

MINUTES OF SPECIAL DISCIPLINE CONVOCATION

Wednesday, 26th October, 1994  
9:30 a.m.

PRESENT:

The Treasurer, (Paul S. A. Lamek), Arnup, Bastedo, Blue, Brennan, Campbell, Carter, Copeland, Cullity, Curtis, Epstein, Lax, Manes, Peters, Scott, Sealy, Thom and Topp.

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The reporter was sworn.

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IN PUBLIC

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ADMISSIONS AND MEMBERSHIP COMMITTEE

Application for Admission

Re: William Harvey JONES - Toronto

The Deputy Secretary placed the matter before Convocation.

Mr. Cullity withdrew for this matter.

Mr. Michael Brown appeared for the Society and Mr. Brian Greenspan appeared for the applicant who was present.

Mr. Greenspan made submissions requesting that the matter be remitted to a new committee for further evidence.

Mr. Brown was not opposing the request and left it to Convocation as to where further evidence would be heard.

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

It was moved by Ms. Peters, seconded by Ms. Curtis that further evidence be heard in Convocation.

Not Put

It was moved by Mr. Epstein, seconded by Mr. Bastedo that the applicant be advised to withdraw his application and proceed with a fresh application before a newly constituted committee.

Carried

Counsel, the applicant, the reporter and the public were recalled and advised of Convocation's decision that the applicant withdraw the pending application and proceed with a fresh application before a new committee.

Counsel and applicant retired.

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26th October, 1994

DISCIPLINE COMMITTEE

Re: Jeffrey Mark LEVY - Toronto

The Deputy Secretary placed the matter before Convocation.

Mr. Scott did not participate.

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

Counsel for the solicitor requested an adjournment to the discipline Convocation in January 1995 to allow more time to prepare. Counsel for the Society did not oppose the request.

Convocation granted the adjournment to the discipline Convocation in January 1995.

Counsel retired.

Re: Raymond Vincent DONOHUE - Sarnia

The Deputy Secretary placed the matter before Convocation.

Messrs. Scott, Campbell and Thom withdrew for this matter.

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

Mr. Foster informed Convocation that the solicitor was still ill and an adjournment was requested on consent to the January 1995 discipline Convocation. Convocation was reminded that the solicitor was not practising law.

An adjournment was granted to the discipline Convocation in January 1995.

Counsel retired.

Re: Roger Patrick Peter COONEY -Toronto

The Deputy Secretary placed the matter before Convocation.

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

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

Convocation had before it the Report of the Discipline Committee dated 25th March, 1994, together with an Affidavit of Service sworn 17th May, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 25th April, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th October, 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:

26th October, 1994

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Laura L. Legge, Q.C., Chair  
Carole Curtis  
Marie Moliner

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

Christina M. Budweth  
for the Society

ROGER PATRICK PETER COONEY  
of the City  
of Toronto  
a barrister and solicitor

Charles Mark, Q.C.  
for the solicitor

Heard: December 17, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 6, 1993, Complaint D96/93 was issued, on June 22, 1993, Complaint D175/93 was issued and on September 21, 1993, Complaint D247/93 was issued against Roger Patrick Peter Cooney, alleging that he was guilty of professional misconduct.

The matters were heard in public on December 17, 1993 before this Committee composed of Laura L. Legge, Q.C., Chair, Carole Curtis and Marie Moliner. The Solicitor was in attendance at the hearing and was represented by Charles Mark, Q.C. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D96/93

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending January 31, 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 Regulation 573 made pursuant to the Law Society Act;

Complaint D175/94

2. a) He failed to provide a reply to the Law Society regarding the ongoing investigation of a complaint by Randall Ross despite letters dated March 25, 1993 and April 29, 1993 and telephone requests on April 14, 1993, April 22, 1993 and May 31, 1993.

26th October, 1994

- b) he failed to comply with his undertaking to the Law Society dated February 19, 1993 by failing to respond to written communications from the Law Society on March 25, 1993 and April 29, 1993 within fifteen days and by failing to reply to telephone communications on April 14, 1993, April 22, 1993 and May 31, 1993 within three days regarding a complaint by Randall Ross.

Complaint D247/93

2. a) During the period July 12, 1989 to December 15, 1989, he misappropriated \$249,843.64 from the estate of Elizabeth McPike Geddes.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D96/93 and D175/93 and is prepared to proceed with a hearing of these matters on July 27 and 28, 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 Complaints D96/93 and D175/93 and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1964. He practices as a sole practitioner.

Complaint D96/93  
Particular 2(a)

5. The Solicitor's fiscal year end is January 31, 1992. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending January 31, as required by S.16(2) of Regulation 573 under The Law Society Act.

6. A Notice of Default in Annual Filing, dated August 8, 1992, was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

26th October, 1994

7. By registered letter 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 Society's September 11, 1992 letter is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

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

9. By registered letter dated January 19, 1993, the Law Society advised the Solicitor that his name would go before Convocation on February 26, 1993 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on February 25, 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. A copy of the Society's January 19, 1993 letter is attached as Exhibit "C" to this Agreed Statement of Facts.

10. By letter dated February 12, 1993, the Law Society reminded the Solicitor that his name would go before Convocation should his Forms 2 and 3 and late filing fees not be received by February 26, 1993. A copy of the Society's February 12, 1993 letter is attached as Exhibit "D" to this Agreed Statement of Facts.

11. By letter dated February 22, 1993, the Solicitor advised the Law Society that he was presently attempting to prepare and file his Forms 2 and 3 with respect to his year ends July 31, 1992, and July 31, 1993 and that his trust records were up to date to and including January 31, 1993. The Solicitor advised that he anticipated having his Forms 2 and 3 filed shortly. A copy of the Solicitor's February 22, 1993 letter is attached as Exhibit "E" to this Agreed Statement of Facts. On the basis of the Solicitor's request the matter of the Solicitor's suspensions was adjourned to the March 1993 Convocation.

12. A Law Society staff member spoke with the Solicitor on February 23, 1993. The Solicitor advised that his accountant hoped to have his Forms 2 and 3 prepared for February 26, 1993. The Society staff member advised the Solicitor that his late filing fee may be waived or reduced.

13. By letter dated February 24, 1993, to Mr. David Crack, Director of Finance, the Solicitor reiterated the comments contained in his letter of February 22, 1993. A copy of the solicitor's February 24, 1993 letter is attached as Exhibit "F".

14. By letter dated March 15, 1993, the Law Society advised the Solicitor that his annual filing and late filing levy had not been received. The Solicitor was reminded that his name would go before Convocation on March 26, 1993 should payment not be received by March 25, 1993. A copy of the Society's March 15, 1993 letter is attached as Exhibit "G" to this Agreed Statement of Facts.

15. As a Form 3 is a report of a public accountant respecting the compliance of the Solicitor's books and records with the regulations, the Society has no way of verifying that the Solicitor is maintaining books and records save for arranging for an audit examiner to attend at the Solicitor's practice thereby substantially increasing the costs of the audit branch.

16. The Solicitor has filed the required forms.

Complaint D175/93  
Particulars 2(a) and (b)

17. By letter dated July 9, 1992, Mr. Randall Ross, a client of the Solicitor filed a complaint with the Law Society. Mr. Ross alleged that the Solicitor did not provide him with a report or an accounting for the proceeds from the sale of his home. Mr. Ross also claimed that he was unaware of the status of his divorce proceedings. These allegations are denied by the Solicitor. Mr. Ross alleged that he tried to contact the Solicitor on numerous occasions, to no avail. A copy of Mr. Ross' letter dated July 9, 1992 is attached as Exhibit "H" to this Agreed Statement of Facts.

18. By letter dated November 17, 1992, the Solicitor advised the Law Society that Mr. Ross' house sale was one of the issues involved in the Divorce proceedings and that the distribution of the proceeds has not yet been agreed upon and was still before the courts. The Solicitor further enclosed a copy of his letter to Mr. Ross of the same date. Copies of the Solicitor's letters dated November 17, 1992 are attached as Exhibit "I" to this Agreed Statement of Facts.

19. By letter dated February 5, 1993, the Law Society wrote to the Solicitor to confirm a telephone conversation and to request an update on the status of this matter as soon as possible. A copy of the Society's letter of February 5, 1993 is attached as Exhibit "J" to this Agreed Statement of Facts.

20. On February 19, 1993, the Solicitor undertook to reply to written communications from the Law Society within a period of 15 days from the date of same and within 3 days of the receipt of telephone communications. A copy of the Solicitor's undertaking of February 19, 1993 to the Law Society is attached as Exhibit "K" to this Agreed Statement of Facts.

21. The Solicitor forwarded a letter to the Law Society which was received on March 23, 1993, wherein he advised that the only monies which he held in trust was a hold back for the home renovations which were stipulated in the Agreement of Purchase and Sale. The Solicitor wrote that he was contemplating bringing an application for directions from the Court as he was unable to resolve the issue to date. A copy of the Solicitor's letter received on March 23, 1993 is attached as Exhibit "L" to this Agreed Statement of Facts.

22. By letter dated March 25, 1993, the Law Society wrote to the Solicitor to request a more detailed response regarding the Solicitor's prior attempts to resolve this matter as well as an approximate time frame for when the Solicitor expected to bring forward the Application. A copy of the Law Society's March 25, 1993 letter is attached as Exhibit "M" to this Agreed Statement of Facts. No reply was received.

23. A Law Society staff employee left a telephone message for the Solicitor requesting he return the call. The call was not returned.

24. A Law Society staff employee left a further telephone message for the Solicitor on his answering machine requesting his response by April 27, 1993 or a registered letter would be sent. The call was not returned nor was a response received.

26th October, 1994

25. By registered mail dated April 29, 1993, the Law Society forwarded to the Solicitor a copy of its March 25, 1993 letter. The Solicitor was reminded of his obligation to reply. The Solicitor was advised that should a reply not be received within seven days, the matter would be referred to the Discipline Committee. A copy of the Law Society's April 29, 1993 letter is attached as Exhibit "N" to this Agreed Statement of Facts.

26. A Law Society staff employee spoke with the Solicitor by telephone on May 31, 1993. The Solicitor advised that he was preparing his response to the Society's March 25, 1993 letter. The Law Society requested the Solicitor respond by June 4, 1993. No reply was received.

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

V. DISCIPLINE HISTORY

28. On July 2, 1992, a complaint was sworn for the Solicitor's failure to reply to the Law Society's audit department regarding discrepancies in annual filings for the fiscal year ending January 31, 1991. The Solicitor was reprimanded in Committee and gave an undertaking to reply promptly to communications from the Society.

DATED at Toronto this 15th day of December , 1993."

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D247/93 and is prepared to proceed with a hearing of this matter on December 17, 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 D247/93 and this agreed statement of facts with his counsel, Charles C. Mark, Q.C., and admits the particular contained in the complaint. The Solicitor also admits that the particular alleged in the complaint supported by the facts as hereinafter stated constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on April 10, 1964. He practises as a sole practitioner in Toronto.

5. An audit of the Solicitor's books and records was authorized because the Solicitor's Form 2/3 for the fiscal year ended January 31, 1991 indicated that overdrawn client trust ledgers were not always corrected immediately.

6. The Solicitor's client, Elizabeth McPike Geddes, died on March 3, 1988. She left the entirety of her estate to her sister, Agnes Geddes Gibson, also known as Nancy Gibson. Mrs. Gibson is 88 years old. The Solicitor submitted the will to the Surrogate Court with an application for letters of administration on December 22, 1988.

7. By letter dated October 26, 1988, the Solicitor reported to Mrs. Gibson providing an explanation for the steps he had thus far taken in the administration of the estate. A copy of the letter is attached as Exhibit 1 to this agreed statement of facts.

8. The Solicitor reported to Mrs. Gibson again by letter dated March 9, 1989, a copy of which is attached as Exhibit 2 to this agreed statement of facts.

9. By letter dated March 23, 1989, Mrs. Gibson replied to the Solicitor's correspondence and advised that she wished the interest from the estate to be paid to her on a yearly basis. A copy of Mrs. Gibson's letter of instruction to the Solicitor is attached as Exhibit 3 to this agreed statement of facts. This letter was supplemented by a letter from Mrs. Gibson's daughter acceding to the Solicitor's suggestion for investment of the estate funds. A copy of Agnes Kerr's letter of March 18, 1989 is attached as Exhibit 4 to this agreed statement of facts.

10. On May 17, 1993, during the examiner's review of the Solicitor's books and records, the examiner discovered the following disbursements from the Geddes estate file:

DATE	PAYABLE TO	AMOUNT
July 12, 1989	Loan-Black	\$ 25,000.00
July 25, 1989	Loan-Black	25,000.00
July 28, 1989	Loan-Black	12,000.00
August 16, 1989	Loan-Black	2,500.00
August 16, 1989	Loan-Black	2,500.00
September 7, 1989	Loan-Black	70,000.00
September 15, 1989	Loan-Black	20,000.00
September 22, 1989	Loan-Black	21,343.64
October 6, 1989	Loan-Black	20,000.00
October 11, 1989	Loan-Black	15,000.00
November 1, 1989	Loan-Black	10,000.00
November 7, 1989	Loan-Black	5,000.00
November 20, 1989	Loan-Black	5,000.00
November 24, 1989	Loan-Black	14,500.00
December 15, 1989	Loan-Black	2,000.00
	TOTAL	\$249,843.64

26th October, 1994

11. The examiner also reviewed the client trust ledger and a "discharge statement" referenced as "Geddes-Black Loan" which was found in the file. When questioned about the "loan", the Solicitor advised that he had lent estate funds to a client by the name of Keith Black in order that Mr. Black could make extensive renovations on his home. As there was no form of security for the loan, the Solicitor agreed that the examiner could confirm the loan arrangements with Mr. Black. The Solicitor provided Mr. Black's home address and telephone number. The examiner tried without success to contact Mr. Black.

