTY

The Committee recommends that David Mayer Rovin be reprimanded in Convocation.

REASONS FOR RECOMMENDATION

The Society and the Solicitor jointly submitted that a Reprimand in Convocation was the appropriate penalty for these offences. They had reached this agreement following a prehearing conference with Bencher Paul Copeland, held March 31, 1994.

The Committee agreed to accept the joint submission. We felt that no error in principle was demonstrated in such a penalty. A public reprimand in Convocation is required as a measure of general deterrence to others who would improperly swear affidavits.

Although Mrs. Sauber bargained for a second mortgage, she ended up as a condominium owner. We accept the evidence that the notation of \$114,000 was an error on the closing documents. We accept the submission that similar units had sold for approximately \$115,000. The Solicitor demonstrated remorse that he had failed to advise his client that the total mortgages (\$77,000 plus \$30,000) exceeded the sale price of \$89,000.

23rd March, 1995

In mitigation of the Solicitor's conduct, Mr. Price submitted that no suggestion has been made that the Solicitor's conduct aided Mr. Stein in the misuse of funds arising from the development of the property. The clients who were the registered owners of the units (the initial investors) and the details of their ages, residency and Family Law Act considerations were all known to the Solicitor. It was submitted that Mr. Lorne Stone had actually signed the Land Transfer Tax affidavit in the Solicitor's office, but not in his presence. The thrust of the Law Society's investigation arose out of the conduct of Mr. Stein; these particulars of complaint were a by-product of that effort. For that reason, Mr. Foster (who previously had carriage of this matter) and Mr. Price had agreed to recommend to the Committee that no costs be payable by this Solicitor.

David Mayer Rowan was called to the Bar on the 22nd day of March, 1974.

ALL OF WHICH is respectfully submitted

DATED this 15th day of February, 1995

K. Julaine Palmer
Chair

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

There were no submissions and the Report was adopted.

It was moved by Ms. Graham, seconded by Mr. Brennan that the Recommendation as to Penalty be adopted, that is, that the solicitor be reprimanded in Convocation.

Counsel and solicitor made submissions in support of the recommended penalty.

The recommended penalty was adopted.

The solicitor was reprimanded in Convocation.

Counsel and solicitor retired.

Re: Christophe Marc CLOUTIER - Gloucester

The Secretary placed the matter before Convocation.

Mr. Brennan withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 11th January, 1995, together with an Affidavit of Service sworn the 8th March, 1995 by Jordon MacLean that he had effected service on the solicitor personally on 28th February, 1995 (marked Exhibit 1), together with the Report of the Discipline Committee dated 11th January, 1995, together with an Affidavit of Service sworn 1st February, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 23rd January, 1995 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

23rd March, 1995

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Michael G. Hickey, Q.C., Chair
Lloyd Brennan, Q.C.
David W. Scott, Q.C.

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

Neil Perrier
for the Society

CHRISTOPHE MARC CLOUTIER
of the City
of Gloucester
a barrister and solicitor

Not Represented
for the solicitor

Heard: April 29, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 13, 1993, Complaint D33/93 was issued against Christophe Marc Cloutier alleging he was guilty of professional misconduct. This Complaint was withdrawn and replaced with Complaint D33a/93 on June 29, 1993.

The matter was heard in public on April 29, 1994 before this Committee composed of Michael G. Hickey, Q.C., Chair, Lloyd Brennan, Q.C. and David W. Scott, Q.C. The Solicitor was present at the hearing and represented himself. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D33a/93

- 2. a) He engaged in the practise of law while under suspension by Order of Convocation made on or about June 5, 1992, in that without limiting the generality of the above, he engaged in the following activities:
 - i) he is listed as Solicitor of record in a Notice of Application dated June 15, 1992 in which the defendant is Mr. Wayne Cusack;

23rd March, 1995

- ii) allowed an advertisement to appear in the October, 1992 issue of the Communique listing that the law firm of Cloutier Cusack would be present at the Cumberland Business Trade Show being held on October 20 - 24, 1992;
- iii) made available business cards at the Cumberland Business Trade Show held on October 20 - 24, 1992;
- iv) corresponded by letter dated September 9, 1992 to Ms. Diane M. Hendley, representing that he was acting for purchasers in a real estate transaction which was to close on October 1, 1992;
- v) sent a reporting letter dated September 30, 1992 to the Laurentian Bank of Canada.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D33/93 and is prepared to proceed with a hearing of this matter on April 29, 1994.

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 this Agreed Statement of Facts and admits to the particulars contained herein.

IV. FACTS

4. The Solicitor is 35 years of age and was called to the Bar in 1984. He practises law in association with Mr. Wayne Cusack in Gloucester, Ontario.

5. In October, 1991, Ms. Sara Blake, prosecutor for the Ontario Securities Commission ("OSC"), was assigned carriage of an investigation and prosecution on charges against Mr. Wayne Cusack and others.

6. On October 17, 1991, the Solicitor contacted Ms. Blake by phone and stated that he was representing Mr. Wayne Cusack with respect to the OSC investigation (Document Book, Tab 1).

7. On November 14, 1991, an information was sworn under Section 24 of the Provincial Offences Act alleging that Mr. Cusack, and Mr. Curran (a solicitor), among others, had engaged in the trade of securities contrary to certain sections of the Ontario Securities Act (Document Book, Tab 2).

8. On Wednesday, December 11, 1991, the Solicitor wrote Ms. Blake stating "...that I have been retained to act as solicitor for Mr. Wayne Cusack, one of the defendants to the... Ontario Securities Act charges"(Document Book, Tab 3).

9. On December 20, 1991, there was a first appearance in court room number 5 at the Provincial Court in Ottawa. The Solicitor met with Ms. Blake and informed her that he was counsel for Mr. Cusack. It was agreed that the matter would be put over to January 13, 1992, for a plea (Document Book, Tab 4). Between December, 1991 and February, 1992, there was an exchange of correspondence between Ms. Blake and the Solicitor, as well as the generation of a notice of motion and affidavit (Document Book, Tabs 5 through 12).

10. By registered letter dated June 1, 1992, the Solicitor was notified that he had been suspended pursuant to Section 36 of the Law Society Act by Order of Convocation dated May 29, 1992. The Solicitor was informed that his suspension was effective as of June 5, 1992 (Document Book, Tab 13). The Solicitor acknowledges receiving the Notice of Suspension on or about June 5, 1992. At Document Book, Tabs 14 through 18 are copies of correspondence between Ms. Blake and Mr. Cloutier from June 1, 1992 through June 8, 1992. The Solicitor's suspension was terminated approximately 11 months later on May 12, 1993.

