

21st October, 1993

MINUTES OF SPECIAL CONVOCATION

Thursday, 21st October, 1993  
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Arnup, Carter, Copeland, Cullity, Curtis, Elliott, Epstein, Feinstein, Graham, Hickey, Hill, Howie, Kiteley, Lamont, Moliner, Murray, Palmer, Richardson, Sealy and Thom.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: SPENCER BLACK, North York

The Secretary placed the matter before Convocation.

The reporter was sworn.

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

Mr. MacKenzie requested an adjournment on consent to the next discipline Convocation.

The adjournment was granted to the November Special Convocation.

Counsel retired.

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Re: ROSS HAINSWORTH, Edmonton

The Secretary placed the matter before Convocation.

The reporter was sworn.

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

Mr. MacKenzie requested an adjournment on consent to the next discipline Convocation.

The adjournment was granted to the November Special Convocation.

Counsel retired.

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Re: THOMAS HOLYOAKE BOX, Markham

The Secretary placed the matter before Convocation.

The reporter was sworn.

Mr. Michael Brown appeared for the Law Society and Mr. Walter Fox appeared for the solicitor. The solicitor was not present.

Mr. Brown requested an adjournment on consent to the next discipline Convocation.

The adjournment was granted to the November Special Convocation.

Counsel retired.

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Re: GEORGE FLAK, Toronto

The Secretary placed the matter before Convocation.

The reporter was sworn.

Mr. Michael Brown appeared for the Society and Mr. John Laskin appeared for the solicitor. The solicitor was not present.

Mr. Brown requested an adjournment on consent to the next discipline Convocation.

The adjournment was granted to the November Special Convocation.

Counsel retired.

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Re: WAYNE DOUGLAS BERTHIN, Midland

The Secretary placed the matter before Convocation.

The reporter was sworn.

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

Mr. Perrier requested an adjournment on consent in order that the solicitor have time to file documents.

The adjournment was granted to the Special Convocation in January 1994.

Counsel and solicitor retired.

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Re: PETER SIMONS, Toronto

The Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Graham withdrew.

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

Mr. Sloan on behalf of the solicitor requested an adjournment to meet with his client and asked that Convocation adjourn the matter until all outstanding complaints have been dealt with. The solicitor undertook to have his files taken over and undertook not to practise. Counsel advised that the solicitor was currently suspended for non-payment of his Errors and Omissions.

Counsel for the Society opposed an adjournment as it was a serious matter which had gone on for some time.

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

It was moved by Ms. Kiteley, seconded by Mr. Carter that the matter be adjourned to the November Convocation with undertakings by the solicitor not to practise and counsel to take over the files.

Carried

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

Counsel and solicitor retired.

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Re: PETER MICHAEL HOLLYOAKE, Burlington

The Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Kiteley, Ms. Graham and Mr. Thom withdrew.

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

Society's counsel in his submissions sought the imposition of the recommended penalty of the Society of a 3 to 6 month suspension to continue until the conditions were complied with.

The solicitor made submissions supporting the Committee's recommendation of a 1 month suspension to continue until the conditions were complied with.

There were questions from the Bench.

The Treasurer reviewed the Cullity/Palmer motion made at Special Convocation in September to disbar the solicitor.

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

It was moved by Ms. Elliott, seconded by Ms. Palmer and carried that Convocation accept the Committee's recommendation that the solicitor be suspended for 1 month and thereafter until the conditions were complied with.

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

Counsel and the solicitor retired.

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Re: IAN THOMAS MCEACHERN, Lindsay

The Secretary placed the matter before Convocation.

The reporter was sworn.

Mr. Feinstein and Ms. Graham withdrew.

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

Convocation had before it the Report of the Discipline Committee dated 10th September, 1993, together with an Affidavit of Service sworn 18th October, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd September, 1993 (marked Exhibit 1). The Report of the Discipline Committee dated 10th September, 1993 together with an Affidavit of Service sworn 19th October, 1993 by David Munro that he had personally served the solicitor on 15th October, 1993 was 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

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

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

Gavin MacKenzie and Christina Budweth  
for the Society

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

R. U. Boriss  
for the solicitor

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

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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

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

#### DECISION

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

##### Complaint D167/92

2. (d) Acting as the executor and solicitor of the estate of John Campbell:
- i) he acted in a conflict of interest by loaning \$25,000 of estate funds to his cousin William McEachern;
  - ii) he violated the provisions of Section 14(7) of Regulation 573 under the Law Society Act and Rule 9 of the Rules of Professional Conduct by withdrawing both executors and legal fees from the estate without rendering fee billings; and
  - iii) he misappropriated \$72,000 from the estate by a series of four cheques in the amounts of \$6,550, \$25,000, \$25,000 and \$15,000.
2. (e) Acting as executor of and solicitor for the estate of Carl Campbell:
- iii) he failed to conscientiously and diligently serve the estate and its beneficiaries by failing to respond to requests for an accounting of the affairs of the estate and by failing to resolve the issues necessary to allow a final distribution of the estate in a timely fashion.
2. (f) He misappropriated \$401.25 of funds provided to him by his client Ms. Brown to pay the account of Charles Roy Appraisals Ltd.
2. (g) He borrowed \$25,000 from his client Peggy Halligan contrary to the provisions of Rule 7 of the Rules of Professional Conduct.
2. (j) He misappropriated the sum of \$155,000, more or less, of client trust money.

##### Complaint D27a/93

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

##### Conduct Unbecoming - Complaint D27a/93

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

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

Complaint D180/92

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

Complaint D195/92

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

Complaint D79/93

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

Complaint D113/93

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

FINDINGS OF THE DISCIPLINE COMMITTEE

CREDIBILITY

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

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

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

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

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

#### THE CHARGES

##### Reasons for Findings

##### Complaint D167/92

##### 2 (d) (i)

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

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

##### 2 (d) (ii)

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

##### 2 (d) (iii)

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

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

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

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

2 (e) iii

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

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

2 (f)

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

2 (g)

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

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

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

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

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



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2 (i)

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

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

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

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

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

Complaint D27a/93

2 (a)

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

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

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

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

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

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

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

Complaint D180/92

2 (a)

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

D195/92, D79/93 and D113/93

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

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

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Ian Thomas McEachern be disbarred.