12. On May 26, 1993, the Solicitor, through his counsel, contacted the Law Society to arrange a meeting respecting the details of the Black loan.

13. On June 3, 1993, the Solicitor and his wife, accompanied by counsel, attended at the Law Society at which time the Solicitor admitted that he had misappropriated \$249,843.64 from the Elizabeth McPike Geddes estate by issuing cheques to a contractor, Keith Black, for his, the Solicitor's, personal home renovations.

14. Co-signing controls were instituted against the Solicitor's account on June 7, 1993 and they remain in place.

15. To date, the Solicitor has failed to repay any of these sums outstanding to the estate.

V. PRIOR DISCIPLINE

16. On October 27, 1992, the Solicitor was found guilty of professional misconduct for failing to reply to the Law Society's audit department. The Solicitor was reprimanded in committee and gave an undertaking to reply promptly to both written and telephone communications from the Law Society.

DATED at Toronto this 15th day of December, 1993."

RECOMMENDATION AS TO PENALTY

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The Committee recommends that the said Roger Patrick Peter Cooney be disbarred.

REASONS FOR RECOMMENDATION

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The Solicitor was appointed administrator, with the will annexed, of the Estate of Elizabeth McPike Geddes pursuant to an application filed on December 22nd, 1988.

The sole beneficiary of this Estate was an eighty-eight year old sister of the deceased living in Scotland. She instructed the Solicitor to invest the money for her and to send her the income annually. The total amount sent to the beneficiary as of the date of the hearing was \$15,000.00.

Commencing on July 12th, 1989, the Solicitor began misappropriating funds from the Estate for his own use. Cheques were paid from the Estate to one David Black, who was renovating the residence of the Solicitor. During the next six months a total of \$249,843.64 was paid to David Black from the Estate of Elizabeth McPike Geddes.

26th October, 1994

The Solicitor has admitted that these monies were misappropriated from the Estate of Elizabeth McPike Geddes. He has mortgaged the family home to secure repayment of the monies owing and the property has been listed for sale. At the hearing an accepted offer was produced with a sale price of \$649,500.00 and a closing date of May 20, 1994. The net proceeds from the sale will be sufficient to repay the full amount owing to the estate, plus interest.

Evidence was given of the Solicitor's ill health. His wife gave evidence and attempted to assume responsibility for the misappropriation. She stated that she had threatened to leave her husband unless the renovations on their residence were done. The wife testified that she was never apprised of the amount of her husband's income and the Solicitor testified that only once during his practice had his gross income reached \$100,000.00. At the time of the misappropriation the Solicitor could not qualify for a mortgage from a lending institution to carry out the renovations.

Counsel for the Solicitor asked that the Solicitor be allowed to resign as this would better enable him to find other employment.

However, the Committee was of the view that this was not a sufficient reason to allow the Solicitor to resign. The misappropriation had occurred almost four years before the hearing, during which time the Solicitor could have sold his house to make restitution. The Solicitor attempted to mislead the Law Society when initial enquiries were made concerning the misappropriation.

The Committee found insufficient unusual circumstances to recommend that the Solicitor be permitted to resign.

Roger Patrick Peter Cooney was called to the bar and admitted as a Solicitor of the Supreme Court of Ontario on the 10th day of April, 1964.

ALL OF WHICH is respectfully submitted

DATED this 25th day of March, 1994

Laura L. Legge, Q.C.  
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. Blue, seconded by Mr. Brennan that the Recommendation as to Penalty be adopted that is, that the solicitor be disbarred.

Both Counsel made submissions on the preliminary issue of further evidence which the Society wished to tender.

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

It was moved by Mr. Epstein, seconded by Mr. Campbell that Convocation receive the material on the passing of accounts and not receive the affidavit of Ms. McIntyre.

Carried

26th October, 1994

Counsel, the solicitor, the reporter and the public were recalled and advised that Convocation would receive the additional material on the passing of accounts.

Mr. Mark made submissions that the solicitor be permitted to resign.

Ms. Budweth supported the recommended penalty of disbarment.

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

The Blue/Brennan motion that the solicitor be disbarred was adopted.

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

Counsel and solicitor retired.

Re: Henry Desmond MORGAN - London

The Deputy Secretary placed the matter before Convocation.

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

An adjournment was requested on consent to the afternoon or Thursday morning, October 27th.

An adjournment was granted to Thursday, October 27th.

Counsel retired.

Re: James Dennis MCKEON - Hamilton

The Deputy Secretary placed the matter before Convocation.

Mr. Thom withdrew for this matter.

Mr. Stephen Foster appeared for the Society and Mr. J. Turnbull appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 23rd September, 1994, together with an Affidavit of Service sworn 14th October, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 26th September, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th October, 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

E. Susan Elliott, Chair  
Stuart Thom  
Shirley O'Connor

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

Stephen Foster  
for the Society

JAMES DENNIS MCKEON  
of the City  
of Hamilton  
a barrister and solicitor

James Turnbull  
for the solicitor

Heard: February 2 and  
February 11, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On May 13, 1993 Complaint D146/93 was issued against James Dennis McKeon. This Complaint was withdrawn on September 14, 1993 and replaced with Compliant D146a/93 issued on September 7, 1993.

The matter was heard in public on February 2, 1994 and February 11, 1994 before this Committee composed of E. Susan Elliott, Chair, Shirley O'Connor, and Stuart Thom, Q.C. The Solicitor was present and was represented by James Turnbull. Stephen Foster appeared on behalf of the Law Society.

DECISION

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

Compliant D146a/93

2. b) Between April, 1990 and November, 1990 he improperly acted in matters where he had a conflict of interest, in that he acted for Ralph Paone and Filomena Paone in respect of their investments in properties at 245 Bay Street, Hamilton, 283 Wilson Street East, Hamilton, 61 Hurst Place, Hamilton, 120-122 Charles Street, Hamilton and 117-119-121 Park Street North, Hamilton, in which he had a financial interest;

26th October, 1994

- c) Between April, 1990 and November, 1990, he borrowed money from his clients, Ralph Paone and Filomena Paone, in that he arranged for them to invest in properties at 245 Bay Street, Hamilton, 183 Wilson Street East, Hamilton, 61 Hurst Place, Hamilton, 120-122 Charles Street, Hamilton and 117-119-121 Park Street North, Hamilton, in which he had a financial interest.

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 146a/93 and is prepared to proceed with a hearing of this matter on February 1 and 2, 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. FACTS

Background Facts

3. The Solicitor was called to the Bar in 1959.

4. The Solicitor had a small to medium size law practice in Ancaster. In September, 1991, he left that practice and worked as an associate in the law firm of Ross & McBride in Hamilton. In November, 1991, the Solicitor entered into personal bankruptcy. He received his unconditional discharge from bankruptcy on September 22, 1992. He is now practising again as a sole practitioner in Ancaster.

Facts Relating to the Present Complaint

- Initial Investment in 245 Bay Street

5. The Solicitor had been the solicitor and personal friend of Ralph and Filomena Paone for over 20 years. He was the godfather of the Paones' first daughter, Michelle. Mr. and Mrs. Paone had other solicitors who had represented them in other real estate transactions of an investment nature.

6. In the spring of 1990 the Solicitor contacted Mr. Paone, a painting contractor, about doing some painting work on a building the Solicitor owned. The building was where Mr. McKeon's law office was located. Mr. Paone met with the Solicitor to discuss the painting job.

7. During their meeting, Mr. Paone asked the Solicitor about the possibility of investing about \$100,000 on his behalf, in an investment in which the solicitor also had an interest.

8. During the meeting the Solicitor told Mr. Paone about this investment opportunity at 283 Wilson Street East in Ancaster.

26th October, 1994

9. The Solicitor and Mr. Paone drove to the building at 283 Wilson Street, and viewed it from the outside. It was a relatively new and clean building. A copy of the Abstract of Title for 283 Wilson Street, Ancaster is attached at Tab 1 of the Book of Documents.

10. Mr. Paone agreed to invest \$100,000 with Mr. McKeon. The investment was to be a combined loan secured by mortgage and equity investment consisting of shares in the company that owned the property.

11. The Solicitor states that because the purchase of 283 Wilson Street East was not a certainty at that time, he told Mr. Paone that a similar investment opportunity existed at 245 Bay Street North, Hamilton, and the funds could be applied there as well. The Solicitor states that Mr. Paone agreed and said he would just leave it to the Solicitor. Mr. Paone denies that the Solicitor ever discussed 245 Bay Street North, Hamilton, with him.

12. On or about April 30, 1990, Mr. Paone and his wife attended at the Solicitor's office and gave him a bank draft for \$100,000.00 to be invested as aforesaid. A copy of the Royal Bank draft is attached at Tab 2 of the Book of Documents.

13. The Solicitor states that he then proceeded to invest the Paone's funds in the property at 245 Bay Street North, Hamilton, because the purchase of the property at 283 Wilson Street East had not been "firmed" up and no closing date had been scheduled.

14. The funds were deposited into the Solicitor's trust account on April 30, 1990. A copy of the Bank of Nova Scotia deposit slip is attached at Tab 3 of the Book of Documents and a copy of the Solicitor's bank statement for the period is attached at Tab 4 of the Book of Documents.

15. The reference on the deposit slip is to File M82-90 which has to do with the property at 245 Bay Street North, Hamilton and not 283 Wilson Street, Hamilton.

16. The property at 245 Bay Street North was owned by 737108 Ontario Inc. A copy of the Articles of Incorporation of 737108 Ontario Inc. are attached at Tab 5 of the Book of Documents.

17. The Solicitor deposited the Paones' \$100,000.00 to his trust ledger account for 737108 Ontario Inc. / 245 Bay Street, Hamilton. A copy of the Solicitor's trust ledger is attached at Tab 6 of the Book of Documents.

18. The Solicitor states that he was directed by 737108 Ontario Inc., through its President, Douglas Branigan, to pay the \$100,000.00 to Household Finance. A copy of the signed direction in this regard is attached at Tab 7 of the Book of Documents.

19. The Solicitor then issued a cheque in the amount of \$156,000.00 to Household Finance. The cheque contains a reference to File M-82-90 and the amount of \$100,000.00. A copy of the cheque is attached at Tab 8 of the Book of Documents.

20. The back of the cheque indicates that the funds are to be applied to three separate accounts as follows:

<u>Account No.</u>	<u>Amount</u>
7-284342	\$151,011.05
7-289846	2,586.95
7-288558	<u>2,402.00</u>
Total	<u>\$156,000.00</u>

21. The Solicitor operated lines of credit in each of these accounts. The Solicitor states that the \$100,000.00 was used to pay for renovations and expenses incurred at 245 Bay Street North, Hamilton.
22. Several days later, Mr. Paone attended at the Solicitor's office and signed some documents respecting the investment.
23. Several weeks later, Mr. Paone received, by mail, two reporting letters dated May 29, 1990 from the Solicitor. A copy of the Solicitor's reporting letters are attached at Tabs 9 and 10 of the Book of Documents.
24. The second letter (Tab 10) reported that Mr. Paone was 25% owner of 737108 Ontario Inc. along with Artesian plumbing & Heating Inc. and Halson Properties Inc. A copy of the share certificate issued to Mr. Paone is attached at Tab 11 of the Book of Documents.
25. Halson Properties Inc. is a company owned by the Solicitor and his wife.
26. The Solicitor did not insist that Mr. Paone obtain independent legal advice in respect of this transaction. The Solicitor was acting in a conflict of interest.
27. The first letter (Tab 9) set out that 737108 Ontario Inc. had provided Mr. Paone with a \$100,000.00 third mortgage on 245 Bay Street, Hamilton. The mortgage was for one year and provided for monthly payments of 13 and 1/2% interest of \$1,083.33. A copy of the third mortgage is attached at Tab 12 of the Book of Documents..
28. An appraisal of the 245 Bay Street North property as of February 26, 1990, indicated its value was \$750,000.00. A copy of that appraisal is attached at Tab 13(a) of the Book of Documents.
29. There was already a first mortgage of \$500,000.00 and a second mortgage of \$78,500.00 on the property.
30. Thus Mr. Paone had a 25% ownership interest in 245 Bay Street and a third mortgage for \$100,000.00.
31. The Abstract of Title for 245 Bay Street North is attached at Tab 13 of the Book of Documents.
32. When Mr. Paone saw that the reporting letter referred to 245 Bay Street, Hamilton, and not 283 Wilson Street, he asked the Solicitor to explain. The Solicitor told Mr. Paone that the investment was in 245 Bay Street because it was a good building and a good potential investment. The Solicitor also states that he explained to Mr. Paone that the closing of 283 Wilson Street had not been completed and the price and terms were still being negotiated.
33. Around this time, Mr. Paone happened to be doing some painting work for an individual who had introduced him to a neighbour, a Mr. Rainer Puder, who was a mortgage executive with a major bank. Mr. Paone asked Mr. Puder to take a look at 245 Bay Street.
34. After visiting the property together, Mr. Puder told Mr. Paone that it was in poor condition and located in a run down neighbourhood. He also expressed some concerns to Mr. Paone about the rent rolls and the fact that Mr. Paone's mortgage was in third position, behind a \$500,000 mortgage to Confederation Trust Company and a \$78,500 second mortgage to Canada Trust.

35. Mr. Paone called the Solicitor and told him he was not happy with the investment in 245 Bay Street North. The Solicitor agreed that he would transfer the \$100,000 out of 245 Bay Street North at a later date.

- Investment in 283 Wilson Street

36. In late May, 1990, the Solicitor told Mr. Paone that it was still possible to invest in 283 Wilson Street but that an additional investment would be required.

37. During a meeting, the Solicitor represented to Mr. Paone that the potential rental income from the Wilson property might be in excess of \$100,000.00. The Solicitor states that income projections were done by Hunter, the other shareholder in the company, and reviewed by McKeon with Mr. Paone. Among the various documents reviewed, according to the Solicitor, were the income projections at Tab 2 of the Supplementary Book of Documents.