11. On June 8, 1992, the Solicitor wrote to Ms. Blake on letterhead containing the names "Cloutier, Cusack" and a caption immediately underneath "Barristers & Solicitors" (hereinafter "Firm Letterhead") (Document Book, Tab 19).

12. On June 15, 1992, the Solicitor appeared in the Ontario Court (Provincial Division) before Justice of the Peace M. Houle at which time he was recorded in the proceedings as counsel for Wayne Cusack and counsel for Thomas curran (on motion) (Document Book, Tab 20). In the transcript of the proceedings at page two, the Solicitor addresses the court stating his name and that he is acting as "...counsel to Mr. Cusack". The court then states "You're acting as an agent for Mr. Curran and then you're representing Mr. Cusack?" The Solicitor responded affirmatively (Document Book, Tab 20, lines 19 through 30).

13. During the course of submissions Mr. Cusack entered the court room and advised the court that Mr. Justice McWilliams of the Ontario Court (General Division) was waiting in another court room to hear Mr. Curran's application for a judicial review of the proceedings. Ms. Blake had not received any notice of this application for judicial review and had no prior notice as to its purpose or content. The purpose of the application was to obtain an order prohibiting Ms. Blake from acting as counsel for the OSC with respect to that action.

14. Ms. Blake, the Solicitor, Mr. Curran and others proceeded to Mr. Justice McWilliams' court room. As no prior notice of the application had been given, Mr. Justice McWilliams granted a one day adjournment to permit Ms. Blake an opportunity to review the material and to file affidavit material for the OSC.

15. On the following day, June 16, 1992, after Ms. Blake had filed affidavit material, all the above-mentioned persons again attended in the court room before Mr. Justice McWilliams. Ms. Blake made submissions and Mr. Justice McWilliams reserved his decision to the next day.

16. On June 17, 1992, Mr. Justice McWilliams granted an order prohibiting Ms. Blake from acting as OSC counsel on that action. Afterwards a discussion occurred surrounding the Askov rights, and possible waiver thereof, amongst the parties.

17. On the same day, all the aforementioned persons returned to Justice of the Peace Houle's court room to advise His Worship of Mr. Justice McWilliams' decision to prohibit Ms. Blake from continuing to act as counsel to the OSC (see transcript at Document Book, Tab 21).

18. As a result, the OSC retained Mr. Timothy Buckley of Borden & Elliot to prosecute Mr. Cusack, et al. By Firm Letterhead dated November 17, 1992, the Solicitor wrote to Mr. Buckley on Mr. Cusack's behalf (Document Book, Tab 22).

19. Wayne Cusack prepared a notice of motion dated November 17, 1992 in which Christophe Marc Cloutier is listed for the defendant, Wayne Cusack (Document Book, Tab 23). In support of the notice of motion, the Solicitor commissioned an affidavit sworn by Mr. Cusack, also dated November 17, 1992 (Document Book, Tab 25). At Document Book, Tab 25 is a notice of motion from Mr. Thomas Curran addressed to the Solicitor dated November 17.

20. The nature of these motions were to have Mr. Buckley removed as counsel for the OSC due to the fact that he had communicated with certain members of the OSC. As a result, the OSC retained Mr. David Moore, of the law firm Bellmore & Moore to act on this matter. Mr. Moore's first correspondence to the Solicitor is dated November 23, 1992 (Document Book, Tab 26). The scheduled hearing date of the motion was November 23, 1992. The hearing was adjourned, but the Solicitor is noted on the record of the transcript as "Counsel for Mr. Cusack" (Document Book, Tab 27).

21. By letters dated November 23 and 25, 1992, the Solicitor wrote to Mr. Moore on Firm Letterhead (Document Book, Tabs 28 and 29). At Document Book, Tabs 30 through 33 are copies of Mr. Moore's letters to the Solicitor and an internal memo.

22. During an appearance before Justice of the Peace Jolicouer on December 10, 1992, the Solicitor introduced himself as "Cloutier, representing the defendant, Mr. Cusack". (Document Book, Tab 33).

23. At Document Book, Tabs 34 through 36 are correspondence from Mr. Moore to the Solicitor and others.

24. At Document Book, Tab 37 is a further letter from the Solicitor on Firm Letterhead dated January 18, 1993.

25. At Document Book, Tab 40 is a further letter from the Solicitor on Firm Letterhead dated January 20, 1993.

26. At the proceedings to remove Mr. Buckley from the record on January 21, 1993, the Solicitor was introduced to the court by Mr. Curran as follows: "I am Thomas Curran, my friend, Mr. Cloutier, on behalf of Mr. Cusack, and my friend, Mr. Lalonde, on behalf of the prosecution, this afternoon". The Solicitor was present in the court and remained silent with respect to the above-noted representation.

27. At Document Book, Tab 42 and 43 are copies of the Solicitor's letters on Firm Letterhead dated January 20 and 26, 1993. A ruling was made on the matter on January 27, 1993 (Document book, Tab 44).

28. At Document Book, Tab 46 is another letter dated February 3, 1993 from the Solicitor to Mr. Moore on Firm Letterhead.

29. At Document Book, Tab 49 is another letter from the Solicitor to Mr. Moore dated February 9, 1993 on Firm Letterhead.

30. At Document Book, Tab 53A is a portion of the transcript of a cross-examination in the OSC action in which the Solicitor appeared on behalf of Mr. Cusack. At Document Book, Tab 53C, during a cross-examination of Mr. Eugene Lewis (phonetic), on February 12, 1993, in which Mr. Moore was marked as being "for the Plaintiffs" and the Solicitor was marked as being "for the defendants", Mr. Moore addresses the Solicitor at page 35 of the transcript as follows: "Well, I am telling you from counsel to counsel...". The Solicitor does not inform Mr. Moore that he was under suspension and therefore, could not be counsel to Mr. Cusack.

31. The same sequence of events and quotes occur at Tab 53D, page 35 of the examination of another witness, in which Mr. Moore addresses the Solicitor saying "Well, I am telling you from counsel to counsel...". The Solicitor again does not inform Mr. Moore that he was under suspension.

32. At Document Book, Tab 54 is an affidavit of Mr. Wayne Cusack dated February 18, 1993 which the Solicitor commissioned.