REASONS FOR RECOMMENDATION

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

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

ALL OF WHICH is respectfully submitted

DATED this 10th day of September, 1993

"Clay Ruby"  
Chair

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

Carried

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

Carried

Counsel retired.

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Note: As a result of a communication received from Mr. McEachern, Convocation on Friday, October 22nd rescinded the order of disbarment and put the matter over to Special Convocation in November. (see page 37)

ADMISSIONS COMMITTEE

Re: MICHAEL JOHN SPICER

The matter was stood down.

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Re: GREGORY PETER LINTON VANULAR, Pickering

The Secretary placed the matter before Convocation.

The reporter was sworn.

Mr. Thom and Ms. Graham withdrew.

Mr. Gavin MacKenzie appeared on behalf of the Society and the solicitor appeared on his own behalf.

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Convocation had before it the Report of the Discipline Committee dated 20th September, 1993, together with an Affidavit of Service sworn 18th October, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd September, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 21st October, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

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

Christina Budweth  
for the Society

GREGORY PETER LINTON VANULAR  
of the Town  
of Pickering  
a barrister and solicitor

Not Represented  
for the solicitor

Heard: June 29, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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On June 9, 1993, Complaint D160/93 was issued against Gregory Peter Linton Vanular, alleging that he was guilty of professional misconduct.

The matter was heard in public on June 29, 1993 before this Committee composed of Mary Weaver, Q.C., Chair, Stuart Thom, Q.C. and Fatima Mohideen. Mr. Vanular attended the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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Complaint D160/93 in regard to this solicitor was issued on the 9th day of June, 1993. The matter was heard and completed in public on the 29th of June, 1993. The evidence before the Committee consisted of an agreed statement of facts. The solicitor appeared on his own behalf. The solicitor admits that the facts alleged in the complaint supported by the agreed statement of facts constitute professional misconduct. After reading the agreed statement of facts containing the admissions of the solicitor, and the submissions of counsel, the Committee finds that the solicitor is guilty of professional misconduct with respect to all of the particulars enumerated.

Complaint D160/93

2. a) He failed to provide a reply to the Society regarding a complaint by Laurie Laning despite letters dated September 15 and November 3, 1992 and telephone requests on October 5, 20 and 27, 1992 and December 2 and 4, 1992.
- b) He failed to provide a reply to the Society regarding a complaint by Rish J. Topan despite letters dated September 15 and November 3, 1992 and telephone requests on October 20 and 27, 1992 and December 2 and 4, 1992.
- c) He failed to provide a reply to the Society regarding a complaint by M. J. Gonneau despite letters dated September 22 and November 3, 1992 and telephone requests on October 13, 20 and 27, 1992 and December 2 and 4, 1992.
- d) He failed to provide a reply to the Society regarding a complaint by R.C. Stewart despite a letter dated October 9, 1992 and telephone requests on October 16, 1992.
- e) He failed to honour his financial obligations incurred in relation to the practice of law namely to Laning, Gonneau and Stewart.
- f) He failed to account for funds entrusted to him for his client, Rish J. Topan, regarding an immigration matter.
- g) He failed to provide a reply to the Society regarding a complaint by Bonnie Johnson despite letters dated September 22 and November 12, 1992 and February 9, 1993 and telephone requests on October 20 and 27, 1992 and February 3 and 5, 1993.
- h) He failed to provide a reply to the Society regarding a complaint by Sheila Finlay despite letters dated October 26, 1992 and February 3, 1993 and telephone requests on November 17, December 2 and 4, 1992.
- i) He failed to provide a reply to the Society regarding a complaint by Gisela Pfeiffer despite letters dated December 3, 1992 and February 3, 1993 and telephone requests on January 6 and 13, 1993.
- j) He failed to honour financial obligations incurred in relation to the practice of law, namely to Johnson and Finlay.
- k) He failed to properly account for monies entrusted to him by his client.
- l) He failed to provide a reply to the Society regarding a complaint by Axel Winkelmann despite letters dated February 9 and March 11, 1993 and telephone requests on February 26 and March 1, 1993.
- m) He failed to serve his client, Axel Winkelmann, in a conscientious, diligent, and efficient manner in that he:
  - (i) failed to attend a motion for summary judgment and as a result judgment was obtained against his client; and

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- (ii) failed to advise his client of the date of the motion.
- n) He failed to provide a reply to the Society regarding a complaint by David McCray, despite letters dated November 30, 1992 and February 8, 1993 and telephone calls on January 15 and February 4, 1993.
- o) He failed to:
  - (i) respond to letters from a fellow solicitor, David McCray, respecting the status of a transaction for which Mr. McCray had delivered documents to the Solicitor in escrow; and
  - (ii) return the documents delivered in escrow, as requested by Mr. McCray or pay Mr. McCray's outstanding account in respect of those documents, pursuant to the Solicitor's undertaking in this regard dated March 5, 1992.

#### 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 D160/93 and is prepared to proceed with a hearing of this matter on June 29 and 30, 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 D160/93 and this agreed statement of facts and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

##### IV. FACTS

4. The Solicitor was called to the bar on April 9, 1981.

##### Particular 2(a) - Failure to Reply - Laurie Laning

5. By letter dated August 31, 1992, the complainant, Laurie Laning, wrote to the Society on behalf of MTC Leasing Inc. regarding the Solicitor's outstanding financial obligation to MTC. Under cover of letter dated September 15, 1992, a copy of which is attached as Exhibit 1 to this agreed statement of facts, the Society forwarded to the Solicitor a copy of the letter of complaint inclusive of enclosures. The Solicitor did not respond.

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6. A staff member of the Society telephoned the Solicitor's office and left messages on October 5, October 20 and October 27, 1992. On each occasion, the Solicitor was requested to return the call. The Solicitor failed to return any of the aforestated telephone messages.