38. In fact, the amount of the rental income at the time was approximately \$80,000.00.

39. Mr. Paone agreed to invest an additional \$56,500.00.

40. The Solicitor incorporated 283 Wilson Street East Ltd. There were three equal shareholders, each holding one hundred shares in the corporation: Retnuh Investments Limited was a company in which the sole shareholder was Peter Hunter; Halson Properties Inc. was a company owned by the Solicitor and his wife; Ralph Paone was the third shareholder. Peter Hunter was the President and the Solicitor was the Secretary of the company.

41. By transfer registered June 8, 1990, 283 Wilson St. East Ltd. purchased the property at 283 Wilson St. East from the vendors David and Susan Coates. The purchase price was \$780,000.00.

42. At the time of the purchase, the property was subject to the following mortgages:

First mortgage to Royal Trust	\$510,000.00
Second mortgage to Truwan Holdings	120,000.00
Third mortgage back to vendors	68,000.00
Total	\$698,000.00

43. On or about June 18, 1990, Mr. Paone gave the \$56,500 to the Solicitor. A copy of the Canada Trust bank draft is attached at Tab 14 of the Book of Documents. The Solicitor and his wife, through their company Halson Properties Inc., also invested \$56,500.00 in the property and received the same interest and security as Mr. and Mrs. Paone.

44. The Solicitor's trust bank account deposit slip regarding this transaction is dated June 18, 1990 is attached at Tab 15 of the Book of Documents.

45. The Solicitor's trust bank account statement showing the deposit is attached at Tab 16 of the Book of Documents.

46. The Solicitor's trust account ledger for 283 Wilson Street is attached at Tab 17 of the Book of Documents.

26th October, 1994

47. The Solicitor then distributed the funds as follows: \$42,000.00 to Halson Properties Inc. and \$14,000.00 to Peter Hunter whose company owned a one-third interest in the 283 Wilson Street property. The Solicitor states that the payment to Halson Properties was to repay the funds which had been temporarily advanced for the closing by Halson on behalf of the Paones. The net effect was that the Solicitor, (through Halson Properties Inc.) had invested the same amount of money and received the same security as Mr. and Mrs. Paone.

48. By a partially dated letter, the Solicitor reported to Mr. Paone respecting this transaction. A copy of the Solicitor's letter is attached at Tab 18 of the Book of Documents.

49. The Solicitor did not insist that Mr. Paone obtain independent legal advice in respect of this transaction. The Solicitor was therefore acting in a conflict of interest.

50. The letter sets out that Mr. Paone received 100 shares, representing a one-third ownership of 183 Wilson Street Ltd. A copy of the Shareholder's Agreement enclosed with the Solicitor's reporting letter is attached at Tab 19 of the Book of Documents.

51. A copy of the Articles of Incorporation of 283 Wilson Street East Limited is attached at Tab 20 of the Book of Documents.

52. In addition to the one-third ownership in the company, Mr. Paone received a one-half interest in a \$113,000 mortgage registered in the names of Ralph Paone and Renate McKeon, the wife of Mr. McKeon. This was a fourth mortgage to secure the \$56,500.00 investment of each of the named mortgagees in the property. The Solicitor provided the Paones with a report concerning this transaction which is found at Tab 1 of the Supplementary Book of Documents. A copy of the mortgage is attached at Tab 21 of the Book of Documents.

53. The result was that for their \$56,500.00 investment, the Paones and Mrs. McKeon each received one-third ownership in 283 Wilson and a fourth mortgage for \$56,500.00 each totalling \$113,000.00.

54. 283 Wilson Street had been independently appraised at \$1,000,000.00 in October, 1989. A copy of the opinion of value page of the appraisal is found at page 9, Tab 1 of the Book of Documents. A further appraisal or preliminary opinion of market value was obtained from the same appraisal office in February of 1991 showing a value of \$960,000.00 and \$1,000,000.00. A copy of that appraisal is found at Tab 13 of the Supplementary Book of Documents.

55. By late August, 1990 Mr. Paone had to provide additional funds of \$2,449.86 to cover cash flow problems in the company. A copy of the Solicitor's letter of August 29, 1990 requesting these funds is attached at Tab 22 of the Book of Documents and a copy of Mr. Paone's cheque in the amount of \$2,449.86 is attached at Tab 23 of the Book of Documents.

56. The Solicitor sought additional funds from Mr. Paone in the amount of \$6,484.72 but Mr. Paone did not provide these funds. A copy of the Solicitor's letter of October 23, 1990 requesting these funds is attached at Tab 24 of the Book of Documents.

57. The property was eventually sold in 1993 under power of sale by the first mortgagee, the Royal Trust, at a loss of \$250,000.00 and Mr. Paone's investment and the McKeon investment were completely lost.

- Investment in Hurst Street

58. The Solicitor had owned a one-half interest in a building project ("Hurst Street") since 1986 together with Greg Hart.

59. The project was a group of 35 rental units located in three adjacent buildings at 61 Hurst Place, 120-122 Charles Street, and 117-119-121 Park Street North, Hamilton, Ontario.

60. The owners had commissioned appraisals of the properties in the spring of 1990 and they independently showed values of \$2,430,000.00 and \$2,500,000.00 respectively as shown at Tab 6 and Tab 7 of the Supplementary Book of Documents.

61. In April, 1990 the Solicitor bought out his partner's one-half interest in the Hurst project based on a value of \$2,250,000.00. The Solicitor's reporting letter is dated April 27, 1990, is attached at Tab 3 of the Supplementary Book of Documents. The Hurst Street properties were transferred to 905175 Ontario Inc. on October 22, 1990.

62. The Solicitor and Greg Hart, (his former partner), had received an Offer to Purchase the properties for \$2,250,000.00. See Tab 4 of the Supplementary Book of Documents. The Solicitor did not want to sell and thus he bought out his partner's one half interest based on the price contained in the offer.

63. In October, 1990, Dr. John McKenna offered to purchase a one half interest in the buildings based on a \$2,300,000.00 value. A copy of the offer is attached at Tab 5 of the Supplementary Book of Documents. The transaction did not close because Dr. McKenna's circumstances changed and the Solicitor let him out of the transaction.

64. 905175 Ontario Inc. was owned by the Solicitor and his wife. A copy of the Articles of Incorporation of 905175 is attached at Tab 25 of the Book of Documents.

65. In November, 1990 the Solicitor transferred Mr. Paone's \$100,000 investment out of 245 Bay Street and into the Hurst Street project as part of a sale of a one-half interest in the project.

66. The Solicitor arranged to have 50% of the outstanding shares of 905175 Ontario Inc. transferred to Mr. Paone at a price of \$180,000.00 which represented a sale price on the buildings of \$2,320,000.00. \$50,000.00 was to be paid by Mr. Paone assuming one-half of another existing, registered \$100,000.00 mortgage and Mr. Paone was to pay the balance of \$130,000.00 subject to adjustments.

67. The Solicitor credited the Paones \$100,000.00 investment in the Bay Street investment against the balance due on closing this transaction. Following adjustments, the Paones were required to make an additional investment of \$23,949.67 to cover the purchase of the shares. A copy of the statement of adjustments is attached at Tab 8 of the Supplementary Book of Documents. They gave this to the Solicitor on or about November 6, 1990. Copies of the Paones passbooks for the two bank accounts evidencing the withdrawal of these funds are attached at Tab 26 of the Book of Documents and copies of the Solicitor's trust account bank statements showing the funds being received on November 6, 1990 are attached at Tabs 27 and 28 of the Book of Documents. A copy of the Solicitor's trust ledger account in this regard is attached at Tab 29 of the Book of Documents.

68. Mr. Paone signed an Assignment of Mortgage to 905175 Ontario Inc. respecting the transfer of his \$100,000.00 investment out of Bay Street. A copy of the Assignment is attached at Tab 30 of the Book of Documents.

69. The Solicitor reported to Mr. Paone in respect of this transaction by letter dated November 22, 1990. A copy of the Solicitor's reporting letter is attached at Tab 31 of the Book of Documents.

70. The Solicitor did not insist that Mr. Paone obtain independent legal advice in respect of this transaction. The Solicitor was acting in a conflict of interest.

71. The report and statement of adjustments disclose that at the time of the transaction there were already four mortgages on the property as follows:

Standard Trust Company	\$1,670,701.51
Ontario Mortgage Corporation	170,000.00
Wanda May Jeas	300,000.00
Fourth mortgage	<u>100,000.00</u>
Total	\$2,240,701.51

72. At the time of closing the mortgages were all in good standing. See Tab 9 of the Supplementary Book of Documents. The mortgages fell into arrears in the spring of 1991 when a number of tenants had vacated the building. A copy of the rent roll for October 1990 is found at the last page of Tab 10 of the Supplementary Book of Documents. A copy of the rent roll for November 1990 is found on page 2 at Tab 11 of the Supplementary Book of Documents. A copy of a summary of the rental deposits for 1991 is found at Tab 12 of the Supplementary Book of Documents.

73. A copy of the Abstract of Title for the Hurst Street project is attached at Tab 32 of the Book of Documents.

74. The Solicitor arranged for Mr. Paone to take over the management contract of these buildings. Mr. Paone says that the Solicitor encouraged him to take this on as an active role in the investment.

75. On November 27, 1991, the Solicitor declared bankruptcy. A copy of the Official Receiver's Report in the Solicitor's bankruptcy is attached at Tab 33 of the Book of Documents.

76. In his examination attached to the report, the Solicitor estimates the value of the Hurst Project at 1.2 to 1.3 million.

DATED at Toronto this 1st day of February, 1994."

RECOMMENDATION AS TO PENALTY

The Committee recommends that James Dennis McKeon be suspended for a period of eight months and pay costs in the amount of \$5,000.00.

REASONS FOR RECOMMENDATION

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FINDING OF MISCONDUCT

1. In addition to the Agreed Statement of Facts, the Committee heard from Mr. Paone and from the solicitor as well as from an appraiser, Mr. Cupido. A variety of documentary evidence was also before the Committee and, where relevant, will be referred to later.
2. The Committee finds particulars (b) and (c) have been made out but not particular (a).
3. The solicitor admitted he was in a conflict position with respect to Mr. Paone and that it "never crossed his mind" to recommend Mr. Paone receive independent legal advice prior to investing his life savings in properties in which the solicitor had a personal interest both directly and indirectly through the solicitor's wife and various corporations.
4. The solicitor and Mr. Paone were victims of the real estate recession. The solicitor submitted that both he and his client were speculating in real estate, the solicitor lost all his own money as well and their relationship in this case was one of "partners" rather than solicitor and client.
5. In further defence of his actions, the solicitor submitted appraisals as to the value of each property at the relevant time and indicated that the values of the properties were such as to minimize the conflict and excuse the lack of independent legal advice. It was submitted that Mr. Paone wanted to invest with the solicitor, he trusted the solicitor's judgment and the solicitor honestly believed the properties were good investments.
6. The Society submitted that the solicitor misused his position of influence and trust with his client to bring in fresh money to a "get rich quick" scheme and that in the course of involving his client the solicitor benefitted personally at the expense of Mr. Paone.
7. Mr. Paone's money was used in three different properties. The first investment was for \$100,000 which was invested in a Bay Street (Hamilton) property on the basis that Mr. Paone's interest in the property would be equal with that of other investors. However, the evidence indicates that the solicitor held a second mortgage on the property and Mr. Paone received a third mortgage. The solicitor now says he would have treated the two mortgages the same and that he never intended to personally benefit from the registration priorities. Nonetheless, the facts show the solicitor ended up in a preferential position, ahead of the client, contrary to the agreement between them. Other than the solicitor's word at the hearing, there is nothing in writing, no agreement of any kind, no postponement of mortgage or other document to show that the solicitor would have treated Mr. Paone's mortgage equal to his own. The only documentary evidence is to the contrary.
8. The solicitor personally benefitted from Mr. Paone's investment in Bay Street in that the solicitor operated a \$400,000 line of credit with Household Finance Corporation and, as a result of Mr. Paone's investment in Bay Street, \$100,000 was repaid on this line of credit. The solicitor indicated the repayment was to re-imburse him for renovations and expenses incurred in relation to the property. The Committee finds that the solicitor received a direct personal benefit from Mr. Paone's investment, which benefit was not disclosed to Mr. Paone and which benefit heightened the conflict of interest in which the solicitor found himself.

9. The Wilson Street property received \$56,000 of Mr. Paone's money. The solicitor believed the property would be rented and indicated to Mr. Paone that the lease would be consummated. The solicitor characterized his statements not as "false" but rather as negligent and the Committee accepts that evidence. However, if Mr. Paone had received the independent legal advice which the solicitor should have recommended, this negligent statement would in all likelihood have been caught or at least counteracted by an independent solicitor either pointing out that the lease was not yet signed or, causing further inquiries as to its status to be made. In the end, both Mr. Paone and the solicitor lost all their investment in the Wilson Street property.

10. The third property in which the solicitor involved Mr. Paone's money was known as Park Street or Hurst Street. Having already advanced considerable sums, Mr. Paone gave the solicitor another \$23,000 to invest. The solicitor had initially acquired this property with another partner but had purchased his partner's interest in April, 1990 as the solicitor believed the property would be worth more in future and his partner wanted to sell the buildings as a result of an offer received from a third party. A variety of evidence led at the hearing involved the value of the Park Street buildings at various points in time.

11. The Park Street buildings were financed to 97% of their value at the time Mr. Paone's money was invested in them. One of the mortgages, for \$170,000 to Ontario Mortgage Corporation, was forgivable and, if the building were owned long enough the principal amount would be written off by the mortgagee over time, without any payment. But, if the building were sold under a forced sale or to a buyer who did not qualify to continue the financing the principal amount outstanding would be due in full. The solicitor would like to look only at the fact that the mortgage was forgivable and so might never be paid. But for his conflict of interest, he might well have advised Mr. Paone though that there were circumstances under which the principal would be due and owing, as would any solicitor to whom Mr. Paone might have been referred for independent advice.