33. Attached as Appendix "A" is an Investigation Enquiry/Instruction Form dated August 13, 1992.

34. Attached as Appendix "B" is a letter dated September 8, 1992, from the Chair of Discipline to the Director of Audit & Investigation authorizing an investigation of the Solicitor pursuant to Section 18 of the Regulation of the Law Society Act.

35. Attached as Appendix "C" is a letter dated January 11, 1993, from the Chair of Discipline to the Director of Audit & Investigation authorizing an investigation of the Solicitor pursuant to Section 9 of the Regulation of the Law Society Act.

36. An audit investigator of the Law Society discovered an advertisement in the October 1992 edition of "Communique" for the Cumberland Business Trade in which "Cloutier, Cusack" was advertised to be in attendance (Document Book, Tab 56).

37. The audit investigator attended and obtained a copy of the Solicitor's business card from the desk of Cloutier, Cusack's booth at the trade show.

38. At Document Book, Tab 58 is a copy of a facsimile transmission dated September 9, 1992 from the Solicitor to a Ms. Diane M. Hendley with respect to a real estate transaction scheduled to close on October 1, 1992.

39. At Document Book, Tab 59, is a letter from the Solicitor to Mr. Gilles R. Saucier regarding a mortgage financing transaction.

V. PRIOR DISCIPLINE

41. The Solicitor has no prior discipline.

DATED at Ottawa, this 29 day of April, 1994."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Christopher Marc Cloutier be suspended for a period of eight months.

REASONS FOR RECOMMENDATION

At the commencement of the hearing the Solicitor raised a technical objection to the admissibility of certain evidence of practicing while under suspension obtained upon an audit authorized under Section 18 of Regulation 708. At issue is whether Section 18 is a proper basis for an audit directed to practicing while under suspension. It was the Solicitor's position that the investigation could only be authorized under Section 9 of Regulation 708. Although such an investigation was authorized on January 11, 1993 it was conceded by counsel for the Society that all the information for the complaint was obtained under the Section 18 investigation authorized on September 8th, 1992.

23rd March, 1995

The Solicitor acknowledged that he was not prejudiced and it was the view of the committee that it could not be concluded that admitting the evidence would bring the administration of justice into disrepute in these circumstances. The disputed evidence, being paragraphs 36 to 39 of the agreed statement of facts, was therefore admitted.

Although raised in argument by the Solicitor, the committee did not consider it necessary to decide whether Sections 7 and 8 of the Canadian Charter of Rights and Freedoms apply to discipline proceedings.

On all the evidence it was the decision of the committee that the Solicitor was guilty of professional misconduct as set forth in paragraphs 2 (a), subparagraphs i to v of the Complaint. In the Ontario Securities Commission prosecution he identified himself as counsel for Mr. Wayne Cusak and allowed this to be continued from June 15th, 1992 throughout the proceedings either by ambiguous statements or positions and without informing other counsel or the presiding members of the Bench that he was under suspension from June 5, 1992 for non-payment of Errors and Omissions fees. He commissioned an affidavit of Mr. Cusak on the 18th February, 1993.

In September, 1992 Solicitor engaged in real estate and mortgage transactions holding himself out as a Solicitor and in October, 1992 he participated in the Cumberland Business Trade Show where his business card was distributed.

In all, there was evidence of practice for eight months while the Solicitor was under administrative suspension. The Committee was referred to the decisions in McGregor and Ellison and was unanimously of the view that a suspension of eight months is the appropriate penalty in this case, being the equivalent of the time the Solicitor practiced while under suspension.

No Order is made as to the costs of the Society in carrying out its investigation of the complaint.

ALL OF WHICH is respectfully submitted

DATED this 11th day of January, 1995

Michael G. Hickey, Q.C.

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

There were no submissions and the Report was adopted.

It was moved by Ms. Weaver, seconded by Ms. Peters that the Recommendation as to Penalty be adopted, that is, that the solicitor be suspended for a period of 8 months.

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

Counsel, the public and the reporter withdrew.

It was moved by Mr. Topp, seconded by Ms. Graham that the solicitor be suspended for 9 months.

Lost

The motion for the recommended penalty was adopted.

23rd March, 1995

Counsel, the public and the reporter were recalled and informed of Convocation's decision that the solicitor be suspended for 8 months, such suspension to commence following any administrative suspension. The solicitor is to be informed that if he wishes he may attend at April Special Convocation and make representation regarding the commencement of his suspension.

The matter was stood down.

Re: Dave Allan KLAIMAN - Thornhill

The Secretary placed the matter before Convocation.

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

Ms. Budweth advised that Mr. Klaiman was out of the country.

Convocation had before it the Report of the Discipline Committee dated 14th December, 1993, together with an Affidavit of Service sworn 20th January, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 17th December, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 23rd June, 1994 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Neil Finkelstein, Chair
Earl Levy, Q.C.
Daniel J. Murphy, Q.C.

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

Christina Budweth
for the Society

DAVE ALLEN KLAIMAN
of the Town
of Thornhill
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 7, 1993
November 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 1, 1992 Complaint D197/92 was issued and on February 3, 1993, Complaint D51/93 was issued against Dave Allen Klaiman alleging that he was guilty of professional misconduct.

The matter was heard in public on July 7, 1993 and November 11, 1993 before this Committee composed of Neil Finkelstein, Chair, Earl Levy, Q.C. and Daniel J. Murphy, Q.C. The Solicitor attended the hearing unrepresented on July 7, 1993 and did not appear at the hearing on November 11, 1993. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D197/92

2. a) He failed to provide a reply to the Law Society regarding a complaint by Margaret Britstone despite letters dated September 18, 1992 and October 20, 1992, and telephone requests on October 6, 1992 and October 16, 1992.

Complaint D51/93

2. a) He breached his undertaking to a discipline committee of Convocation to file his forms 2/3 for the year ends April 30, 1990 and April 30, 1991 by or before November 16, 1992.
- b) He has failed to reply to the Society regarding a complaint by Pierre Lebrun despite letters dated September 25th, November 2nd, 1992 and telephone requests on August 14th, September 9th, 11th, October 16th, 20th, 27th, 1992.
- c) He has failed to reply to the Society regarding a complaint by William Rickett despite letters dated November 11th and December 7th, 1992 and telephone requests on November 25th and December 4th, 1992.
- d) He has failed to serve his client in a diligent and efficient manner. Examples of such conduct include his failure to return his client's telephone calls; failure to keep the client reasonably informed; and his failure to answer the client's requests for information.