7. By registered letter dated November 3, 1992, the Society wrote to the Solicitor restating its efforts at previous contact. A copy of the Society's November 3, 1992 letter complete with registered mail receipt card is attached as Exhibit 2 to this agreed statement of facts.

8. A staff member of the Society telephoned the Solicitor on December 2, 1992 leaving a message for the Solicitor to return the call. He failed to do so.

9. On December 4, 1992, a staff member of the Society spoke to the Solicitor regarding the aforestated complaint. The Solicitor stated that he had received the Society's communications and that he should be able to "bang them (the replies) off over the weekend".

10. To date the Solicitor has failed to reply to the Society's communications regarding the complaint of Laurie Laning.

Particular 2(b) - Failure to Reply - Rish Topan

11. By copy of letter dated August 28, 1992, the Solicitor's client, Rish Topan complained to the Law Society about the Solicitor's failure to act on her behalf in regard to an immigration matter. Mrs. Topan also complained about the Solicitor's failure to attend at scheduled appointments.

12. By letter dated September 15, 1992, a copy of which is attached as Exhibit 3 to this agreed statement of facts, the Society forwarded to the Solicitor a copy of Mrs. Topan's letter of complaint complete with enclosures. The Solicitor did not reply.

13. A staff member of the Society telephoned the Solicitor's office on October 20 and October 27, 1992 and left messages for the Solicitor to return the calls. The Solicitor failed to do so.

14. By registered letter dated November 3, 1992, the Society restated its efforts to contact the Solicitor. The Solicitor was reminded of his obligation to reply to the Society. A copy of the Society's November 3, 1992 letter, complete with registered mail receipt card, is attached as Exhibit 4 to this agreed statement of facts.

15. On December 2, 1992, a staff member of the Society left a telephone message at the Solicitor's office asking him to return the call. The Solicitor did not reply.

16. On December 4, 1992, during the same conversation referred to in paragraph 9 above, a staff member of the Society spoke to the Solicitor who advised that he should be able to "bang them (the replies) off over the weekend" and send them into the Society. Despite the Solicitor's assurance in this regard, the Society has yet to receive a reply to Mrs. Topan's complaint.

Particular 2(c) - Failure to reply - M. J. Gonneau

17. By letter dated September 11, 1992, Mrs. M. J. Gonneau, Registrar in the Ontario Court (General Division), Milton, Ontario, complained about the Solicitor's conduct in writing two cheques which were returned by the bank bearing the notation "insufficient funds".

21st October, 1993

18. By letter dated September 22, 1992, a copy of which, complete with enclosures, is attached as Exhibit 5 to this agreed statement of facts, the Society wrote to the Solicitor regarding Mrs. Gonneau's complaint. The Solicitor failed to reply.

19. On October 13, October 20 and October 27, 1992, a staff member of the Society telephoned the Solicitor's office and left messages asking that he return the calls. The Solicitor failed to return the calls.

20. By letter dated November 3, 1992, a copy of which, complete with registered mail receipt card is attached as Exhibit 6 to this agreed statement of facts, the Society restated its efforts to contact the Solicitor and reminded him of his obligation to reply to the Society. The Solicitor failed to reply.

21. On December 2, 1992, a staff member of the Society called the Solicitor and left a message requesting that he return the call. The Solicitor failed to do so.

22. On December 4, 1992, a staff member of the Society had a telephone call with the Solicitor regarding this matter as set out in paragraphs 9 and 16 above.

23. To date the Solicitor has failed to reply to the Society regarding the complaint of Mrs. Gonneau.

Particular 2(d) - Failure to Reply - R. C. Stewart

24. By letter dated May 7, 1992, the Society received a letter of complaint from R.C. Stewart, Land Registrar, Bracebridge, regarding the Solicitor's payment of a registry fee with a cheque which was subsequently returned by the bank marked "insufficient funds". By letter dated May 15, 1992, a copy of which, complete with enclosures is attached as Exhibit 7 to this agreed statement of facts, the Society forwarded to the Solicitor a copy of the letter of complaint.

25. By letter dated July 15, 1992, the Solicitor replied to the Society's May 15 letter advising that a replacement cheque would be sent. A copy of the Solicitor's July 15, 1992 response is attached as Exhibit 8 to this agreed statement of facts.

26. By letter dated September 28, 1992, Mr. Stewart advised that the Solicitor's replacement cheque had also been returned "insufficient funds".

27. The Society wrote to the Solicitor again regarding this matter on October 9, 1992, asking that the Solicitor rectify the matter immediately. A copy of the Society's October 9, 1992 letter is attached as Exhibit 9 to this agreed statement of facts.

28. During a telephone call between a staff member of the Society and the Solicitor on October 16, 1992, the Solicitor advised he would send a cheque immediately.

29. The Solicitor has, to date, failed to do so or to communicate further with the Society.

Particular 2(e) - Failure to Honour Financial Obligation Re: Laning, Gonneau and Stewart

30. The Solicitor admits the truth of the contents of the letters of complaint marked as Exhibits 1, 5 and 7 to this agreed statement of facts.



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31. The Solicitor admits that the financial obligations to Laning, Gonneau and Stewart are obligations incurred in relation to or in the name of his law practice and that they remain outstanding.

Particular 2(f) - Failure to Account Re: Rish Topan

32. The Solicitor admits that he received funds in trust as set out in Mrs. Topan's letter, attached as Exhibit 3. The Solicitor admits that he has failed to account to Mrs. Topan for the funds provided to him in trust regarding the immigration matter on which he had been retained by her.

Particular 2(q) - Failure to Reply - Bonnie Johnson

33. By letter dated August 25, 1992, Bonnie Johnson complained that the Solicitor had failed to honour an invoice for services rendered to his law practice. The Society wrote to the Solicitor by letter dated September 4, 1992, a copy of which, complete with enclosures, is attached as Exhibit 10 to this agreed statement of facts.

34. The Solicitor responded by letter dated September 15, 1992, a copy of which is attached as Exhibit 11 to this agreed statement of facts.