12. The solicitor's conflict of interest with Mr. Paone took many forms and his personal benefits from the use of Mr. Paone's money were also varied. The solicitor did the legal work on the properties in question and billed for his services; he was an investor in the properties through his company Halson Properties Inc. which owned part of 737108 Ontario Inc. which owned the Bay Street property; his personal line of credit was used to finance improvements to the properties and was repaid with Mr. Paone's money; his second mortgage was in priority to Mr. Paone's third mortgage, although they were to be equal; his own interest in "getting rich quick" caused him to lose sight of the dangers to which he was exposing his client and for that he must accept the consequences. He is guilty of professional misconduct as alleged in particulars (b) and (c) of complaint #D146a/93.

#### RECOMMENDED PENALTY

13. The Society submitted that a penalty of a suspension in the range of six months to one year was necessary to protect the public interest in maintaining a high standard of conduct by solicitors investing client's funds. Costs of \$5,000 were suggested as appropriate in that the Society calculated its costs for all three particulars as alleged to be \$7,000 but particular (a) was not proven.

14. The solicitor submitted that a penalty in the range of three to six months suspension together with costs of \$5,000 would be adequate to deliver the message as to the standard required to solicitors in general. Counsel for the solicitor also pointed out that the solicitor is a sole practitioner practising in a small community and the impact of a lengthy suspension upon him will be great, especially given his age (60) and the fact that he lost all his own money in these dealings.

15. Tendered in evidence at hearing were twenty-four letters attesting to the good character, honesty and integrity of the solicitor. Letters were received from the Mayor of Hamilton, a number of Justices and fellow lawyers as well as clients. The solicitor's curriculum vitae indicates he has been a Chair of the Planning Board, alderman and councillor, President of the Hamilton Lawyers Club and a part-time lecturer at McMaster University. Over the years the community in and around Hamilton has placed a lot of faith in the solicitor and his judgment.

16. It was therefore with some regret that the Committee learned of the solicitor's prior discipline record for actions similar in nature to the present i.e. acting in a position of conflict and not advising clients to obtain independent legal representation or advice. It appears to the Committee that the solicitor did not learn enough from his past conduct and discipline to avoid the present complaint but he should have done so.

17. In the Committee's opinion the character evidence tendered in favour of the solicitor neither helps nor hurts him. On the one hand, his reputation in the community brings with it the responsibility to meet a standard somewhat higher than he would have if not for such involvement while on the other hand he has accumulated civic "credits" upon which he should now be able to call in mitigating the penalty. Unfortunately, as a result of his prior discipline hearing, the solicitor has used up some of his credits and so, for all these reasons the character evidence has been viewed by the Committee as being of neutral effect.

18. The Committee has taken into account the pattern of conflict evidenced by the dealings with Mr. Paone. This was not a single occurrence; Mr. Paone's money was being moved around from one project to another, in a falling real estate market, and the conflict was repeating itself each time. The solicitor had opportunities to correct his lack of protection of his client but he did not do so. His actions have permanently and significantly affected Mr. Paone's life by inflicting serious financial harm upon him. That the solicitor benefitted personally, even though ultimately losing all his own money as well, serves to exacerbate the conduct.

19. Given the solicitor's practice, age and circumstances the Committee agrees that a suspension of twelve months would be too long. Given the cavalier disregard the solicitor exhibited for his client's potential losses (which losses were realized) and his prior discipline for similar events, the Committee views six months as inadequate. The penalty recommended by the Committee is therefore a suspension of eight months and payment of the Society's costs of \$5,000.00.

26th October, 1994

20. James Dennis McKeon was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 25th day of June, 1959.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of September, 1994

E. Susan Elliott  
Chair

It was moved by Mr. Campbell, seconded by Mr. Copeland that the Report be adopted.

There were no submissions and the Report was adopted.

It was moved by Mr. Copeland, seconded by Mr. Campbell that the Recommendation as to Penalty be adopted (that is, that the solicitor be suspended for a period of 8 months and pay costs in the amount of \$5,000.

Both counsel made submissions in support of the recommended penalty.

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

It was moved by Mr. Topp, seconded by Mr. Blue that the solicitor be disbarred.

Not Put

The Copeland/Campbell motion to adopt the Recommendation as to Penalty carried.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for 8 months and pay costs in the amount of \$5,000.

Counsel and solicitor retired.

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Convocation took a brief recess at 10:50 a.m. and resumed at 11:05 a.m.

Re: George FLAK - Toronto

The Deputy Secretary placed the matter before Convocation.

Ms. Peters, Ms. Curtis and Mr. Cullity withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 21st May, 1993, together with an Affidavit of Service sworn 11th June, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 26th May, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th October, 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:

26th October, 1994

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

J. James Wardlaw, Q.C., Chair  
Carole Curtis  
Netty Graham

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

Christina Budweth  
for the Society

GEORGE FLAK  
of the City  
of Toronto  
a barrister and solicitor

Walter Fox  
for the solicitor

Heard: December 10, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On March 18, 1992, Complaint D33/92 was issued against George Flak alleging that he was guilty of professional misconduct.

The matter was heard in public on December 10, 1992 and December 18, 1992 before this Committee composed of J. James Wardlaw, Q.C., Chair, Carole Curtis and Mrs. Netty Graham. Mr. Flak attended the hearings and was represented by Walter Fox. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D33/92

2. (1) he misappropriated \$61,198.95 of mortgage funds advanced to him by Sun Life Trust Company for the benefit of his client Sasha Milenov to be used to discharge a first mortgage to Ukrainian Credit Union on Sasha Milenov's property, 63 St. Clemens Avenue, Toronto;
- (2) he misappropriated \$57,978.12 received by him in trust from his clients Zeaud, Samad Kayum, Abdool Samad Kayum and Zohoratul Neisha Kayum, to discharge a mortgage in favour of the Bank of Nova Scotia on the Kayum's property at 81 Galbraith Avenue;
- (3) he misappropriated approximately \$69,360 or a portion thereof from his firm's mixed trust account during the period February, 1991 to July, 1991; and

26th October, 1994

- (4) he misappropriated clients' funds when he made an unauthorized loan in the amount of \$56,000 to his client, Jalal Merhi, without receiving authorization or permission from the clients whose money was used to make the loan.

Evidence

Part of the evidence received by the Committee contained the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D33/92 and is prepared to proceed with a hearing of this matter on October 13 and 14, 1992.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D33/92 as amended and the agreed statement of facts with his counsel, Walter Fox, and admits the particulars contained therein. The Solicitor admits that the particulars detailed in the complaint supported by the facts as hereinafter stated constitute professional misconduct. The Society and Solicitor agree that the client losses arising out of the misappropriations detailed in the complaint totalled \$119,177.07. The Society acknowledges that the majority of the misappropriations detailed in particulars 2 (1) and (2) were injected into the Solicitors mixed trust account to repay the misappropriations detailed in particulars 2 (3) as amended and (4).

IV. FACTS

Background

4. The Solicitor was called to the bar in 1972. His practice consisted of entertainment law and some real estate but primarily entertainment law. He is a former employee and legal counsel of a broadcasting network. In November, 1991 the Society conducted a spot audit of the Solicitor's practise during which certain abnormalities were drawn to his attention. Shortly afterward the Solicitor disclosed the misappropriations detailed below. On July 6, 1992 the Solicitor gave an undertaking to the Society which significantly restricted his right to practise, a copy of the Solicitor's undertaking is attached as Exhibit 1 to the Agreed Statement of Facts. From July 11, 1992 to date the Solicitor has not practised.

Particular 2(3) - Misappropriation of \$69,360 from the Firm's Mixed Trust Account

5. In 1987 one, Ivan Milenov, a client, provided the Solicitor with a loan in the amount of \$225,000 to enable the Solicitor to acquire a 50% interest in a property located at 5 Earl Street, Toronto.

26th October, 1994

6. In the fall of 1987 the Solicitor was hired by one of his clients and became in house counsel for S.C. Entertainment. The Solicitor introduced Ivan Milenov to the principals of S.C. Entertainment. Between 1987 and December of 1988, Ivan Milenov made a number of unsecured loans to S.C. Entertainment which totalled approximately \$450,000. As of December, 1988 the amount owing to Ivan Milenov from S.C. Entertainment was about \$200,000, plus interest. S.C. Entertainment is a style name which includes the corporations: (1) S.C. Studios Inc., (2) The S.C. Entertainment Centre Inc., (3) S.C. Entertainment Corporation and (4) S.C. Communications Limited.

7. In order to secure the outstanding \$200,000, the Solicitor placed a mortgage on a property owned by S.C. Studios Inc., a corporation related to S.C. Entertainment, in which the principals of S.C. Entertainment and the Solicitor were shareholders. The Solicitor left the employ of S.C. Entertainment in February, 1989. At that time, S.C. Studios denied the validity of the mortgage. Ivan Milenov sued S.C. Entertainment and S.C. Studios on the mortgage and they, in turn, added the Solicitor to the litigation as a third party. The litigation was resolved by a settlement in December of 1989 whereby S.C. Studios paid Ivan Milenov \$117,000 and the Solicitor assumed liability to Ivan Milenov in the amount of \$117,000.

8. In January 1990, the Solicitor entered into negotiations with the solicitor for Ivan Milenov as a result of which the Solicitor rearranged his personal real estate portfolio. He assigned a vendor take back mortgage in the amount of \$101,000 to Ivan Milenov. The property has since been sold and Ivan Milenov received the entire proceeds of \$101,000.

9. Further, the Solicitor secured Ivan Milenov's position by giving him a collateral mortgage in the amount of \$375,000 (its full appraised value) against the Solicitor's property at 265 Pacific Avenue, Toronto and properties in which he held a 50% ownership located at 157 Mavety Avenue and 5 Earl Street, Toronto. The terms of the mortgages required the Solicitor to pay interest at a rates of 15%-18%. Due to the collapse of the real estate market in 1990, the Pacific Avenue property is currently under power of sale and the Solicitor does not expect to realize any equity.

10. To reduce the interest on the \$370,000 owed to Ivan Milenov, the Solicitor issued three trust cheques totalling \$35,000 to Ivan Milenov as follows:

February 21, 1991 -\$10,000

March 5, 1991 - \$10,000

May 17, 1991 - \$15,000 (Their monies went as payments on account to Ivan Milenov)

These cheques represent fees earned by the Solicitor in a financing transaction arranged for a production company Rose & Ruby; however, the funds were withdrawn from trust prior to the receipt of funds for the fees. As a result, unrelated client trust funds were misappropriated to cover the cheques to Ivan Milenov.

11. The Solicitor also made frequent transfers from his mixed trust account to his firm's general account to pay Ivan Milenov interest on the outstanding funds owed. The transfers varied between \$2,000 and \$7,200 and totalled \$34,360. It is the Solicitor's position that all of the \$34,360 are legal fees owed to him but the complete state of disarray of the Solicitor's financial records has made it impossible for the department of audit and investigation to confirm this.

12. To date the Solicitor indebtedness to Ivan Milenov is approximately \$214,000.

26th October, 1994

Particular 2(4) - Misappropriation of \$56,000 by Loan to his client Jalal Merhi and Loan of \$10,000 to his client Jessica Daniel

13. The Solicitor loaned \$56,000 to Jalal Merhi by a series of cheques drawn his mixed trust account as follows:

February 26, 1991 - \$5,000  
March 11, 1991 - \$7,000  
March 14, 1991 - \$30,000  
March 18, 1991 - \$10,000  
March 20, 1991 - \$1,000

14. On March 19, 1991 the Solicitor issued a trust cheque to Jessica Daniel in the amount of \$5,000. On May 16th, 1991, he issued another trust cheque in the amount of \$4,000 to her. Finally, on July 2, 1991, the Solicitor issued a cheque from his general account in the amount of \$1,000 to Ms. Daniel completing the \$10,000 loan. Although the last cheque was issued from his general account, the Solicitor indicated that the funds were transferred from his mix trust account (this being part of the \$34,360 misappropriation).

15. The Solicitor did not receive permission or authorization from the firm's clients to make loans from his mixed trust account. The Solicitor acknowledges that this manner of dealing with client funds constitutes misappropriation of those funds.

Particular 2(1) - Misappropriation of \$61,198.95

16. Sasha Milenov is a professional architect and had been, at times material to this complaint, a friend and client of the Solicitor's for approximately 15 years.

17. In October, 1991, Sasha Milenov negotiated with Sun Life Trust Company to refinance the mortgage on his residence and business property, 63 St. Clements Avenue, Toronto. Sun Life was to provide a new mortgage in the amount of \$458,000. There were, prior to the refinancing, two mortgages outstanding and registered against the property, a first mortgage in the amount of \$325,000 in favour of Ukrainian Credit Union and a second mortgage in the amount of \$149,000 registered to Sun Life Trust Company. The prior encumbrances were to be replaced with the new Sun Life mortgage which was to be registered as a first charge on title to the property.

18. The Solicitor was retained by both Sun Life and Sasha Milenov to act as solicitor in the matter. The Solicitor received confirmation of his retainer and instructions respecting the transaction from Sun Life in a letter dated October 16, 1991.

19. On October 28, 1991, the Solicitor received \$307,742.22 of mortgage funds into his trust account at Central Guaranty Trust, the remainder of the funds were applied directly to paying out the prior Sun Life mortgage. The Solicitor was to use the funds advanced to him, in trust, to pay out the Ukrainian Credit first mortgage. The Solicitor paid only \$245,000 toward the Ukrainian Credit Union mortgage, leaving an outstanding balance of \$61,198.95. The remaining funds were used to cover the shortage in the Solicitor's trust account caused by the misappropriations detailed in particulars 2(3) as amended and 2(4).