Evidence

Mr. Klaiman is the subject here of a number of grounds of complaint for professional misconduct ranging from the breach of an undertaking to a Discipline Committee of Convocation to failures to 1) file forms, 2) reply to the Law Society regarding various client complaints, and 3) serve his clients in a diligent and efficient manner. These complaints, which have been made out, point to a person who has been persistently unable to deal with his professional responsibilities. The pattern of behaviour exhibited by the complaints is also fully borne out by Mr. Klaiman's actions throughout the disciplinary process.

Mr. Klaiman consistently did not respond to Law Society counsel when she tried to communicate with him and, when he finally did appear in front of Discipline Committee panels, made repeated requests for adjournments. Most of the time these were granted.

On July 7, 1993, following a series of adjournments, Mr. Klaiman appeared before this Committee and requested a further adjournment. He submitted that he had had a breakdown, advised the Committee of an alcohol and nervousness problem, and said that he had been diagnosed as having clinical depression.

The Committee refused the further adjournment. Witnesses for the Law Society had appeared on each of the three previous times when this matter had been adjourned and Mr. Klaiman had apparently made the same requests. Accordingly, this Committee proceeded with the complaints insofar as the professional misconduct portion of the hearing was concerned on July 7, 1993. Mr. Klaiman read the particulars of the complaints, agreed that they were true, and agreed that they constitute professional misconduct. The Committee therefore made a finding that professional misconduct had been committed in relation to the within complaints.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Dave Allen Klaiman be suspended for a period of one year from the date that Convocation hears and determines the matter, and thereafter until such time as Mr. Klaiman has i) completed all filings to the satisfaction of the Law Society, ii) responded to all of the complaints which are the subject of the proceedings herein to the satisfaction of the Law Society, and iii) submits medical reports satisfactory to the Law Society that he is physically and mentally able to practice law responsibly.

REASONS FOR RECOMMENDATION

Mr. Klaiman then requested an adjournment on the issue of penalty. He wanted to consider retaining counsel and obtaining medical evidence. Counsel for the Law Society advised Mr. Klaiman and the Committee that she would be seeking a penalty of 1 - 2 years' suspension or, possibly, disbarment. The Committee granted the adjournment. Mr. Klaiman was clearly advised that the matter would proceed when the Committee reconvened.

The hearing reconvened on November 11, 1993. On that date, counsel for the Law society advised us that Mr. Klaiman had telephoned her some five minutes before the proceeding started and requested a further adjournment in order to allow him to lead psychiatric evidence. He advised us, through counsel for the Law Society, that he was sick in bed. Counsel for the Law Society opposed the adjournment.

The whole purpose of the adjournment from July 7, 1993 to November 11, 1993 was to permit Mr. Klaiman to either obtain counsel and/or psychiatric evidence on the issue of penalty. Given that, and given the consistent pattern of refusing to deal with both the subject matter of the various complaints and the discipline process itself, and also the fact that witnesses for the Law Society were present specifically to give evidence on penalty, this committee refused the adjournment and proceeded in Mr. Klaiman's absence.

Counsel for the Law Society requested that Mr. Klaiman be disbarred. Her submission was that the complaints herein are serious and that, taken as a whole, they point to a member who is ungovernable.

Mr. Klaiman does not seem to be able to face up to his professional responsibilities. While we have not heard any sworn evidence about why this may be so, notwithstanding the numerous opportunities given to Mr. Klaiman to lead such evidence, we at least heard submissions from Mr. Klaiman on July 7, 1993 when he was requesting an adjournment that he was suffering from psychiatric and alcohol problems. Giving him the benefit of the doubt that this is so, we are not prepared to recommend disbarment. Instead, this Committee recommends that Mr. Klaiman be suspended for a period of one year from the date that Convocation hears and determines the matter, and thereafter until such time as Mr. Klaiman has i) completed all filings to the satisfaction of the Law Society, ii)

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responded to all of the complaints which are the subject of the proceedings herein to the satisfaction of the Law Society, and iii) submits medical reports satisfactory to the Law Society that he is physically and mentally able to practice law responsibly.

Dave Allen Klaiman was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1986.

ALL OF WHICH is respectfully submitted

DATED this 14th day December, 1993

Neil Finkelstein
Chair

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

There were no submissions and the Report was adopted.

It was moved by Mr. Carey, seconded by Ms. Weaver that the Recommendation as to Penalty be adopted, that is, that the solicitor be suspended for a period of 1 year and continuing until all outstanding matters are completed.

The matter was stood down.

Re: William Donald GRAY - Toronto

A discussion took place as to whether the William Donald Gray matter would proceed.

Mr. Blue did not participate.

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

It was moved by Mr. Carter, seconded by Ms. Peters that the matter be adjourned to the September Discipline Convocation peremptory to the solicitor.

Carried

It was moved by Mr. Topp, seconded by Ms. Curtis that the matter go to the Assignment Court on April 3.

Not Put

Counsel, the solicitor, the public and the reporter were recalled and informed of Convocation's decision to adjourn the matter to the September Discipline Convocation peremptory to the solicitor.

Counsel and solicitor retired.

CONTINUATION OF THE DAVE ALLAN KLAIMAN MATTER

Ms. Budweth made submissions seeking a penalty of disbarment.

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

Counsel for the Society made brief submissions in reply.

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

It was moved by Ms. Graham, seconded by Ms. O'Connor that the solicitor be disbarred.

Carried

The motion for the recommended penalty was not put.

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

Counsel and Duty Counsel retired.

Re: Robert Keith MURRAY - Scarborough

The Secretary placed the matter before Convocation.

Messrs. Blue and Thom and Ms. Graham withdrew for this matter.

Ms. Gagnon 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 , together with an Affidavit of Service which was personally served and sworn on by that he had effected service on the solicitor

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Ian Blue, Q.C., Chair
Stuart Thom, Q.C.
Netty Graham

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

Georgette Gagnon
for the Society

ROBERT KEITH MURRAY
of the City
of Scarborough
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 2, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 4, 1994 Complaint D138/94 was issued against Robert Keith Murray alleging that he was guilty of professional misconduct.

The matter was heard in public on November 2, 1994 before this Committee composed of Ian Blue, Q.C., Chair, Stuart Thom, Q.C. and Netty Graham. The Solicitor was not in attendance at the hearing nor was he represented. Georgette Gagnon appeared on behalf of the Law Society.