35. By letter dated September 22, 1992, the Society acknowledged receipt of the Solicitor's September 15 letter and requested that he confirm when the account had been paid.

36. Staff members of the Society telephoned the Solicitor on October 20 and October 27, 1992 leaving messages requesting that he return the calls. The Solicitor failed to do so.

37. By letter dated November 12, 1992, the Society wrote to the Solicitor again requesting confirmation that the outstanding invoice had been paid. The Solicitor did not reply.

38. A staff member of the Society left telephone messages at the Solicitor's office on February 3 and February 5, 1993 requesting that the Solicitor return the call. The Solicitor failed to do so.

39. By registered letter dated February 9, 1993, the Society restated its efforts to contact the Solicitor and reminded him of his obligations pursuant to Rule 13. A copy of the Society's February 9, 1993 letter complete with registered mail card evidencing receipt is attached as Exhibit 12 to this agreed statement of facts.

40. To date the Solicitor has not responded to the Society's correspondence regarding Ms. Johnson's complaint.

Particular 2(h) - Failure to Reply - Sheila Finlay

41. By letter dated October 2, 1992, Sheila Finlay complained to the Law Society that she had received an NSF cheque from the Solicitor for payment of freelance conveyancing work for matters completed in February and April, 1992. By letter dated October 26, 1992, the Society forwarded a copy of Ms. Finlay's letter to complaint to the Solicitor. A copy of the Society's October 26 letter complete with enclosure is attached as Exhibit 13 to this agreed statement of facts.

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42. On November 17, 1992, a staff member of the Society had a telephone conversation with the Solicitor regarding the Finlay complaint during a conversation regarding another matter. The Solicitor advised he had just received a number of registered letters from the Society and that he would try to have his best to have some response by "tomorrow".

43. Further calls were placed by the Society's staff on December 2 and December 4, 1992. During the December 4, 1992 conversation the Solicitor promised a response after the weekend.

44. Not having received a response from the Solicitor, the Society wrote to him again by way of registered letter dated February 3, 1993. The Society reminded the Solicitor of his obligation to reply to the Society pursuant to provisions of Rule 13. A copy of the Society's February 3, 1993 letter complete with registered mail receipt card is attached as Exhibit 14 to this agreed statement of facts.

45. The Solicitor has, to date, failed to reply to the Society's communications regarding Ms. Finlay's complaint.

Particular 2(i) - Failure to Reply - Gisela Pfeiffer

46. By letter dated November 26, 1992, Gisela Pfeiffer complained to the Society regarding the Solicitor's failure to account for funds being withheld on a real estate transaction. By letter dated December 3, 1992, the Society forwarded a copy of Ms. Pfeiffer's letter of complaint to the Solicitor and requested that he provide comments with respect thereto. A copy of the Society's December 3, 1992 letter complete with enclosure is attached as Exhibit 15 to this agreed statement of facts. The Solicitor did not reply.

47. A staff member of the Society left telephone messages with the Solicitor's office on January 6 and January 13, 1993. Messages were left requesting that the Solicitor return the call. He failed to do so.

48. By registered letter dated February 3, 1993, the Society restated its efforts to contact the Solicitor and asked him to reply to its previous communications reminding of his obligations under Rule 13. A copy of the Society's February 3, 1993 letter completed with registered mail receipt card evidencing receipt is attached as Exhibit 16 to this agreed statement of facts.

49. To date the Solicitor has not replied to the Society.

Particular 2(j) - Failure to Honour Financial Obligations

50. The Solicitor admits that he has incurred financial obligations to Bonnie Johnson and Sheila Finlay as set out in their letters of complaint attached as Exhibits 10 and 13, respectively. The Solicitor admits the truth of the contents of those letters of complaint.

51. The Solicitor admits that the financial obligations to Johnson and Finlay are obligations incurred in relation to his practise and that they remain outstanding.

Particular 2(k) - Failure to Account

52. The Solicitor admits that he has failed to account to Gisela Pfeiffer as set out in her letter of complaint attached as Exhibit 15 to this agreed statement of facts.

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Particular 2(1) - Failure to Reply - Axel Winkelmann

53. By letter dated January 26, 1993, Axel Winkelmann made a complaint to the Law Society regarding the Solicitor's failure to attend at a motion for summary judgment in an action in which Mr. Winkelmann was a named party. The Society corresponded with the Solicitor regarding the complaint by letter dated February 9, 1993, a copy of which, complete with enclosure is attached as Exhibit 17 to this agreed statement of facts.

54. A staff member of the Society left telephone messages with the Solicitor's office on February 26 and March 1, 1993 requesting that he return the calls. He failed to do so.

55. By registered letter dated March 11, 1993, the Society wrote to the Solicitor restating its efforts to contact him. The Solicitor was reminded of his obligations under Rule 13. A copy of the Society's March 11, 1993, complete with registered mail receipt card evidencing receipt is attached as Exhibit 18 to this agreed statement of facts.

56. To date the Solicitor has failed to reply.

Particular 2(m) - Failure to Serve

57. The Solicitor admits the allegations as set out in Mr. Winkelmann's letter of complaint attached as Exhibit 17 to this agreed statement of facts.

Particular 2(n) - Failure to Reply - David McCray

58. By letter dated November 11, 1992, a solicitor, David McCray, complained to the Law Society regarding the Solicitor's failure to either return documents forwarded to him in escrow or to provide him with payment for an account owing arising out of the preparation of the same documents. The Society forwarded a copy of Mr. McCray's letter of complaint to the Solicitor under cover of letter dated November 30, 1992, a copy of which, complete with enclosures is attached as Exhibit 19 to this agreed statement of facts.

59. On January 15, 1993, a staff member of the Society had a telephone conversation with the Solicitor during which he advised that a reply to the Society's November 30, 1992 letter would be faxed no later than January 18, 1993. No reply was received.

60. A staff member of the Society left a telephone message with the Solicitor's office on February 4, 1993 requesting that he return the call. The Solicitor failed to do so.