20. Sasha Milenov learned of the fact that the Ukrainian Credit Union mortgage had not been paid out on his return from vacation when he was advised by the staff there that his November mortgage payment was in arrears. Sasha Milenov called the Solicitor who then deposited \$5,000 into Sasha Milenov's account to cover the mortgage payment. Sasha Milenov received a further \$5,000 to cover the mortgage payment for the month of December, 1991. From January, 1992 to July, 1992, the Solicitor made principal and interest payments on the mortgage. In July of 1992 the entire mortgage was paid off. A discharge was registered on September 3, 1992.

Particular 2(2) - Misappropriation of \$57,978.12

21. The Kayum family owned property at 81 Galbraith Avenue, Markham and 675 Atwood Crescent, Pickering.

22. When they purchased the Markham property and prior to the Solicitor's involvement in the matter, the Kayums had assumed an \$81,098.50 mortgage from the Bank of Nova Scotia in June, 1986. They also arranged a second mortgage in the amount of \$85,000 with Premier Trust. A portion of the Premier Trust funds were used to close the purchase of the Pickering property.

23. Central Guaranty held a first mortgage on the Pickering property. In early 1991, the mortgage on the Pickering property fell into arrears. The Kayum family approached Central Guaranty and advised Central Guaranty that they could sell the Pickering property but that there would be a shortfall of approximately \$12,000 on the Central Guaranty mortgage. After some negotiation between Central Guaranty and the Kayums, an agreement was reached whereby Central Guaranty would lift its mortgage on the Pickering property to allow the sale to proceed. The Markham property would then be refinanced so as to encumber it with a mortgage including the amount of the loss on the Pickering sale. The Solicitor was retained by both Central Guaranty and the Kayum family to complete the sale and mortgage transactions.

24. The Pickering property sold in May, 1991, at a significant loss to the Kayums. The Solicitor bears no responsibility or fault for that.

25. The Kayums entered into two new mortgages with Central Guaranty to refinance the Markham property. The first in the amount of \$150,000 and the second in the amount of \$14,000. The purpose of the financing was to pay out and discharge the former encumbrances (Premier Trust and Bank of Nova Scotia) and secure Central Guaranty in accordance with the agreement referred to in paragraph 23 above. The Solicitor received into his trust account both the sale proceeds from the Pickering property and the proceeds of the refinancing of the Markham mortgage. The Central Guaranty Trust mortgage on the Pickering property was paid out.

26. In accordance with the agreement referred to in paragraph 23, the Premier Trust mortgage was paid out by the Solicitor. The first mortgage, in the amount of \$57,978.12, owing to the Bank of Nova Scotia was not paid out. These funds were misappropriated by the Solicitor to cover the misappropriations detailed in particulars 2(3) as amended and 2(4).

27. In March, 1992, the Solicitor repaid the outstanding amount owing on the Bank of Nova Scotia mortgage.

V. PRIOR DISCIPLINE

28. The Solicitor was found guilty of professional misconduct and reprimanded in committee on February 14, 1984 for borrowing from clients, failing to maintain sufficient trust balances; and failure to file, copy of complaints are attached as Exhibit 2 to this agreed statement of facts.

DATED at Toronto this 9th day of October, 1992."

RECOMMENDATION AS TO PENALTY BY MRS. GRAHAM

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It is recommended that George Flak be granted permission to resign.

REASONS FOR RECOMMENDATION

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In order to maintain public confidence, it is appropriate to disbar members of the profession who have been found guilty of misappropriation of funds. The message needs to be very clear to the profession that the public expects nothing less than the termination of a member's privilege to practice under these circumstances. There is no issue in this case as to the termination of practice. The issue is whether he should be disbarred or given permission to resign.

Permission to resign should be reserved for those cases where there are mitigating circumstances that do not merit the most severe penalty of disbarment. I feel very strongly that this is such a case.

The letter of Dr. Marvin Wiesenthal, dated October 5, 1992 and attached as Schedule "A" briefly outlines Mr. Flak's family life and indicates that it is "significant".

He was born in Yugoslavia in 1943 of Ukrainian background and his father was a priest in the Orthodox Church. He has one sister, Vera. In 1936 the family fled to Germany and at the end of the war, were in East Germany. In 1945 the family fled again to West Germany and were in a displaced persons camp from 1945 to 1949. In 1949 the family moved to Alberta to a small town where his father was responsible for a parish. They were there until 1960. In 1962 the family moved to Toronto.

In 1981 his father became ill and for almost every weekend thereafter until his father's death in March of 1992, Mr. Flak attended to all of his family's needs. By 1987 the situation had become very stressful. His sister was at their father's side 24 hours a day, 7 days a week. Mr. Flak went home to do the shopping, look after the medication and prepared the meals for the family for the whole week. The relationship between his sister and his mother deteriorated to the point where he needed to purchase a duplex so that his mother could live on one side and his sister and father on the other.

Any time there was a crisis with the father, he would get a call to go home right away and when he was hospitalized, Mr. Flak would need to be home several days at a time. It got to a point where he was getting 3 to 4 calls per night from his sister and his mother. By 1991 he indicated that his family "was driving me crazy". By the time of the hearing, his father had passed away, the family home had been sold under Power of Sale, his mother was in an Old Age Home in Oakville and both he and his sister were in therapy. As a result of all of this Mr. Flak never developed a life of his own.

26th October, 1994

Attached here to and marked Schedule "B" is a letter from Mark Starowicz of the Canadian Broadcasting Corporation which is self evident and describes the kind of life Mr. Flak was trying to live.

If ever there was a case for the Law Society to be compassionate - this is the case. It is very difficult to imagine the kind of life this man must have lived. His evidence was very moving and it is difficult to appreciate that he almost gave up his whole personal life to his family - the very ill father, the disturbed sister and later his aging and frail mother. He personally and single-handedly looked after these persons for all of his adult life, and still does.

He deserves our compassion, if for no other reason than his incredible sacrifice to his family - he has given his life to them. He did not appear before the Society with a claim of any disease or mental illness. He was honest and forthright. His remorse was overwhelming. He admitted the facts and has made complete restitution.

The letter of Carl Zittler, and marked Schedule "C" hereto attached sheds more light on George Flak in his capacity as a lawyer in Entertainment Law, where he enjoyed some prominence.

Added to these pressures was the relationship between the Solicitor and Ivan Milenov.

Mr. Milenov appears to be a complex person. The Solicitor owes him about \$214,000.00 arising out of loans made by Mr. Milenov to the Solicitor. It was partially because of this debt that the Solicitor is in the trouble he has found himself. Mr. Milenov at times treats the Solicitor as a close friend, inviting him to his home and treating him like a younger brother. He also comes from Yugoslavia after World War II. Threats of physical violence, including the threat of "cement shoes" was made. Ivan Milenov's brother Sasha gave evidence. He could not say the threat was not real.

I do not conclude that Ivan Milenov was a violent man who would carry out his threats. It has no difficulty, however, in believing that the Solicitor believed he might do so. A couple of small misappropriations were made to partially satisfy the debt.

Another part of the money misappropriated was used to help finance the completion of "Grey Wolf", a Canadian film that has won international acclaim as perhaps the best Canadian film ever produced. It is probable the film would not have been completed if the Solicitor had not advanced the money. The producer/director, Jahal Merki, was on the Solicitor's doorstep every morning for weeks, and, to use the Solicitor's words "almost crying" for the money. The Solicitor had earlier agreed to try to get it for him but had failed. Needless to say, that money has been repaid.

In consideration of the difficult personal circumstances alone in this case, it is recommended that George Flak be given permission to resign.

ALL OF WHICH is respectfully submitted

DATED this 20th day of May, 1993

Netty Graham

RECOMMENDATION AS TO PENALTY BY MR. WARDLAW

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The Committee is not able to recommend a penalty to Convocation. The Chair recommends disbarment. Mrs. Graham recommends that the Solicitor be allowed to resign. Ms. Curtis has withdrawn from acting as a bencher until the complaints made against her have been dealt with.

REASONS FOR RECOMMENDING DISBARMENT

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There were three types of misappropriations.

1. Money used to support the lawyer's father, mother and sister.
2. Money paid because of fear of physical violence.
3. "Loans" to clients.

The total "net" misappropriations amounted to \$119,177.07 which have been repaid in full.

Background

The Solicitor was born in Yugoslavia in 1943. The country was suffering under the double evils of occupation and civil war. The Solicitor's father was an Orthodox priest attached to one of the Royalist guerilla bands. As is well known, the partisans defeated both the Germans and the Royalists. The father, with his wife, and two children fled west into Germany. They were located in displaced person camps until 1949 at which time they were permitted entry into Canada. The father was given charge of a series of small Ukrainian parishes in the west where he raised his family.

The Solicitor received his LL.B. from University of Toronto Law School in 1970 and articulated at Osler, Hoskin & Harcourt. After his call he joined the legal department of the Canadian Broadcasting Corporation. His superiors were happy with his work and he was offered the position of personal assistant to the president in 1974. He decided, however, to go into the private practice of law, and did so in 1974.

The story of the misappropriations is outlined in paragraphs 5 to 26 of the Agreed Statement of Facts. They need not be repeated here.

Use of Money to Support Parents and Sister

It is impossible to quantify, from the evidence, the amount of money that was used for this purpose.

In July of 1983, his father suffered a massive stroke during mass which completely paralysed him and left him in a vegetative state with loss of speech. He had no savings. He, his wife, and his daughter, who was living at home, had to leave the manse. The Solicitor purchased one-half of a duplex in London near the church where his father had been officiating. A family decision was made to care for the father at home. The Solicitor provided full financial support for this purpose.

Care of the father was a 24 hour, seven days a week job for both the mother and sister. The Solicitor went to London every Friday evening or Saturday and returned to Toronto on Sunday night or Monday. He would do the shopping, bathe his father, feed him, disimpact him, shave him and exercise him, cook meals for the family for the next week, do general maintenance in the house and yard and let his sister get some sleep.

26th October, 1994

During this period his mother became harder to live with. She wanted to help his sister but lacked much of the physical strength required to do so. She was suffering from a loss of hearing. In addition, she did not get along well with her daughter, the Solicitor's sister. This was understandable. The two women were living under one roof, working long hours to look after his father, no time for outside interests, not a lot of money, etc. Either or both of them would telephone him at night in Toronto, two to three times a week, arising out of fights with each other or arising out of a need to take the father to the hospital. If they could not contact him directly, they would telephone his friends to try to find out where he was. The Solicitor was not married. The problem was partially resolved by the Solicitor purchasing the other half of the duplex for his mother to live in.

This situation lasted for nine years and only ended with the death of his father in March of 1992.

The family problems the Solicitor was dealing with are further fleshed out in the reasons of Mrs. Graham and in the letters which are attached to her reasons.

At this point the question must be asked whether or not the Solicitor should be disbarred for using clients money to support his family or should compassion be shown to allow him to resign. This was the only issue before the Committee.

Counsel for the Society took no position. Counsel for the Solicitor urged the Committee to extend the grounds upon which resignation would be permitted. That such grounds may exist is indicated in the words of a Committee, composed of Arthur R.A. Scace, Q.C., Alan M. Rock and Roseanne Sutherland in the proceedings involving Denis Patrick Lynch.

"As we noted earlier, the general 'rule' has been that solicitors who deliberately misappropriate funds should be disbarred, save in exceptional circumstances. In recent years, Convocation has seen fit to permit resignation in a number of cases. Many of those cases involved lawyers who succumbed to overwhelming pressures, such as addiction to drugs and compulsive gambling. In our view, however, the cases do not disclose a consistent rationale for imposing the more lenient penalty. We do not agree that the 'exceptional circumstances' necessarily must entail pressures so overwhelming that they entirely preclude rational decision making.

In our view, Convocation has a wide discretion with respect to penalty, and is bound only by its good sense and compassion. We do not believe it is necessary to narrowly circumscribe the options with respect to penalty and the ability to show compassion in an appropriate case. We believe this to be an appropriate case."

While a case can be made that the grounds enumerated in the Lynch case should be expanded to include compassion alone, I would disagree with it in this case. I adopt the words of Robert J. Carter, W. Bruce Affleck and Mary P. Weaver in the proceedings involving Ronald P. Milrod.

"We are still unable to agree with the submission that Mr. Milrod should be permitted to resign. The Society cannot countenance theft and fraud by its members, and must express its disapproval in no uncertain terms. The penalty of disbarment is not meant to be reserved only for members who are thoroughly lacking in good qualities; experience shows that the penalty attends the tragic downfall of good lawyers who succumb to pressure as frequently as it is the fitting conclusion of an evil career."

26th October, 1994

It is my view that no sufficient excuse has been made out to warrant permission to resign on the grounds submitted.

#### Fear of Physical Violence

This fear arose out of threats made by Ivan Milanov in his quest for repayment.

The relationship between Mr. Milanov and the Solicitor is a strange one. Mr. Milanov also came from Yugoslavia after World War II. He regards the Solicitor as a personal friend and has often invited him to social gatherings at his home. He treats him and looks on him as a younger brother.

At the same time, he publicly embarrasses him by ranting and screaming at him in public demanding a return of his money. The phrase "rant and scream" is my characterization and is not one that appears in evidence. Threats of physical violence, including the threat of "cement shoes" were made. Ivan's brother Sasha gave evidence that he could not say the threats were not real.

Neither Mrs. Graham nor I have sufficient evidence to conclude that Ivan Milanov was in fact a violent man who would carry out his threats. We have no doubt, however, that the Solicitor believed them.

A couple of the small misappropriations were made to partially satisfy the Milanov debt as a result of these threats.

I would not recommend disbarment if this situation was the only one considered by the Committee.

#### Loans to Other Clients

As indicated, the Solicitor was involved in the entertainment industry. A film producer, Jahal Merki, asked him if he could arrange financing of about \$60,000.00. The Solicitor thought that he could but his efforts failed.