DECISION

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

Complaint D138/94

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending January 1, 1991, January 1, 1992 and January 1, 1993, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation made pursuant to the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS

1. The Solicitor was called to the Bar on March 21, 1975. He practised as a sole practitioner until his suspension on November 21, 1989 as a result of his failure to pay his Errors and Omissions Insurance Levy.

2. The Solicitor's fiscal year end is January 1st. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending January 1, 1991, January 1, 1992 and January 1, 1993, as required by S.16(2) of Regulation 708 under The Law Society Act.

Failure to File for the Fiscal Year ended January 1, 1991

3. Notice of Default in Annual Filing, dated August 9, 1991, (Document Book, Tab 1) was forwarded to the Solicitor by the Law Society.

4. By registered mail dated September 19, 1991, the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Solicitor did not reply to the Law Society's letter. A copy of the Law Society's September 19, 1991 letter and Acknowledgment of Receipt of a Registered Item Card is contained in the Document Book, Tab 2.

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5. The late filing fee began to accrue on October 4, 1991.

Failure to file for the Fiscal Year ended January 31, 1992

6. Notice of Default in Annual Filing, dated August 8, 1992 was forwarded to the Solicitor by the Law Society. The Law Society's August 8, 1992 Notice was returned by the post office marked "return to sender". A copy of the Notice of Default in Annual Filing and returned envelope are contained in the Document Book, Tab 4.

7. By registered mail dated September 11, 1992, the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A copy of the Law Society's September 11, 1992 letter and Acknowledgment of Receipt of a Registered Item Card is contained in the Document Book, Tab 4.

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

Notice to File for the Fiscal Year ended January 1, 1993

9. Notice of Default in Annual Filing, dated August 11, 1993 (Document Book, Tab 5) was forwarded to the Solicitor by the Law Society.

10. By registered mail the Law Society forwarded to the Solicitor a Second Notice in Default in Annual Filing dated September 15, 1993. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Law Society's Second Notice was returned by the post office marked "moved". A copy of the Law Society's Second Notice and returned envelope are contained in the Document Book, Tab 56.

11. The late filing fee began to accrue on October 8, 1993.

12. The Law Society conducted a motor vehicle search on or about May 25, 1994. The Law Society was provided with the Solicitor's home address of 7 Fraser Avenue, Apt. 1, Toronto, Ontario M6K 1Y7 by the Ministry of Transportation and Communications.

13. By registered mail dated May 25, 1994 the Law Society forwarded to the Solicitor a copy of the Notices of Default in Annual Filing. The Solicitor was reminded of his obligation to notify the Law Society of a change of address as well as, his obligation to make his annual filings. The Solicitor was advised that should he fail to make the required filings, the matter would be referred to the Discipline Department. The Law Society's May 25, 1994 letter was returned by the post office marked "unclaimed". A copy of the Law Society's May 25, 1994 letter and returned envelope are contained in the Document book, Tab 7.

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14. 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.

15. To date, the Solicitor has not filed the required forms for the fiscal years ended January 1, 1991, January 1, 1992 and January 1, 1993.

V. DISCIPLINE HISTORY

16. The Solicitor was found guilty of professional misconduct and reprimanded in committee on October 10, 1990 with respect to his failure to file for the fiscal years ended January 1, 1988, January 1, 1989 and January 1, 1990.

DATED at Toronto, this 2 day of November, 1994."

RECOMMENDATION AS TO PENALTY

The majority of the Committee recommend that Robert Keith Murray be disbarred.

REASONS FOR RECOMMENDATION

The Committee is deeply troubled by the conduct of Robert Keith Murray reflected in this complaint. Mr. Murray is charged with failing to file the requisite forms within six months of termination of his fiscal year ending January 1st, 1991; January 1st, 1992 and January 1st, 1993. These forms are the forms required under Section 16(2) of the regulation made pursuant to the Law Society Act.

Mr. Murray has a discipline history, indicating that he was found guilty of professional misconduct and reprimanded in Committee on October 10th, 1990 with respect to his failure to having filed the requisite forms for the fiscal years ended January 1st, 1988; January 1st, 1989 and January 1st, 1990. In short, Mr. Murray has not filed his forms for six years.

Exhibit 3 was a letter filed from Mr. Murray in which he indicates to the Committee that he ceased to practise law in 1989 and had no intention of resuming practising again.

The Committee is tempted to treat Mr. Murray as a closed book and not trouble Convocation with his case. Mr. Murray's letter, however, which is an appendix to these reasons, indicates several serious matters.

First, Mr. Murray did not close out his files in an orderly manner; instead, he had his files shredded several years ago.

Secondly, his trust account, he tells us, had a balance but rather than dealing with it in an appropriate manner, he wrote a cheque to Save The Children Canada.

Thirdly, Mr. Murray defies Convocation to disbar him. These statements again might be treated as those of a "smart-alec" or as a member with whom the Society should not be concerned.

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This Committee, however, believes that if that course is taken, this Committee and Convocation would be guilty of gross neglect.

This solicitor simply has decided to close down business. The Law Society has no record of how his clients have been treated or how their money has been handled. The solicitor, by his conduct, has been completely ungovernable. The Committee believes that this conduct is not acceptable, falls below the standards of conduct of any solicitor and is grounds for disbarment.

One addendum, in saying that the solicitor had not filed for the six years, 1988 to 1993, I meant to say that he had not filed until he was disciplined in Convocation. In fact, he did file for the years 1988, 1989 and 1990.

Robert Keith Murray was called to the Bar on the 21st day of March, 1975.

ALL OF WHICH is respectfully submitted

DATED this 6th day of January, 1995

Ian Blue, Q.C. Chair

DISSENT

RECOMMENDATION AS TO PENALTY

The minority of the Committee recommends that Robert Keith Murray be suspended for one month and thereafter, month to month until he has satisfied his obligations to the Society.

REASONS FOR RECOMMENDATION

The solicitor, by inviting disbarment on his own terms is, in effect, resigning from the Society in complete disregard of the obligations which our rules and regulations provide, whatever takes place in the ordinary course of events.

This is an impossible situation and the recommendation of the minority is that the solicitor be suspended for one month and thereafter, month to month until he has satisfied his financial and other obligations to the Society.

ALL OF WHICH Is respectfully submitted

Dated this 9th day of January, 1995

Stuart Thom, Q.C.

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

Not Put

Ms. Gagnon asked that an amendment be made to the Report by deleting the word "Agreed" in the heading Agreed Statement of Facts.