61. By registered letter dated February 8, 1993, the Society wrote to the Solicitor reminding him of his obligation to reply to the Society pursuant to the provisions of Rule 13. A copy of the Society's February 8, 1993 letter complete with registered mail receipt card evidencing receipt is attached as Exhibit 20 to this agreed statement of facts.

62. To date, the Solicitor has failed to reply.

Particular 2(o)

63. The Solicitor admits that the allegations made by Mr. McCray as set out in Exhibit 19 to this agreed statement of facts are accurate.

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V. PRIOR DISCIPLINE

64. On May 24, 1988 the Solicitor was found guilty of professional misconduct in that he participated in financing for his personal residence that had been structured to disguise the fact that he was a borrower and to make it appear that the price paid for the property was higher than it actually was; that he borrowed money from clients without insuring that their interests were protected; and that during the period 1984 to mid-1987 there were frequent unreasonable delays in the completion of his work on behalf of clients. By Order of Convocation dated June 23, 1988, the Solicitor's right to practice was suspended for six months effective July 11, 1988, and he was ordered to pay a fine of \$5,000. The Solicitor resumed practice on January 11, 1989. Convocation also ordered that at the completion of the suspension the Solicitor was to practice with an experienced solicitor for an indefinite period until relieved by Convocation. Copies of the complaints D135/87 and the Report and Decision of the Discipline Committee respecting the matter are attached as Exhibit 21 to this agreed statement of facts.

65. The Solicitor was found guilty of professional misconduct on February 26, 1991 for failing to reply to communications from the Society. On that occasion the Solicitor was reprimanded in committee. A copy of complaint D213/90 is attached as Exhibit 22 to this agreed statement of facts.

66. On May 8, 1991, the Solicitor was found guilty of professional misconduct in respect of complaint D26a/89 for failing to meet financial obligations arising out of his practice, including a \$33,000 judgement in favour of a client and remission of an Errors & Omissions deductible. On that occasion also the Solicitor was reprimanded in committee. A copy of complaint D26a/89 is attached as Exhibit 23 to this agreed statement of facts.

67. The Solicitor has been suspended on four separate occasions between November 1989 and March 1990 as follows:

<u>Suspended</u>	<u>Reinstated</u>	<u>Reason</u>
November 24, 1989	December 15, 1989	Non payment of E&O levy
May 25, 1990	June 27, 1990	Non payment of E&O levy
November 23, 1990	December 27, 1990	Non payment of E&O levy
February 23, 1990	March 7, 1990	Non payment of annual fees

68. On April 14, 1992, the Solicitor was found guilty of professional misconduct for exhibiting a standard of practice below that expected of a barrister and solicitor. The complaint was based on the Solicitor's unreasonable delay in replying to the Society, his delay in fulfilling undertakings, and his failure to honour financial obligations arising out of his practice. The Solicitor was reprimanded in Convocation and ordered to enrol in the Practice Review Program of the Professional Standards Department by order of Convocation dated October 22, 1992.

69. On October 27, 1992, the Solicitor was found guilty of professional misconduct for guaranteeing a financial obligation on behalf of a client and failing to honour a guarantee. By order of Convocation made January 28, 1993, the Solicitor was suspended for a period of nine months beginning February 13, 1993 and required to pay the Society's costs of the investigation in the amount of \$2,500. A copy of the Report and Decision of the Discipline Committee is attached as Exhibit 24 to this agreed statement of facts.

DATED at Toronto this 29th day of June, 1993."

RECOMMENDATION AS TO PENALTY

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The Committee recommends that Gregory Peter Linton Vanular be disbarred.

REASONS FOR RECOMMENDATION

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The complaint contains seventeen separate particulars. The earliest of the particulars was May of 1992, the most recent being January of 1993. The matters were still outstanding at the date of the hearing. Nine of the particulars are for failing to reply to complaints from nine different clients. Two of the particulars are for a failure to account for trust funds. Two are for failing to serve a client in a conscientious, diligent and efficient manner. Two are for failing to honour financial obligations incurred in relation to the practice of law. One for failing to respond to a fellow solicitor, and one for failing to return documents delivered to the solicitor in escrow. In each of these incidents, the client, the creditor or solicitor, has suffered frustration, inconvenience, and possibly financial loss as a result of their dealing with this solicitor. The various acts of misconduct set out in the complaint cover a substantial number of the Rules of Professional Conduct.

The prior discipline history commenced with a finding of professional misconduct on May 24th, 1988. Since that date there have been four subsequent findings of professional misconduct, the most recent complaint was dealt with by Convocation in January of 1993. It was apparent to the Committee that the solicitor felt no remorse for his conduct and that he has failed to take the several opportunities given to him to change his style of practice into one that would be acceptable and in accordance with the Rules of Professional Conduct. It was submitted by counsel for the Law Society that based on this record, the solicitor is ungovernable.

The solicitor stated that the cause of his problems was that he was harassed unnecessarily by the Law Society. He stated that he had tried to continue with his practice, but that he wished to wash his hands of this constant barrage of attacks. He asked the Committee for permission to resign.

The Committee reviewed the evidence and submissions and considered the degree of culpability of the numerous acts of misconduct in the current complaint together with the lengthy prior discipline history of the solicitor. The Committee could find no mitigating circumstances that would be grounds for the lesser penalty sought by the solicitor and recommends that the solicitor be disbarred.

Gregory Peter Linton Vanular was Called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th of April, 1981.

DATED this 20th day of September, 1993

Mary P. Weaver, Q.C.  
Chair

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

Carried

21st October, 1993

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

The solicitor asked Convocation for permission to resign and Society's counsel supported the recommended penalty of disbarment.

Ms. Kiteley withdrew from Convocation.

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

Convocation adopted the motion to disbar the solicitor.

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

Counsel retired.

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Convocation took a brief recess at 10:50 a.m.

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Convocation resumed with Mr. Howie acting as Chair.

Re: JOHN RONALD HOULAHAN, Ottawa

The Secretary placed the matter before Convocation.