Mr. Merki was not satisfied with that failure and was on the Solicitor's office doorstep every morning almost crying for the money. The Solicitor, under the pressures already indicated, to get rid of him, advanced \$56,000.00 from trust without his client's consent.

The film, "Grey Wolf" was completed and has won international acclaim. It would probably not have been completed if the Solicitor had not advanced the money. The loan has been repaid in full.

Nevertheless, the Solicitor had no right to do what he did. It was a direct violation of his duty to his other clients.

The success story of Jahal Merki with Grey Wolf must be contrasted with another "loan" made by the Solicitor from his trust account to Jessica Daniel of \$10,000.00 for a project that was not successful and has not been repaid.

In the absence of the first two matters, this one, standing alone, would warrant disbarment.

In light of all of the circumstances I have concluded, that the Solicitor should be disbarred.

26th October, 1994

George Flak was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 24th day of March, 1972.

ALL OF WHICH is respectfully submitted

DATED this 21st day of May, 1993

J. James Wardlaw, Q.C.  
Chair

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

There were no submissions and the Report was adopted.

It was moved by Mr. Bastedo, seconded by Mr. Copeland that the solicitor be permitted to resign.

Counsel for the Society took no position on the issue of penalty.

Counsel for the solicitor made submissions that the solicitor be permitted to resign and referred in detail to various character references provided.

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

Mr. Copeland requested that the reference to Ms. Curtis' situation in the first paragraph under the Recommendation as to Penalty, be deleted.

Convocation concluded that the Report not be changed.

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

There were further submissions made by both counsel.

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

The Bastedo/Copeland motion that the solicitor be permitted to resign lost.

It was moved by Mr. Topp, seconded by Mr. Carter that the solicitor be disbarred.

Carried

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

Counsel and solicitor retired.

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

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Arnup, Bastedo, Brennan, Campbell, Carter, Copeland, Cullity, Curtis, Graham, Manes, Peters, Scott, Thom and Topp.

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IN PUBLIC

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Re: Carol Anne ALLISON - Orangeville

The Secretary placed the matter before Convocation.

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

Convocation had before it the Report of the Discipline Committee dated 16th September, 1994, together with an Affidavit of Service sworn 14th October, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th September, 1994 (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

Frances Kiteley, Chair  
Laura L. Legge, Q.C.  
Shirley O'Connor

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

Christina Budweth  
for the Society

CAROL ANNE ALLISON  
of the Town  
of Orangeville  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: April 26, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On September 21, 1993. Complaint D253/93 was issued against Carol Anne Allison alleging the Solicitor was guilty of professional misconduct.

The matter was heard in public on April 26, 1994 before this Committee composed of Frances Kiteley, Chair, Laura L. Legge, Q.C., and Shirley O'Connor. The Solicitor was not present nor was she represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D253/93

2. a) She has failed to reply to the Society regarding inadequacies discovered in her books and records during an audit examination on September 9, 1991, despite letters dated February 27, 1992, April 7, 1992, May 13, 1992, May 25, 1992, July 7, 1992, April 14, 1992 and May 12, 1993.

Evidence

The hearing had been adjourned to this date on January 18, 1994 and was peremptory to the Solicitor. The Solicitor was not present at the hearing.

The Committee had before it copies of correspondence to the Solicitor. The Committee noted that on November 6, 1991 a letter from the Society stated in part as follows:

"Notes in the report indicate that you act as sole executor as well as solicitor for an estate for which a separate bank account is maintained, but for which books, records and accounts are not maintained as required by subsection 1 of section 15 of the Regulation."

On February 27, 1992, the Solicitor was advised by the Society as follows:

"In regard to the records for the Estate of Foppe, we require the following as noted in our letter of November 22nd, 1990:

- (1) a list of original assets;
- (2) full particulars of capital receipts and disbursements;
- (3) full particulars of income receipts and disbursements;
- (4) a list of residual assets."

Of particular concern was a letter dated October 22, 1993 to the Solicitor from the Society stating in part:

"Notes in the report indicate that you act as sole executor as well as solicitor for an estate for which a separate bank account is maintained, but for which books, records and accounts are not maintained as required by subsection 1 of section 15 of the Regulation."

"Please institute proper cash books and a trust ledger record for inspection of the estate to meet the requirements of section 15 of the Regulation, and provide to us within one month from the date of this letter a complete accounting of estate funds handled by you showing original assets, full particulars of capital and income receipts, and disbursements, and residual assets."

There was no evidence given to the Committee that a satisfactory answer had been received to these matters.

RECOMMENDATION AS TO PENALTY

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The Committee recommends as follows:

1. If the Solicitor satisfies Senior Discipline Counsel on the points raised as set out before the first return date in Convocation, a reprimand in Convocation should be made.
2. If the Solicitor fails to satisfy the Senior Discipline Counsel on these points before the first return date in Convocation, there should be an indefinite suspension until the Solicitor does satisfy Senior Discipline Counsel on those points.
3. In the absence of the Solicitor and without any basis to establish that the Solicitor was aware that costs might be imposed, no costs were awarded although requested by the Law Society.

REASONS FOR RECOMMENDATION

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Members of the Law Society must give information to the Society as to books and records when requested.

The Committee was not satisfied that there are no deficiencies in the member's books and records, especially regarding the Estate of Foppe.

Carol Anne Allison was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 19th day of March, 1970.

ALL OF WHICH is respectfully submitted

DATED this 16th day of September, 1994

Laura L. Legge, Q.C.  
for the Committee

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

There were no submissions and the Report was adopted.

A letter from Mr. Budweth to Ms. Allison dated October 21, 1994 was filed as Exhibit 2.

It was moved by Mr. Bastedo, seconded by Mr. Campbell that the Recommendation as to Penalty be adopted that is, that the solicitor be suspended indefinitely with conditions.

There were brief submissions by Ms. Budweth.

Counsel, the reporter and the public withdrew.

Mr. Bastedo asked that an amendment be made to his motion to suspend the solicitor indefinitely, that in the event the solicitor contacts Senior Counsel-Discipline, Senior Counsel would make a recommendation to Convocation.

Not Put

26th October, 1994

It was moved by Mr. Cullity, seconded by Mr. Campbell that the solicitor be suspended indefinitely until she provides Convocation with an adequate explanation of her conduct.

Mr. Cullity accepted an amendment by Mr. Scott to his motion that the solicitor be suspended indefinitely until Convocation through the Secretary is satisfied that the points raised in the Report are completed.

Carried

It was moved by Ms. Curtis, seconded by Mr. Cullity that the penalty include costs in the amount of \$1,500.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended indefinitely until such time that she can satisfy Convocation through the Secretary that the points raised in the Report were completed and to pay costs in the amount of \$1,500.

Counsel retired.

Re: Reginald Edwin BRADBURN - Etobicoke

The Secretary placed the matter before Convocation.

Mr. Thom and Ms. Graham withdrew for this matter.

Ms. Janet Brooks appeared for the Society and Mr. George Hatley, Duty Counsel appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 26th August, 1994, together with an Affidavit of Service sworn 14th October, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 9th September, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th October, 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

Netty Graham, Chair  
Marie Moliner  
Stuart Thom

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

Janet Brooks  
for the Society

REGINALD EDWIN BRADBURN  
of the City  
of Etobicoke  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: May 17, 1994

26th October, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On January 25, 1994, Complaint D380/93 was issued against Reginald Edwin Bradburn alleging that he was guilty of professional misconduct.

The matter was heard in public on May 17, 1994 before this Committee composed of Netty Graham, Chair, Marie Moliner and Stuart Thom, Q.C. The Solicitor was present at the hearing and was not represented. Janet Brooks appeared on behalf of the Law Society.

DECISION

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

Complaint D380/93

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending January 31, 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 Regulation 708 made pursuant to 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 Complaint D380/93 and is prepared to proceed with a hearing of this matter on May 17 and 18, 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 D380/93 and admits the particular contained therein together with the facts set out herein.

IV. FACTS

4. The Solicitor was called to the Bar on March 19, 1970. He practises as sole practitioner.

26th October, 1994

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 forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.
7. By registered mail, the Law Society forwarded to the Solicitor 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 is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.
8. The late filing fee began to accrue on October 8, 1993.
9. By registered mail, the Law Society forwarded to the Solicitor a Third Notice of Default in Annual Filing, 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 Exhibit "C" to this Agreed Statement of Facts.
10. On February 24, 1994, the Solicitor paid \$1,410.00 of the \$1,500.00 late filing fee.
11. By registered mail, the Law Society forwarded to the Solicitor another Third Notice of Default in Annual Filing, dated March 24, 1994. The Solicitor was advised that his name would go before Convocation on April 22, 1994 for suspension of his rights and privileges should the remainder of his late filing fee remain unpaid as of 5:00 p.m. on April 21, 1994. The Solicitor was reminded that the paying of the late filing fee would not relieve him of 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 Exhibit "D" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.
12. On April 21, 1994, the Solicitor paid \$90.00, being the balance outstanding of the late filing penalty.
13. 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 had no way of verifying that the Solicitor was 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. Accordingly, the Society's audit examiner, Christine Phillips, attended at the Solicitor's office on March 7, 1994 and conducted examination. The audit examiner found

26th October, 1994

that the Solicitor was not maintaining a trust account, the trust account having been closed during the fiscal year ended January 31, 1991 according to the Solicitor's previous filing. The audit examiner found administrative inadequacies in the Solicitor's records with respect to his general account. The Solicitor was using his bank deposit book as a receipts book as opposed to maintaining books of general receipts and disbursements. The Solicitor acknowledged these inadequacies.

14. To date, the Solicitor has not yet filed Forms 2 ad 3. To date, the Solicitor has failed to completely correct the inadequacies in his records and has failed to bring his books up to date.

V. DISCIPLINE HISTORY

15. The Solicitor does not have a discipline history.

Dated at Toronto this 17th day of May, 1994."

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Reginald Edwin Bradburn be reprimanded in Convocation if his filings are made prior to Convocation, failing which, the Solicitor will be suspended for one month and the suspension to continue thereafter until the filings are made. The Solicitor is also to pay costs in the amount of \$500.00.

REASONS FOR RECOMMENDATION

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The filing of the forms as prescribed by the Rules are required in order to maintain an administrative and financial watch over the profession in the interest of the public. This is the only way to monitor trust accounts and the profession needs to be shown as strongly as possible that the penalty for not complying with this particular administrative rule will not be dealt with lightly by Convocation.

This Solicitor has been given the opportunity to avoid a suspension in the event that he make his filings prior to Convocation. Should he fail to do so, he must be suspended until such time as the filings are made.

Reginald Edwin Bradburn was called to the Bar on the 19th day of March, 1970.

ALL OF WHICH is respectfully submitted

DATED this 26th day of August, 1994

(Mrs.) Netty Graham  
Chair

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

There were no submissions and the Report was adopted.

26th October, 1994

Mr. Hately advised Convocation that the solicitor's filings were completed and the costs in the amount of \$500 had been paid.

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.

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

The Recommendation as to Penalty was adopted.

The solicitor was reprimanded by the Treasurer.

Counsel and solicitor retired.

Re: Richard Paul RANIERI - Toronto

The Secretary placed the matter before Convocation.

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

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

Convocation had before it the Report of the Discipline Committee dated 30th August, 1994, together with an Affidavit of Service sworn 14th October, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 9th September, 1994 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th October, 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

Carole Curtis, Chair  
Denise Bellamy  
Netty Graham

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

Stephen Foster  
for the Society

RICHARD PAUL RANIERI  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: July 5, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On September 16, 1993 Complaint D248/93 was issued against Richard Paul Ranieri alleging that he was guilty of professional misconduct.

The hearing was heard in public on July 5, 1994 before this Committee composed of Carole Curtis, Chair, Denise E. Bellamy and Netty Graham. The Solicitor was present and represented himself. Stephen Foster appeared on behalf of the Law Society.

DECISION

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Complaint D248/93

2. a) He continued to practice law despite the fact that his right to do so was suspended pursuant to section 36 of the Law Society Act on February 23, 1990, and in breach of his undertaking to practice given to the Society on December 12, 1990, by continuing to engage in the practice of law during the period June to November, 1991.
- b) During discipline proceeding D178/91, he misled a committee of Convocation by advising the committee that he had not practised law except for the incidents of his practising to the end of April, 1991 as offered in evidence at the hearing, when in fact, he had practised during the period June to November, 1991.

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 D248/93 and is prepared to proceed with a hearing of this matter on July 5, 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 D248/93 and this agreed statement of facts and admits that particular (a) constitutes professional misconduct in that the Solicitor should not have been corresponding with parties opposite on letterhead indicating that he was a "Barrister and Solicitor". The Solicitor also admits that in his telephone communications with counsel opposite and the occasion of his appearance in court on the Taverner matter described below he did not advise counsel opposite or the court that he was a suspended lawyer. The Solicitor admits that his actions constitute holding himself out to be a member in good standing when he was not. The Solicitor does not admit the allegation as set out in particular (b).

IV. FACTS

4. The Solicitor was suspended by Order of Convocation on February 23, 1990, pursuant to Section 36 of the Law Society Act. The Solicitor continued in active practice following that date until December 12, 1990 on which date he gave an undertaking to the Society not to practice.

5. During the period December 12, 1990 to April, 1991, the Solicitor continued to practice law although the volume of his practise was significantly reduced.

6. The Solicitor was disciplined for his practice while under suspension in 1992. The matter proceeded largely by way of agreed statement of facts as well as on the basis of the Solicitor's evidence to the committee. A copy of the complaint is attached as Exhibit 1 to this agreed statement of facts. During the course of examination by the committee the Solicitor gave evidence, an excerpt of the transcript is attached as Exhibit 2 to this agreed statement of facts. The Solicitor's hearing on that complaint continued over the course of the following days:

February 18, 1992, May 22, 1992 and June 25, 1992. A copy of the Committee's decision is included in the transcript attached as Exhibit 2.