It was moved by Ms. Peters, seconded by Mr. Topp that the matter be referred back to the Committee to clarify the Report on the issue of the Agreed Statement of Facts.

Carried

Counsel retired.

Re: David Brian PAGE - Halton Hills

The Secretary placed the matter before Convocation.

Ms. Janet Brooks 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 31st January, 1995, together with an Affidavit of Service sworn 8th March, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 8th February, 1995 (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

Kenneth E. Howie, Q.C., Chair
Earl Levy, Q.C.
Hope Sealy

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

Janet Brooks
for the Society

DAVID BRIAN PAGE
of the Town
of Halton Hills
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 14, 1994
September 27, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 6, 1993 Complaint D281/93 was issued and on April 15, 1994 Complaint D57/94 was issued against David Brian Page alleging that he was guilty of professional misconduct.

The matter was heard in public on June 14, 1994 and September 27, 1994 before this Committee composed of Kenneth E. Howie Q.C., Chair, Earl Levy, Q.C. and Hope Sealy. The Solicitor was present at the hearing and was not represented. Janet Brooks appeared on behalf of the Law Society.

DECISION

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

Complaint D281/93

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending September 30, 1992, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation made pursuant to the Law Society Act;

Complaint D57/94

2. a) He failed to serve his clients Faith Ardron, Karen Fraser and David Fraser in a conscientious, diligent and efficient manner in that he failed to report to them with respect to the sale of property at 12 Mary Street, Guelph.
- b) He failed to serve his clients Karen Fraser and David Fraser in a conscientious, diligent and efficient manner in that he failed to report to them with respect to the purchase of property at 20 Shoemaker Crescent, Guelph.
- c) He failed to serve his client Faith Ardron in a conscientious, diligent and efficient manner in that he failed to account to her with respect to funds held back on the sale of property at 41 Melchior Drive, Scarborough.
- d) He failed to serve his client Faith Ardron in a conscientious, diligent and efficient manner in that he reported to her that he paid a fuel oil account from the proceeds of the sale of property at 2 Brian Avenue, Scarborough when such was not the case.
- e) He failed to provide a reply to the Society regarding a complaint by Faith Ardron despite letters dated September 2, 1993 and October 13, 1993 and telephone messages left on September 29, 1993 and October 6, 1993.
- f) He failed to comply with his undertaking to the Law Society dated April 15, 1986 by failing to respond forthwith to communications regarding a complaint by Faith Ardron.
- g) He failed to produce to the Law Society his books and records despite visits from the Law Society on November 17, 1993 and November 29, 1993 and telephone calls on December 8, 1993, December 9, 1993, December 13, 1993 and January 10, 1994.
- h) He failed to comply with his undertaking to the Law Society dated April 15, 1986 by failing to respond forthwith regarding production of his books and records.

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- i) He failed to maintain books and records pursuant to section 15 under Regulation 708 of the Law Society Act.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D57/94 and D281/93 and is prepared to proceed with a hearing of these matters on June 14 and 15, 1994.

II. ADMISSIONS

2. The Solicitor has carefully read Complaints D57/94 and D281/93 and this Agreed Statement of Facts and admits the particulars in Complaints D57/94 and D281/93. The Solicitor also admits that the particulars detailed in both Complaints, supported by the facts as hereinafter stated, constitute professional misconduct.

IV. FACTS

3. The Solicitor was called to the Bar in 1981 and practised as a sole practitioner until his suspension on May 9, 1994 as a result of non-payment of his Errors and Omissions levy.

COMPLAINT D57/94

Particular 2(a)

Failure to report on sale of 12 Mary Street, Guelph

4. The Solicitor acted for Faith Ardron and her daughter Karen Fraser and her son-in-law David Fraser with respect to the sale of their property at 12 Mary Street, Guelph to Constance Williston. The sale transaction closed on or about May 28, 1993 (Tabs 1 and 2, Document Book).

5. The Solicitor failed to report to Mrs. Ardron and Mr. and Mrs. Fraser with respect to the sale of this property notwithstanding the requests of Faith Ardron and the request of Karen Fraser (Tab 3, Document Book).

Particular 2(b)

Failure to report on purchase of 20 Shoemaker Crescent, Guelph

6. The Solicitor acted for Karen Fraser and David Fraser as purchasers of with respect to the purchase of 20 Shoemaker Crescent, Guelph which closed on or about May 28, 1993.

7. The Solicitor failed to report to Karen Fraser and David Fraser with respect to this purchase transaction.

Particular 2(c)

Failure to account for proceeds for sale of 41 Melchior Drive, Scarborough

8. The Solicitor acted for Faith Ardron as vendor on the sale of her property at 41 Melchior Drive, Scarborough to Siekris and Brown. The transaction closed on or about June 11, 1993. (Tab 4, Document Book)

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9. In his account of June 11, 1993 and his letter of June 16, 1993 to Faith Ardron, the Solicitor reported that he had withheld a total of \$892.96 from the proceeds of the sale of the property at 41 Melchior Drive. He reported that he withheld \$592.96 from the proceeds of the sale with respect to the account of the Scarborough Public Utilities Commission. (Tabs 5 and 6 Document Book) With respect to the account of the Scarborough Public Utilities Commission, the Solicitor advised Mrs. Ardron in his letter of June 16, 1993: "the way to clear this up is for you to provide me with some proof of payment so that I can release the funds." (Tab 6, Document Book)

10. In his account of June 11, 1993 and his letter of June 16, 1993 to Faith Ardron, the Solicitor further reported that he also withheld the sum of \$300 from the proceeds of the sale with respect to a warrantee for fumigating which was assigned to the purchaser and was to expire on July 19, 1993. (Tabs 5 and 6, Document Book)

11. On July 23, 1993, Faith Ardron delivered a letter of the same date to the Solicitor. Attached to her letter of July 23, 1993 was proof of payment of the final account of the Scarborough Public Utilities Commission with respect to the property at 41 Melchior Drive, Scarborough (Tab 8, Document Book).

12. The Solicitor failed to release funds held with respect to the utility account to Mrs. Ardron. The Solicitor has failed to account to Mrs. Ardron with respect to monies held back for both the utility account and the assignment of the fumigating warrantee.

Particular 2(d)

Failure to account for proceeds of sale of 2 Brian Avenue, Scarborough

13. The Solicitor acted for Faith Ardron as vendor on the sale of property at 2 Brian Avenue, Scarborough to Vishwesh Sharma and Davina Hamewatee Sharma (Tab 9, Document Book). The transaction closed on or about April 2, 1993.