The reporter was sworn.

Ms. Elliott withdrew from Convocation.

Mr. Gavid MacKenzie appeared for the Society and Mr. Michael Neville appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 7th June, 1993, together with an Affidavit of Service sworn 16th August, 1993 by Louis Katholos that he had effected service on the solicitor by registered mail on 14th June, 1993 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 21st October, 1993 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Mary P. Weaver, Q.C., Chair  
Marc J. Somerville, Q.C.  
Susan E. Elliott

21st October, 1993

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

Gavin MacKenzie  
for the Society

JOHN RONALD HOULAHAN  
of the City  
of Ottawa  
a barrister and solicitor

Michael Neville  
for the solicitor

Heard: May 11, 1992  
March 26, 1993

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 15, 1991 Complaint D64/91 was issued against John Ronald Houlahan alleging that he was guilty of professional misconduct. This complaint was withdrawn on May 11, 1992 and replaced with Complaint D64a/91 issued on May 11, 1992.

The matter proceeded in public on May 11, 1992 and March 26, 1993 before this Committee composed of Mary P. Weaver, Q.C., Chair, Marc J. Somerville, Q.C. and Susan E. Elliott. Mr. Houlahan appeared at the hearing and was represented by Michael Neville. Gavin MacKenzie appeared on behalf of the Law Society.

#### DECISION

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

2. a) During 1990 he failed to maintain current books and records as required by regulation 573 under the Law Society Act;
- b) During 1989 and 1990 he misappropriated \$12,491 from his client, the Estate of Richard Robert Foster;
- d) Between February and October, 1990, he transferred funds from his mixed trust account to his general account on approximately nine occasions before or without rendering accounts to clients in contravention of section 14(8)(c) of Regulation 573 under the Law Society Act, R.S.O. 1980, ch. 233 as amended, despite written assurances provided to the Law Society on two prior occasions (October 28, 1981 and August 29, 1989) that a practice of rendering an account before funds are transferred to his general account would be strictly enforced in the future.

#### 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 D64a/91 and is prepared to proceed with a hearing of this matter on May 11, 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, having reviewed complaint D64a/91 and this agreed statement of facts with his counsel, Michael Neville, and having considered his counsel's advice, admits particulars (a), (c), and (d) in the complaint and acknowledges that he is accordingly guilty of professional misconduct.

IV. Background Facts

4. John Ronald Houlahan (the "Solicitor") was called to the Ontario bar in 1969. He has practised in Ottawa continuously since that date. He practised as an associate with a senior lawyer for three years after his call, and bought that lawyer's practice in 1972. Since then, he has carried on a general practice, with emphasis on real estate and municipal law, as a sole practitioner and in partnership with other lawyers, and was a sole practitioner at the times material to this complaint. He was appointed a Queen's Counsel in 1981. He is at present 51 years old. He has no prior discipline record.

V. Facts Relevant to Complaint

5. The Society conducted an audit investigation of the Solicitor's practice as a result of information it received from a former employee of the Solicitor, namely Diane Hyde, who had worked for the Solicitor as a bookkeeper for 13 years. The matter was reported to the Society in October, 1990.

Particular 2(a)

a) During 1990 he failed to maintain current books and records as required by regulation 573 under the Law Society Act.

6. Ms. Margot Devlin, a long term employee of the Law Society who was at the material time employed as an investigation auditor, was assigned responsibility for the investigation.

7. Ms. Devlin attended at the Solicitor's office on October 9, 11, 12, 15, 16, 17, 18, 19 and November 8, 9, 20, and 21, 1990.

8. Ms. Devlin quickly determined that the Solicitor's books and records were neither current nor accurate. For example, trust comparisons, which are required by regulation 573 under the Law Society Act to be made monthly, were eight months in arrears. The books and records contained numerous false entries and some entries were not posted at all.

9. Ms. Devlin examined the Solicitor's trust list for his fiscal year ended January 31, 1990, and discovered that the balances thereon differed from those on his client trust ledger accounts.



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10. Because she could not rely on the accuracy of the books and records to determine the true state of the Solicitor's trust account, Ms. Devlin arranged for the Solicitor's trust records for 1990 to be reconstructed. She also arranged for the Solicitor's trust account to be frozen. A new trust account was opened in order that the Solicitor could carry on his law practice.

11. The reconstruction of the Solicitor's trust records was completed in November, 1990. Shortages were disclosed in an aggregate amount in excess of \$100,000, excluding shortages in the trust account relating to the Solicitor's client, the Richard Foster Estate, which are dealt with separately below. The Solicitor arranged financing which enabled him to replace the entire amount of the shortage promptly.

12. It is the Solicitor's position that he was unaware of the shortage referred to in particular 2(a) of the complaint and in paragraph 11 of this agreed statement of facts, as the shortage was caused by the dishonest conduct of his bookkeeper, Diane Hyde, who realized a significant financial benefit as a result of her dishonest conduct. The Society acknowledges that it is unable to refute this explanation on the basis of clear and convincing evidence, and it is for this reason that the parties have jointly agreed to request that the complaint be amended to substitute particular (a) of complaint D64a/91 for particulars (b) and (c) of complaint D64/91.

13. The Solicitor nevertheless acknowledges that it is his responsibility to maintain accurate and current books and records as required by regulation 573 under the Law Society Act, and that he failed to do so.

Particulars 2(b) and (c)

- b) During 1989 and 1990 he misappropriated \$12,491.00 from his client, the Estate of Richard Robert Foster;
- c) In the alternative to paragraph (b), during 1989 and 1990, he failed to maintain sufficient balances on deposit in his trust account to meet his obligations with respect to moneys held in trust for his client, the Estate of Richard Robert Foster, as required by regulation 573 under the Law Society Act;

14. One specific transaction which was brought to Ms. Devlin's attention by Diane Hyde was a sale of real property by the Solicitor's client, the Estate of Richard Robert Foster (the "Foster Estate"). Ms. Devlin reviewed the Solicitor's file in relation to this transaction at the time of her first attendance at the Solicitor's office on October 9, 1990.