7. The committee recommended a suspension for a period of six months and indefinitely until all outstanding obligations to the Society are met, a copy of the Committee Report and Recommendation is attached as Exhibit 3 to this agreed statement of facts. The matter was considered by Convocation on January 28, 1993. Convocation accepted a portion of the committee's recommendation and ordered that the Solicitor be suspended for a period of six months.

8. Subsequent to the hearing of this matter in Convocation, the discipline department became aware of two instances in which the Solicitor had engaged in the practice of law following April, 1991.

Monica Kelly

9. In or about June, 1991, the Solicitor was asked by the son of Monica Kelly to provide assistance with respect to a rent review proceeding in which his mother was involved.

10. The Solicitor corresponded with counsel opposite on the matter, Andrew Roberts by letter dated June 19, 1991, a copy of which is attached as Exhibit 4 to this agreed statement of facts.

11. Not having received a response from Mr. Roberts, the Solicitor corresponded with him again by letter dated July 23, 1991, a copy of which is attached as Exhibit 5 to this agreed statement of facts.

12. Exhibit 5 contains notations made by Mr. Roberts of his attempts to contact the Solicitor upon receipt of his July 23, 1991 correspondence.

13. Particularly, Exhibit 5 contains notations made by Mr. Roberts during a telephone conversation with the Solicitor on September 12, 1991. Mr. Roberts' notes indicate that the Solicitor advised him he had a part-time practice. Mr. Roberts would testify that the Solicitor advised him that his reduced

workload resulted from his child-care responsibilities. Mr. Roberts would testify that he recalls having a fairly detailed discussion about the stresses of private practice with lengthy hours and the notion of an alternative lifestyle as revealed by the Solicitor during their conversation. Mr. Roberts did not know nor was he made aware by the Solicitor that he was a suspended lawyer. The Solicitor would not offer any evidence to contradict that of Mr. Roberts.

14. Attached as Exhibit 6 to this agreed statement of facts is a file note made by Mr. Roberts indicating a telephone conversation with the Solicitor on September 12, 1991 during which an adjournment of this matter and change of venue were discussed.

15. By letter dated November 5, 1991, the Solicitor sought Mr. Roberts consent to a change of venue of the matter indicating that he had spoken with the Rent Review Board to determine the appropriate procedure of so doing. A copy of the November 5, 1991 letter is attached as Exhibit 7 to this agreed statement of facts.

16. Attached as Exhibit 8 to this agreed statement of facts are file notes made by Mr. Roberts during a telephone conversation with the Solicitor on November 6, 1991. The Solicitor admits that Mr. Roberts' chronology of their conversation is accurate and reflects the essence of their conversation.

17. The hearing of the matter was transferred to Toronto. The Solicitor advised Mr. Kelly of his success in achieving this result and had not further contact in the matter.

18. John Done, executive director of the Kingston Legal Aid Clinic, reported what he believed to be the Solicitor's practice while under suspension by letter dated October 22, 1992, a copy which is attached as Exhibit 9 to this agreed statement of facts. When questioned by the Society regarding this conduct, the Solicitor responded by a letter dated November 30, 1992, a copy of which is attached as Exhibit 10 to this agreed statement of facts.

Tammy Taverner

19. The Solicitor was retained by Tammy Taverner in or about 1989 at which time the Solicitor was a member in good standing, to act for her in respect of a child paternity and support case. The respondent disputed paternity.

20. The hearing of the matter was adjourned in October, 1990 for a period of one year. Ms. Taverner's matter was specifically discussed between the Solicitor and the Staff Trustee on February 12, 1991. During that meeting the Solicitor advised that he expected to be reinstated shortly and that no work needed to be done on this matter as a trial date had been set and it was sometime off. The matter progressed to a number of meetings between the Solicitor and the Staff Trustee which culminated in a letter from the Staff Trustee to the Solicitor on April 15, 1991, a copy of which is attached as Exhibit 11 to this agreed statement of facts.

21. On April 14, 1992, the Solicitor delivered an account to the Ontario Legal Aid Plan for his actions on behalf of Ms. Taverner. A copy of the letter and account are attached as Exhibit 12 to this agreed statement of facts.

22. The Solicitor appeared on a return of motion in the matter on Sept. 18, 1992.

23. By letter dated July 5, 1991, the Solicitor wrote to Ms. Taverner respecting the upcoming hearing. A copy of this letter is attached as Exhibit 13 to this agreed statement of facts.

24. By letter dated August 14, 1991, the Ontario Legal Aid Plan sought the Solicitor's advise respecting the status of this matter. A copy of that letter is attached as Exhibit 14 to this agreed statement of facts.

25. By letter dated August 19, 1991, the Solicitor provided the Legal Aid Plan with the information sought. A copy of his August 19, 1991 letter is attached as Exhibit 15 to this agreed statement of facts.

26. The Solicitor wrote to Ms. Taverner again on September 11, 1991, a copy of his letter is attached as Exhibit 16 to this agreed statement of facts.

27. The Solicitor attended on the return of the motion on the matter on September 18, 1991. Counsel for the respondent appeared accompanied by his client. The applicant did not appear. The matter was adjourned sine die. A copy of the endorsement is attached as Exhibit 17 to this agreed statement of facts.

28. On neither the occasion of June 18, 1991 nor on September 18, 1991 did the Solicitor indicate that his right to practice was suspended.

29. The Solicitor wrote to Mr. Taverner on September 30, 1991, a copy of that letter is attached as Exhibit 18 to this agreed statement of facts.

30. The Solicitor has had no contact with Ms. Taverner since June 1991.

DATED at Toronto this 24th day of June, 1994."

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that the Solicitor's rights and privileges as a member be suspended for incapacity pursuant to section 35 of the Law Society Act, and that the Committee hearing the Solicitor's request to return to practice (should he make a request) consider recommending that the Solicitor cannot practice in sole practice.

#### REASONS FOR RECOMMENDATION

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The Solicitor admitted in the Agreed Statement of Facts, that particular 2(a) (continuing to practice when suspended, and in breach of an undertaking to the Law Society) of Complaint D248/93 constituted professional misconduct. The Solicitor did not admit the allegations in particular 2(b) of the Complaint (misleading a Committee of Convocation by advising the Committee that he had not practiced law for a certain period, when in fact, he had practiced for that period). The Committee found, however, that those allegations were proven, and the Committee makes a finding of professional misconduct against the Solicitor with respect to both particulars 2(a) and 2(b).

The Solicitor came before the Committee seeking permission to resign, to which request the Law Society counsel was, with some regret, consenting. The submissions regarding penalty were presented in the nature of a joint submission. The suggestion of the penalty, clearly, however, came from the Solicitor, and Law Society counsel was consenting to that suggestion, although they would have sought a different penalty.

26th October, 1994

The Solicitor's reasons for seeking permission to resign included his personal circumstances and his present mental health. The Solicitor believes he is presently unable to practice. The Solicitor is currently under treatment for depression by Dr. Daniels, whom he sees once a week, and who has prescribed prozac for him. The Solicitor feels he needs closure to this very difficult recent period with the Law Society. The Solicitor, apparently did not want a section 35 suspension.

The Solicitor's personal circumstances are quite sad. He is not currently practicing, and has no plans to return to practice. He is 40 years old (born 1954). The Solicitor is currently receiving welfare. He has a 3 year old daughter. He is separated from his wife who now lives in London, Ontario. In order to visit with his daughter, the Solicitor travels to London, and sleeps on his wife's couch.

The Solicitor appeared unrepresented and in person at the discipline hearing. He indicated that Dr. Daniels thinks that resigning his membership would be a good idea and would assist the Solicitor with closure. Other than the matters referred to in this complaint and the previous complaint, the Solicitor has no other discipline record. The Law Society has no information to suggest the Solicitor has been involved in any acts of dishonesty.

The Committee was not satisfied that granting the Solicitor permission to resign his membership was necessary to protect the public. The Committee was concerned over the fact that the Solicitor was requesting this penalty at a time he was unrepresented by counsel, being treated weekly for depression and was on medication for this depression. The Committee was also influenced by the sad personal circumstances of the Solicitor. In the Committee's view, the public interest would be met by an order for suspension under section 35 of the Law Society Act, as the Solicitor is currently incapable of practicing law. The Committee offers a recommendation that the Solicitor should not be practicing alone, should he return to practice.

Richard Paul Ranieri was called to the Bar and admitted as a Solicitor on the 7th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 30th day of August, 1994

Carole Curtis  
Chair

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

Ms. Budweth asked that the following amendments be made to the Report:

- page 1, second paragraph, last sentence - Christina Budweth appeared on behalf of the Society, not Stephen Foster;
- page 5, paragraph 22. - date should be September 18, 1991 and not 1992.

The Report as amended was adopted.

It was moved by Mr. Topp, seconded by Mr. Campbell that the Recommendation as to Penalty be adopted that is, that the solicitor's right to practice be suspended until he can satisfy a Committee of Convocation that he is mentally fit to resume the practice of law with or without conditions.

Carried

Counsel retired.

Re: Norman Edward Joseph ROY - Oakville

The Secretary placed the matter before Convocation.

Messrs. Scott and Topp withdrew for this matter.

Ms. Christina Budweth 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 15th September, 1994, together with an Affidavit of Service sworn 25th October, 1994 by Louis Katholos that he had effected service on the solicitor by registered mail on 26th September, 1994 (marked Exhibit 1). The Affidavit of Attempted Service by James Gooding that he had attempted service on the solicitor on 7th, 11th, 12th, October, 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

Robert C. Topp, Chair  
Ross W. Murray, Q.C.  
Nora Richardson

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

Christina Budweth  
for the Society

NORMAN EDWARD JOSEPH ROY  
of the City  
of Oakville  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: June 8, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On March 8, 1994 Complaint D21/94 was issued against Norman Edward Joseph Roy alleging that he was guilty of professional misconduct.

The matter was heard in public on June 8, 1994 before this Committee composed of Robert C. Topp, Chair, Ross W. Murray, Q.C., and Nora Richardson. The Solicitor was not present nor was he represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D21/94

2. a) He failed to provide a reply to the Law Society regarding a complaint by Cathy Wood of the Royal Bank of Canada, despite letters dated June 16, September 10 and November 26, 1993 and telephone messages left on August 31, September 2, September 16, September 17 and September 29, 1993;
- b) He failed to provide a reply to the Law Society regarding an additional complaint by Cathy Wood of the Royal Bank of Canada, despite letters dated September 2 and November 26, 1993 and a telephone message left on November 24, 1993;
- c) He failed to provide a reply to the Law Society regarding a complaint by a fellow lawyer, Kazimieras V. Stasiukevicius, despite letters dated November 5 and November 26, 1993 and a telephone message left on November 24, 1993;
- d) He failed to provide a reply to the Law Society regarding a further complaint by Cathy Wood of the Royal Bank of Canada, despite letters dated November 5 and November 26, 1993 and a telephone message left on November 24, 1993;
- e) He failed to provide a reply to the Law Society regarding a complaint by a fellow solicitor, H. Grant Kerr, despite letters dated November 10 and November 26, 1993 and a telephone message left on November 24, 1993;
- f) He failed to provide a reply to the Law Society regarding a complaint by a client, Greg McIntosh, despite letters dated December 13 and January 12, 1994 and a telephone call on January 10, 1994;
- g) He failed to provide final documentation to his client the Royal Bank of Canada, regarding mortgages on the following properties:
  - (ii) 422 March Crescent, in the City of Oakville, Ontario.
  - (iii) 11701 Guelph Line, in the City of Milton, Ontario.
- h) He failed to provide final documentation to his client, Greg McIntosh, with respect to his purchase of a property which closed on or about July 29, 1993.
- i) He failed to answer with reasonable promptness letters dated May 18, July 15 and September 16, 1993 and telephone calls on May 13, May 14, May 18, May 25, June 10, June 21, July 14, July 16, and September 2, 1993 from a fellow lawyer, Kazimieras V. Stasiukevicius.

26th October, 1994

- j) He failed to answer with reasonable promptness letters dated July 19 and August 24, 1993 from a fellow lawyer, Rene Liebs-Benke;
- l) He failed to serve his client, Greg McIntosh, in a conscientious, diligent and efficient manner with respect to the purchase of a real estate property, in that:
  - (i) He failed to prepare the necessary papers for his client to obtain the Land Transfer Tax rebate.
- m) He failed to serve his client, Cathy Wood of the Royal Bank of Canada, in a conscientious, diligent and efficient manner with respect to three separate mortgage transactions, in that:
  - (ii) He failed to answer reasonable requests for information from the client, despite letters dated April 1, May 3, June 1, and July 6, 1993 concerning a mortgage on a property situated at 17701 Guelph Line, in the City of Oakville, Ontario.
  - (iii) He failed to answer reasonable requests for information from the client, despite letters dated June 3, July 6, August 6, and September 6, 1993 concerning a mortgage on a property situate at 422 March Crescent in the City of Milton, Ontario.
- n) He failed to comply with his Undertaking dated March 17, 1992 "to respond promptly to all communications from the Law Society; in respect of written communications, within one week of receipt of such communications, and in the case of telephone communications, within three days of receipt thereof".
- o) He failed to file with the Society within six months of the termination of his fiscal year ending April 30, 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 Regulation 708 made pursuant to the Law Society Act;
- p) In the circumstances of particulars (a) to (o) above, the Solicitor has demonstrated himself to be ungovernable by the Society.

### Jurisdiction

In the absence of the Solicitor, evidence was heard by your Committee as to the steps taken by the Law Society of Upper Canada to bring to the attention of the Solicitor Complaint D21/94 and in that regard a letter dated March 8, 1994 addressed to the Solicitor giving him notice of the complaint and the return date was filed along with an Affidavit of Personal Service wherein that letter was delivered to him on March 10, 1994 at 8:40 p.m.