14. By letter dated June 4, 1993, (Tab 12, Document Book) which referred to his account dated April 5, 1993 (Tab 11, Document Book) the Solicitor represented to Faith Ardron that he had paid the fuel oil account of Ultramar Canada Inc. (hereinafter "fuel oil account") in the amount of \$782.36 from funds held back on the closing of the sale transaction of 2 Brian Avenue.

15. The fuel oil account for 2 Brian Avenue was in the name of Mrs. Ardron's son, Mike Ardron. On a monthly basis, by accounts dated April 27, 1993 through to October 26, 1993, Ultramar Canada Inc. sent accounts to Mike Ardron or Faith Ardron demanding payment of the account together with financing charges. (Tabs 10 and 13, Document Book).

16. On or about June 4, 1993, Faith Ardron contacted the Solicitor by telephone. The Solicitor advised her that the fuel oil bill had been paid and that he would clear up the matter immediately.

17. Following June 4, 1993, Faith Ardron left telephone messages for the Solicitor on his answering machine to contact her but they were returned.

18. By letter dated September 4, 1993 received by the Law Society, Faith Ardron stated that she had been notified that the fuel oil account with Ultramar Canada Inc. for 2 Brian Avenue, Scarborough, would be placed in the hands of a collection agency. Mrs. Ardron paid \$100.00 to the fuel oil company. (Tab 14, Document Book)

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19. As a result of further demands for payment by Ultramar Canada Inc., Faith Ardron borrowed funds and paid a further \$752.86 to Ultramar Canada Inc. on or about November 5, 1993 (Tab 14, Document Book). She made this payment in order to avoid legal action to collect the outstanding account and finance charges.

Particular 2(e)
Failure to reply to the Law Society

and

Particular 2(f)
Failure to comply with his undertaking to the Law Society dated April 1, 1986 by failing to comply forthwith to communications regarding a complaint by Faith Ardron

20. By letter dated April 15, 1986, the Solicitor gave his undertaking to the Society to respond forthwith to all future communication received from the Society. (Tab 15, Document Book)

21. By letter to the Law Society dated August 11, 1993, Faith Ardron complained to the Law Society regarding the conduct of the Solicitor (Tab 3, Document Book) with respect to the matters which are the subject of particulars 2(a) through (d) of Complaint D57/94.

22. By letter to the Solicitor dated September 2, 1993, Christine Watt of the Complaints Department of the Law Society requested the Solicitor's comments on Faith Ardron's letter of August 11, 1993. The Solicitor was also asked to contact Ms. Watt by telephone if he could not reply in writing within a period of two weeks. (Tab 16, Document Book)

23. By registered letter dated October 13, 1993, Christine Watt of the Complaints Department of the Law Society requested the Solicitor's response to the letter of complaint of Faith Ardron. Ms. Watt referred the Solicitor to Rule 13, Commentary 3, of the Rules of Professional Conduct which states that "the lawyer has a duty to reply promptly to any communication from the Society". Ms. Watt requested the Solicitor's response within seven days, failing which she would refer the matter to the Chair of the Discipline Committee for further instructions. (Tab 17, Document Book)

24. The Solicitor failed to respond to the Society's letter of September 2, 1993 and the Society's registered letter of October 13, 1993.

Particular 2(g)
Failure to produce books and records

and

Particular 2(h)
Failure to comply with his undertaking to the Law Society dated April 15, 1986

and

Particular 2(i)
Failure to maintain books and records

25. On November 17, 1993, a Law Society examiner attended at the Solicitor's office, unannounced, to examine his books and records. The Solicitor advised that he required some time to locate his books. An appointment for the examination of his books and records was scheduled for November 29, 1993. (Tab 18, Document Book)

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26. The examiner attended at the Solicitor's office on November 29, 1993 to commence the examination of his books and records. The Solicitor still could not locate his books. The Solicitor provided the examiner with his letter to her dated November 28, 1993, as well as, his latest trust bank statement from September 30, 1993 to October 29, 1993. The Solicitor's letter of November 28, 1993 stated that he last reviewed his financial records in late September or early October, 1993. Since that time, he has been unable to locate them. In or about the same time, the Solicitor stated that he moved approximately 100 boxes from off-site storage to his home. He had gone through many of those boxes and have thrown out and organized material. He does not believe that he disposed of any financial information. The Solicitor provided the examiner with a list of the material he was missing, being:

trust bank statements and bank reconciliations from October, 1990 to present;

general bank account statements and reconciliations from April, 1991 to present;

client billing files from January, 1992 to present;

trial balances since he started his practice in 1981;

clients' ledger cards for unclosed files;

all journals for the last two or three years;

general ledger.

It was agreed by the Solicitor that he would continue to look for those documents and contact the examiner, by telephone, on December 8, 1993 regarding the status of his search. (Tab 18, 19, 20, Document Book)

27. The examiner left a telephone message for the Solicitor on his answering machine on December 8, 1993, requesting he return the call. The Solicitor returned the call that same day. He was unable to speak to the examiner and left her a telephone message stating that he had found some of the missing records. The Solicitor advised that the examiner could contact him at her convenience or he would contact her in a couple of days.

28. The examiner left a telephone message for the Solicitor on his answering machine on December 9, 1993, requesting he return the call. The Solicitor returned the call that same day. He was unable to speak to the examiner and left her a telephone message stating that he would try to call her again later that afternoon. The examiner returned the Solicitor's call later that same afternoon. She left a message on his answering machine requesting he return the call. The call was not returned.

29. The examiner left a telephone message for the Solicitor on his answering machine on December 13, 1993, requesting he return the call. The call was not returned.

30. The examiner made an unannounced visit to the Solicitor's office on December 15, 1993. No one was home. The examiner left no note for the Solicitor of her visit.

31. The examiner left a telephone message for the Solicitor on his answering machine on January 10, 1994 requesting he return the call. The call was not returned.

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32. The examiner met with the Solicitor at the Law Society on March 2, 1994. He executed documentation to freeze his trust account. He advised that he and a friend were attempting to reconstruct his records. (Tabs 21 and 22, Document Book)

33. The Solicitor left a telephone message for the examiner on March 30, 1994 advising that this was his second call that day and requesting that she return the call.

34. As of today's date, the Solicitor has re-constructed trust comparisons for the eleven-month period from October 1, 1991 to August 3, 1992. Once the Solicitor has completed the trust comparisons for the fiscal year ended September 30, 1992, he will be in a position to complete trust comparisons for the fiscal year ended September 30, 1993. The filing for the September 30, 1993 fiscal year end is outstanding at this time.