15. Richard Robert Foster died in 1949. The only remaining asset in his estate was a property (Part Lot 6, Conc. I & II R.F.I.) in the city of Ottawa.

16. The Foster Estate sold the property to Edward Rump in trust on February 15, 1989. The Solicitor acted for the Foster Estate. The two executors of the Foster Estate were Clayton and Elwyn Foster. The statement of adjustments disclosed the following:

Sale price	\$1,400,000.00	
Deposits		\$ 50,000.00
Mortgage back to Estate		1,000,000.00
Adjustments		1,166.40
Balance due on closing		<u>348,833.60</u>
	\$1,400,000.00	\$1,400,000.00

21st October, 1993

17. A copy of the statement of adjustments is under Tab 1 of the book of documents filed herewith. The balance due on closing was received by the Solicitor on February 15, 1989, and from that balance due on closing he disbursed the following trust monies:

Houlahan legal fees	\$ 20,000.00
Clarkson Gordon	300.00
Webster (surveyor)	7,409.00
Century 21 commission	20,000.00
City of Ottawa	300.00
Reimburse beneficiaries for taxes paid personally	46,001.28
Holdback by solicitors for R. Rump re: road allowance	(86,520.00)
Available for distribution to beneficiaries	<u>168,303.32</u>
	\$262,313.60

18. A copy of the trust statement prepared by the Solicitor for the disposition of the balance due on closing is under Tab 2 of the book of documents. It will be referred to as Statement "A" throughout the balance of this agreed statement of facts.

19. The trust ledger account, which is under Tab 3 of the book of documents, disclosed that the Solicitor disbursed only \$155,812.32 to the beneficiaries. The amount of the surveyor's account on the trust statement which was remitted to the beneficiaries, was changed from \$7,409.00 to \$19,900.00. The difference in the amount of \$12,491.00 remained in his trust account temporarily, and then was disbursed for his personal benefit as described below.

20. The second trust statement for the disposition of the balance due on closing is under Tab 4 of the book of documents. This second statement revealed that the Solicitor had increased the payment to the surveyor and reduced the proceeds available for distribution to the beneficiaries by \$12,491.00. This statement will be referred to as Statement "B" throughout the balance of this agreed statement of facts.

21. Payments on the mortgage back to the estate were due in three equal installments as follows:

Principal Amount: \$1,000,000.00

July 1, 1989	\$333,333.33
January 1, 1990	333,333.33
July 1, 1990	333,333.33

22. The mortgage payments were properly distributed to the beneficiaries. Copies of the trust statements prepared for each of the payment dates are under Tab 5 of the book of documents.

23. Ms. Hyde provided the Law Society with copies of the two different trust statements for the Foster Estate. Statement B which did not properly reflect the disposition of the Estate's trust funds, was remitted to the client. The trust statements which she provided identified the following disbursements:

21st October, 1993

		Statement A	Statement B
Feb. 15	BDOC	\$262,313.60	\$262,313.60
Feb. 15	Pd Century 21	20,000.00	20,000.00
Feb. 15	Pd Surveyor	7,409.00	19,900.00
Feb. 15	Pd tax opinion	300.00	300.00
Feb. 15	Pd Houlahan	20,000.00	20,000.00
Feb. 15	Pd taxes	46,001.28	46,001.28
Feb. 15	Cash available for disposition	168,303.32	155,812.32
		\$262,313.60	\$262,313.60

Distribution of Proceeds:		
Robert Foster	\$8,014.44	\$7,419.62
Clayton Foster	80,144.44	66,776.73
Elwyn Foster	80,144.44	66,776.73
Hazel Jeroy		7,419.62
Nellie Vrooman		7,419.62
	\$168,303.32	\$155,812.32

24. The surveyor had estimated his account to be between \$15,000 and \$20,000. The original invoice came in at approximately \$7,409. The Foster beneficiaries were aware of the estimate but were not informed of the amount of the original invoice. The Solicitor prepared Statement B, showing the estimated survey cost and not the actual cost, and sent it to the clients.

25. The Solicitor admits that a trust shortage, in the amount of the difference between the actual surveyor's account and the reported surveyor's account eventually resulted, because disbursements were posted to the Foster Estate trust ledger which were to pay the Solicitor's debts.

26. The Solicitor made restitution in full on October 12, 1990. He provided Ms. Devlin with a statement dated October 12, 1990, in regard to this shortage. A copy of this statement is under Tab 6 of the book of documents. The Solicitor admits that the second trust statement to the Estate was misleading. The Solicitor acknowledges that the difference in the amount shown as having been paid to the surveyor and the actual amount was used for his personal benefit. The Solicitor says that he did so without any dishonest intent, and will testify on this point at the hearing.

27. The Solicitor states that he fully expected to receive one or more further invoices from the surveyor and fully intended to pay those accounts. A second invoice was in fact received by the Solicitor from the surveyor on November 5, 1990, in the amount of \$4,575.00. The Solicitor paid this account from the Foster Estate trust ledger account on that date. Copies of the two invoices from the surveyor dated February 7, 1989, and November 5, 1990 are under Tabs 7 and 8 of the book of documents respectively.

28. The November 5, 1990 invoice was received by the Solicitor as a result of a telephone call which he placed to the surveyor on November 1, 1990, in which he inquired whether a further invoice would be forthcoming. The Solicitor made this inquiry as a result of Ms. Devlin's review of the transaction with him in October, 1990.

Particular 2(d)

- d) Between February and October, 1990, he transferred funds from his mixed trust account to his general account on approximately nine occasions before or without rendering accounts to clients in contravention of section 14(8)(c) of regulation 573 under the Law Society Act, R.S.O. 1980, ch. 233 as amended, despite written assurances provided to the Law Society on two prior occasions (October 28, 1981 and August 29, 1989) that a practice of rendering an account before funds are transferred to his general account would be strictly enforced in the future.