26th October, 1994

The Solicitor did not attend the set date appearance on April 12, 1994 and your Committee was provided with a letter dated April 15, 1994 from the Law Society to the Solicitor informing the Solicitor that the matter had been set to proceed on June 8, 1994. Attached to that letter was a Document Book provided to the Solicitor by way of disclosure setting out the documents upon which the Society was to rely in the prosecution of the case. In addition that letter spoke of a draft Agreed Statement of Facts to be delivered to the Solicitor for his review.

In addition the April 15, 1994 letter set out the fact that the Society was to put the option of disbarment as a result of the Solicitor's ungovernability before the Committee hearing this matter. Your Committee was provided with an Affidavit of Service of the aforementioned material upon the Solicitor by Personal Service on April 26, 1994 at 10:00 p.m.

Your Committee was provided with a letter dated May 6, 1994 from the Law Society wherein the Solicitor was provided with a draft Agreed Statement of Facts and Document Book which constituted disclosure of the Law Society's case with respect to the hearing of the complaint. In addition that letter informed the Solicitor that costs may be sought against him and he was urged to consider an Agreed Statement of Facts or to contact the Law Society if he wished to call evidence. Your Committee was provided with an Affidavit of Personal Service wherein the Solicitor had been personally served on May 7, 1994 at 7:50 p.m. with the aforesaid material.

Finally, your Committee was provided with a letter to the Solicitor dated June 3, 1994 from the Law Society enclosing the sworn Affidavit of Kaz v. Stasiukevicius. The Solicitor was also informed of the intent of the Law Society to amend particular 2(j) of the complaint.

The letter also requested the Solicitor contact Ms. Budweth and to inform her as to how he intended to proceed in this matter.

The letter also clearly set out the Law Society's position that given the Solicitor's failure to address any outstanding matters coupled with the complete absence of communication with the Law Society regarding the complaints that the position would be taken that his membership in the Society be terminated by way of disbarment and that the Society would be seeking costs in the matter. Your Committee was provided with an Affidavit of Kaz v. Stasiukevicius wherein the Solicitor was personally served with this material on June 3, 1994 at 3:15 p.m.

Your Committee is fully satisfied that the Solicitor had ample notice of the proceedings to be undertaken on June 8, 1994 and given the Solicitor's failure to attend or in any way to inform the Society or your Committee of his intentions or a request for an adjournment, we are satisfied the matter should be heard in absentia given the serious nature of the complaints raised against the Solicitor.

COMPLAINT

Complaint D21/94  
Particular 2(a)

By regular mail a letter was sent to the Solicitor on June 16, 1993 regarding the complaint from the Royal Bank of Canada made to the Law Society on June 3, 1993 regarding the failure of the Solicitor to provide the bank with final documentation. The Committee was provided with evidence of further letters of September 10, 1993 and November 26, 1993 and telephone messages left on August 31, 1993, September 2, 1993, September 16, 1993, September 17, 1993 and September 29, 1993. Your Committee was satisfied that the Solicitor had failed to provide any reply to any of the correspondence or messages aforesaid.

Particular 2(b)

By letter sent by regular mail to the Solicitor dated September 2, 1993 the Law Society requested the Solicitor's comments regarding an additional complaint by the Royal Bank of Canada made to the Law Society of Upper Canada on August 6, 1993. Your Committee was provided with evidence that a further letter of November 26, 1993 and a telephone message left on November 24, 1993 failed to generate any response from the Solicitor.

Particular 2(c)

By letter dated May 18, 1993, Messrs. Cashman and Stasiukevichius, Attorneys at Law, of Boston, Massachusetts contacted the Solicitor in regard to a client who had contacted that firm regarding a support and alimony claim for which Mr. Roy had apparently been retained. The same law firm again wrote to the Solicitor on July 15, 1993 informing the Solicitor that their client was now required to resort to public assistance due to her husband's dereliction on his child support obligations and that in order to complete her application for public assistance she must acquire a copy of her Divorce Judgment. The letter also went on to speak about the significant medical attention that their client's son needed and asked that the Solicitor give this matter his "due consideration". On September 16, 1993 the same firm again wrote to the Solicitor wherein the Solicitor was informed that it was:

"imperative that we speak relative to the pending Support Order currently before the family courts in Canada."

The Law Society of Upper Canada received a complaint from Messrs. Cashman and Stasiukevichius on September 27, 1993 and by letter dated November 5, 1993 a copy of that letter of complaint was sent to the Solicitor by ordinary mail.

On February 1, 1994 the Law Society was provided with a letter from Messrs. Cashman and Stasiukevichius informing the Society that they had written to the Solicitor on May 18, 1993, July 15, 1993 and September 16, 1993. In addition attempts to contact personally were made on May 13, 1993, May 14, 1993, May 18, 1993, May 25, 1993, June 10, 1993, June 21, 1993, July 14, 1993, July 16, 1993 and September 2, 1993. In that letter the Law Society was informed:

"to date I have not received the courtesy of a return call or a reply from Mr. Roy and my client has been left in the precarious position of not having been completely represented before the Canadian Court wherein she has a pending Divorce matter."

26th October, 1994

Your Committee was provided with further evidence that no response was forthcoming to the Law Society in regard to this complaint.

Particulars 2(d), 2(g)(iii), 2(m)(iii)

By letter from the Royal Bank of Canada to the Solicitor regarding mortgage transaction Alikhan. The Solicitor was notified of his failure to provide the necessary final documents. Evidence was called before your Committee of letters to the Solicitor from the Royal Bank of June 3, 1993, July 6, 1993 and August 6, 1993 for which there was no response. By letter dated October 6, 1993, the Law Society wrote to the Solicitor requesting his comments regarding the Alikhan problem. Evidence was provided to your Committee that no response was ever made to that letter from the Law Society or any subsequent telephone message which was left on November 24, 1993.

Evidence was provided to your Committee wherein the Solicitor failed to answer the reasonable request for information from the Royal Bank despite letters of June 3, 1993, July 6, 1993, August 6, 1993 and September 6, 1993 regarding the property situated at 423 March Crescent in the City of Milton.

Particulars 2(e), 2(j), 2(k)

In regard to the Alikhan sale to Jaeger, the Solicitor gave a personal undertaking to hold back from the proceeds of closing the sum of \$550.00 and to pay all utility arrears to date of closing. The Solicitor also undertook to provide a binder letter or a copy of policy of insurance in respect to the above captioned property forthwith upon receipt of same.

By letter dated July 19, 1993 Messrs. Blenkern Roche wrote the Solicitor informing him the outstanding balance was \$767.10 and asked for his payment of that sum immediately. That letter was delivered to the Solicitor by fax. On August 24, 1993 a second letter was sent from Messrs. Blenkern Roche to the Solicitor again asking for payment in the sum of \$767.10.

By letter dated October 26, 1993 Messrs. Blenkern Roche complained to the Law Society of Upper Canada as to the refusal of the Solicitor to honour his personal undertaking. Your Committee received other evidence that the Law Society wrote to the Solicitor on November 26, 1993 and a telephone message was left for him on November 24, 1993 and that no response was received.

Particular 2(j)

Your Committee was provided with evidence that the Solicitor failed to answer with reasonable diligence letters dated July 19, 1993 and August 24, 1993 from fellow lawyer H. Grant Kerr.

Particular 2(k)

Your Committee was satisfied that evidence had been provided to the effect that the Solicitor had failed to honour his personal undertaking in regard to Alikhan utility arrears. Your Committee however notes that further evidence was provided indicating that on March 8, 1994 the Solicitor had fulfilled his undertaking by arranging for payment.

Particulars 2(f), 2(h), 2(l)

The Solicitor acted in the purchase of a residence on behalf of Greg McIntosh which closed on or about July 29, 1993. The Committee was provided with evidence from Mr. McIntosh who testified that originally he was quite satisfied with the professional services but that the Solicitor had failed to provide him with the necessary documents for the O.H.O.S.P. Land Transfer Tax

26th October, 1994

rebate of approximately \$900.00. Filed before the Committee were letters from Mr. McIntosh dated November 5, 1993, November 29, 1993, Mr. McIntosh's letter of complaint to the Law Society of November 29, 1993. On or about December 13, 1993 the Law Society wrote to the Solicitor enclosing a copy of Mr. McIntosh's complaint and requesting a response. On or about the 5th day of January 1994 Mr. McIntosh telephoned the Law Society and was informed that the Society had not heard from the Solicitor and on January 10th, 1994 the Law Society telephoned the Solicitor and was informed that number was no longer in service. By letter dated January 12th, 1993 the Society again wrote to the Solicitor requesting a response to the McIntosh complaint and pointing out commentary 3 of Rule 13 to the Solicitor.

Your Committee was provided with evidence that the Solicitor in no way responded to either Mr. McIntosh or to the Law Society.

Based on that evidence your Committee is absolutely satisfied that the Solicitor failed to serve his client Greg McIntosh in a conscientious, diligent and efficient manner.

#### Particular 2(o)

By a notice of default in annual filing dated November 3, 1993 Norman Roy was advised that he had failed to file within six (6) months from the end of his fiscal year end or by November 30 in each year for the period ending April 30, 1992. On December 7, 1993 the Solicitor had mailed to him by regular mail a second notice of default.

Evidence was heard by your Committee that the Solicitor failed to make the appropriate filing and remains in default to this date.

#### Particular 2(p)

An application was brought by the Society to apply the evidence heard in regard to all of the outstanding matters before the Committee in regard to the allegation of the Solicitor having demonstrated himself to be ungovernable by the Society. The Committee accepted that invitation and applied the evidence heard aforesaid to that particular.

Your Committee finds that the facts set out substantiate each and every allegation made against the Solicitor that was not withdrawn.

#### Prior Discipline

The Solicitor was found guilty of professional misconduct on March 17, 1992 for failing to reply to the Society, failing to file forms 2/3 within six (6) months of the end of his fiscal year ending April 30, 1990 and breaching an Undertaking to the Society. The Solicitor was reprimanded in Committee as a result of his misconduct.

The Solicitor was again found guilty of professional misconduct for failing to file his forms 2/3 for the fiscal year ending April 30, 1991, failing to reply to the Society and failing to comply with his Undertaking to the Society. The Solicitor was reprimanded in Convocation as a result of his misconduct on October 22, 1992.

The Solicitor was again found guilty of professional misconduct on March 10, 1993 for failing to reply to correspondence from the Society, failing to comply with an Undertaking to the Society and failing to honour a financial obligation incurred in connection with his practice. The Solicitor was reprimanded in Committee in order to pay the Society's cost of \$400.00.

26th October, 1994

The Solicitor was again found guilty of professional misconduct on January 12, 1994 for practicing while suspended from November 3, 1992 to December 7, 1992 and for failing to comply with Sections 14 and 15 of Regulation 573 from March 11, 1991 to November 26, 1991 by failing to maintain proper books and records in connection with his practice. The Solicitor was suspended for a period of one (1) month and ordered to pay costs to the Law Society in the sum of \$1,200.00.

The Solicitor was again found guilty of professional misconduct on October 22, 1992 for failing to file with the Society within six (6) months of his termination of fiscal year 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. In addition he was convicted of failing to reply to the Law Society regarding a complaint by a client and in failing to comply with his Undertaking to the Law Society dated March 17, 1992 that he would respond promptly to all communication of the Law Society in respect of written communications within one (1) week of receipt of such communications and in the case of telephone communications within three (3) days of the receipt thereof. The penalty imposed at that time was a Reprimand in Convocation.

On March 10, 1993 while being administered a reprimand the Solicitor was informed by a member of the Committee as follows:

"..... You have brought this on or on yourself. You have brought this on or on the profession, on your family. You have gone through a series of court appearances and at one time you had to - were held in contempt twice in a small community. And the reason for the compassion that you receive today is because of your own financial difficulties. We know that a lot of other members of the profession are going through the same difficulties but they are coping. Now, you are heading right down the pipe and you are heading for a long, long term suspension if you keep this up. So, I hope that you will follow the recommendations of practice review and implement them, otherwise you won't be practicing for very long, I promise you."

#### RECOMMENDATION AS TO PENALTY

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The Committee recommends that Norman Edward Joseph Roy be disbarred.

#### REASONS FOR RECOMMENDATION

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The Solicitor is no stranger to the Discipline process and it is your Committee's view that he has been afforded every opportunity to rehabilitate himself and he has failed to do so.

Not only has he failed to rehabilitate himself but he has conducted his practice in a shameful manner in that he has failed to serve his clients in an acceptable fashion and it is clear to your Committee that he has caused substantial damage to the reputation of the profession generally.

It is clear to your Committee that the Solicitor is totally out of control and is ungovernable in every sense of the word.

In the absence of any submissions by the Solicitor or anyone on his behalf there is nothing that can be reported to Convocation in mitigation.

26th October, 1994

Your Committee finds that the Solicitor's conduct is a tragedy for each and every member of the profession and the only way to handle this repeated misconduct is to recommend the Solicitor's disbarment. The message must be sent to both the public and the profession that repeated acts of misconduct cannot and shall not be tolerated.

The offenses for which he has been found guilty are serious and show a wanton disregard for his responsibility both to his clients and his profession.

Norman Joseph Edward Roy was called to the Bar on the 7th day of April, 1992.

ALL OF WHICH is respectfully submitted

DATED this 15th day of September, 1994

Robert C. Topp  
Chair

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

Ms. Budweth asked that an amendment be made to the Report by deleting the last paragraph on page 10.

The Report was adopted.

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

Counsel for the Society made submissions in support of the recommended penalty.

The Recommendation as to Penalty was adopted.

Counsel retired.

Re: Frederick Bernard SUSSMANN - Ottawa

The Secretary placed the matter before Convocation.

Mr. Scott and Ms. Graham withdrew for this matter.

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

The Report of the Discipline Committee together with the Affidavit of Service was filed as Exhibit 1.

A letter from Mr. Sussmann dated October 24, 1994 was before Convocation.