COMPLAINT D281/93

Particular 2(a)

Failure to file Forms 2 and 3

35. The Solicitor's fiscal year end is September 30th. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending September 30, 1992, as required by S.16(2) of Regulation 708 under The Law Society Act.

36. A Notice of Default in Annual Filing, dated April 5, 1993 was forwarded to the Solicitor by the Law Society. The Solicitor received this Notice. A copy of this Notice is at Tab 23, Document Book. The Solicitor did not respond to this correspondence.

37. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual filing dated May 8, 1993. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates on defaults in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to Section 36 of The Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him of the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Solicitor received this Notice. A copy of the Society's Second Notice is at Tab 24, Document Book. The Solicitor did not respond to this correspondence.

38. The late filing fee began to accrue on May 24, 1993.

39. By registered mail dated October 2, 1993, the Law Society forwarded to the Solicitor a Third Notice of Default in Annual Filing. The Solicitor was advised that his name would go before Convocation on October 29, 1993 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on October 28, 1993. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. The Solicitor received this Notice. A copy of the Society's Third Notice is at Tab 25, Document Book. The Solicitor did not respond to this correspondence.

40. The Solicitor paid the late filing fee on October 29, 1993. A copy of the Solicitor's letter enclosing the late filing fee is at Tab 26, Document Book.

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41. 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.

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

V. PRIOR DISCIPLINE

43. The Solicitor was found guilty of professional misconduct and reprimanded in committee on February 3, 1987 with respect to his failure to reply to the Society, failure to comply with his undertaking to the Law Society and having left a client under a misapprehension that he was taking steps on her behalf when in fact he was not doing so.

44. The Solicitor was found guilty of professional misconduct on March 10, 1993 with respect to his failure to reply to the Law Society and failure to comply with his undertaking to the Law Society. The Solicitor was reprimanded in Committee and ordered to pay costs of \$400.00

DATED at Toronto, this 14 day of June, 1994."

RECOMMENDATION AS TO PENALTY

The Committee recommends to Convocation that the Solicitor be suspended from practice for a period of one year, to be followed by a continuing indefinite suspension until the Solicitor has fulfilled the undertakings made to the Society in June 1994 as follows:

- a. that he immediately cease the practice of law;
- b. that he release custody and control over all clients files presently under his control to the Society upon request by the Society;
- c. that he co-operate with the Staff Trustee in the winding up of his practice and the disbursement of any monies now held in trust in relation to his practice;
- d. that he immediately release to Faith Ardron, Karen Fraser and David Fraser the contents of their file with respect to the sale of 12 Mary Street, Guelph;
- e. that he immediately release to Karen Fraser and David Fraser the contents of their file with respect to the purchase of 20 Shoemaker Crescent, Guelph;
- f. that on or before September 1, 1994, he account to Faith Ardron for the proceeds of the sale of 41 Melchior Drive, Scarborough, and in particular, that he account to Faith Ardron with respect to the sum of \$892.96 held back from the proceeds of that sale;
- g. that on or before September 1, 1994, he account to Faith Ardron for the proceeds of sale of 2 Brian Avenue, Scarborough, and in particular, that he account to Faith Ardron with respect to the sum of \$782.36 held back from the proceeds of that sale;
- h. that he file with the Society his Forms 2 and 3 for the fiscal years ended September 30, 1992 and September 30, 1993, on or before September 1, 1994 and that he continue to file Forms 2 and 3 until those monies now held in trust are properly disbursed to the satisfaction of the Society;
- i. that he produce the books and records of his practice to the Society for examination on or before September 1, 1994 for the period from October 1, 1991 to the present, as follows:

- (1) with respect to trust journals, fee billings, and client ledgers entries regarding trust monies, that he produce complete and up-to-date books and records; and;
- (2) with respect to his general account and client ledgers regarding general receipts and disbursements, that he produce those books and records now in existence;
- (3) that at the Law Society's request, he provide his irrevocable direction and authorization to any Bank at which he has maintained or now maintains a trust or general account to provide the Law Society with any and all records for any general and trust accounts of his practice.

REASONS FOR RECOMMENDATION

The Committee is satisfied that for whatever reason, the Solicitor has been unable to fulfill the obligations which he owes to his clients and to his governing body. Unfortunately, the Solicitor was not represented by counsel and it was clear to the Committee that at the very least, the Solicitor is suffering from depression. It was determined in the evidence that the Solicitor had been under the care of a psychiatrist and a family doctor, but unfortunately no medical evidence was led.

The Committee considered as a possible penalty, permission to resign. The Committee was concerned, however, of the need to protect the interests of the clients of the Solicitor for the small balances of trust monies, at this time unallocated, as well as the issues that may arise out of the review of his files, and in the final analysis, the Committee was anxious that the Society should continue to have some control over the affairs of the Solicitor as they relate to his clients.

The Committee has some sympathy for the problems of the Solicitor. While there is a suggestion in the evidence of the possibility of some minor failures to account for some amounts of money, the Committee is not satisfied that the Solicitor has been dishonest.

Counsel for the Society submitted that the penalty to be imposed should be a three month suspension plus the indefinite suspension. The Committee is of the view that the conduct of the Solicitor requires a more significant penalty, and decided that a one year suspension is a fair penalty for the conduct of the Solicitor. The indefinite suspension is really a function of trying to ensure that the Solicitor fulfils his undertakings, both from an administrative point of view to the Society and, even more importantly, fulfils his outstanding obligations to his clients.

David Brian Page was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 10th day of April, 1981.

ALL OF WHICH is respectfully submitted

DATED this 31st day of January, 1995

Kenneth E. Howie, Q.C.
Chair

23rd March, 1995

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

There were no submissions and the Report was adopted.

It was moved by Mr. Topp, seconded by Ms. Lax that the Recommendation as to Penalty be adopted, that is, that the solicitor be suspended for a period of 1 year and indefinitely until he has fulfilled the undertakings made to the Society in June 1994.

Ms. Brooks advised that a number of the undertakings were still outstanding and she supported the recommended penalty.

Counsel, the public and the reporter withdrew.

The motion for the recommended penalty was adopted.

Counsel, the public and the reporter were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 1 year and thereafter until all of the undertakings given in June 1994 were completed.

CONVOCATION ROSE AT 6:20 P.M.

Confirmed in Convocation this day of , 1995

Treasurer