29. The Solicitor admits that between February and October, 1990, he transferred funds from his mixed trust account to his general account on 56 occasions before or without rendering accounts to clients. These transfers are listed in a schedule prepared by Ms. Devlin which is under Tab 10 of the book of documents.

30. As a result of two previous audits, in 1981 and 1989, the Law Society drew to the Solicitor's attention the fact that the audits had disclosed transfers from trust to general before billings were prepared, delivered, and posted. On these occasions, the Solicitor assured the Society that a practice of rendering accounts before funds are transferred from trust would be strictly enforced in the future. Copies of relevant correspondence relating to the 1981 and 1989 audits are under Tabs 11 through 14 of the book of documents.

DATED at Toronto this 11th day of May, 1992."

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

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As will be seen from the above Agreed Statement of Facts, there is no dispute with respect to Particulars 2(a) and (d) and accordingly the Solicitor is guilty of professional misconduct with respect to those particulars.

It is admitted by Mr. Houlahan that the sum of \$12,491.00 was disbursed from his trust account for payment of his personal expenses. Whether Mr. Houlahan is guilty of the allegation contained in Particular 2(b), (Misappropriation), or Particular 2(c) (gross negligence), depends upon a finding of whether Mr. Houlahan had a dishonest intent at the time the monies were transferred from his trust account to pay his personal expenses. Mr. Houlahan's defence in his viva voce evidence before the Committee was that he believed he was entitled to these monies. His evidence-in-chief was:

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"In June I had been on vacation -- in fact, I had been away for a period of time and when I arrived back in my office Mrs. Hyde, who also handled my personal financial affairs, paying bills and so on, indicated that while I was away my En Route travel card account, or invoice, had arrived and various other expenses associated with my account and I indicated, of course, they would have to be dealt with, paid, and she said, quote, "I have some good news because you did not get your fee on the Foster file of \$20,000.00, and on that basis she paid them, albeit, ought not to have been paid directly from trust but she said that that was earned fees untransferred remaining in the trust account."

Transcript - pages 63 - 64

Mrs. Hyde, who was Mr. Houlahan's bookkeeper, was not called as a witness. She is herself the subject of an on-going investigation based upon allegations that she acted dishonestly while in the employment of Mr. Houlahan.

The Committee heard the evidence of Margot Devlin; (formerly Margot Ferguson, and so identified in certain of the Exhibits before the Committee), who in October 1990, held the position of Investigation Auditor with the Law Society. Ms. Devlin attended at Mr. Houlahan's office on October 12, 1990 and obtained the following signed statement from Mr. Houlahan:

I, John Ronald Houlahan, Q.C., carrying on business as a Barrister and Solicitor at 1207 - 130 Albert Street, Ottawa, Ontario.

RE: FOSTER ESTATE

Upon reviewing the Foster Estate trust ledgers with Ms. Ferguson and comparing them to the Statement of Monies Received and Disbursed, I acknowledge the following:

Payment to William J. Webster Limited, Surveyor

The estimated fee of Mr. Webster had been quoted at \$19,900.00 which is the amount on the second Statement of Monies Received and Disbursed. The first Statement of Monies Received and Disbursed identified a disbursement of \$7,409.00 to Mr. Webster which is the actual amount disbursed and the only amount for which I have received an invoice.

The second statement to the Estate is misleading in that it states that Mr. Webster was paid the \$19,900.00; in fact I only disbursed \$7,409.00. I subsequently used the difference of \$12,491.00 for my personal benefit. I fully expected to receive a second invoice from the Surveyor and fully intended to pay that account.

My view of the Foster Trust Ledger with Ms. Ferguson indicated that I had drawn funds in excess of the \$12,491.00. This was the first time I became aware of this fact. The following amounts were drawn from the Foster trust ledger (#5975) to or on behalf of myself.

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<u>Date</u>	<u>Paid To</u>	<u>Re</u>	<u>Amount</u>
14 June 1989	Bank of Nova Scotia	*bank a/c	\$5,820.00
21 June 1989	City Hall	*taxes	2,187.70
12 July 1989	en Route	*credit card	9,134.38
9 August 1989	TD	*bank a/c	1,500.00
31 August 1989	American Express	*credit card	2,150.81
31 August 1989	JRH	*	213.30
15 Feb. 1990	J. MacDougall		1,961.00
2 March 1989	St. Bridget	*donation	50.00
*Houlahan personal			<u>\$23,017.19</u>

In addition, I could not identify the following disbursements from the Foster trust ledger #5975-A:

<u>Date</u>	<u>Paid to</u>	<u>Amount</u>
?	?	\$1,539.00
13 April, 1989	Daniel Miller	<u>737.09</u>
		<u>\$2,276.09</u>

I advised Ms. Ferguson that I was not aware that I had appropriated Foster Estate funds in excess of the \$12,491.00. I advised Ms. Ferguson that in addition to the above appropriations, I had received my legal fee of \$20,000.00, on February 15th, 1989 which I had rendered to my client.

I told Ms. Ferguson that I would make restitution of the \$23,017.19 to the Foster Estate forthwith and have done so. I will replace any other monies as required.

Based upon my knowledge and recollection of the books and records, which I do not now have, I advised Ms. Ferguson that this is an isolated incident.

I advised Ms. Ferguson that I would co-operate fully with her investigation.

The facts set out in this statement are true to the best of my knowledge and belief.

signed

"John Ronald Houlahan, Q.C."

October 12th, 1990

This Statement was drafted by Ms. Devlin (Ferguson) as a result of her discussion with Mr. Houlahan. The Committee also had before it (as Exhibit 4) an earlier draft of this Statement, also typewritten but containing certain handwritten amendments by Mr. Houlahan. We accept this as corroborative of Ms. Devlin's testimony that Mr. Houlahan reviewed her original draft and appeared to fully understand the Statement which he signed. It will be noted from paragraph 23 of the Agreed Statement of Facts that the Foster Estate file contained two different trust statements. Statement B was sent to the client; Statement A was not. The difference is the disbursement allegedly paid to the surveyor. He in fact had been paid \$7,409.00. Statement B, sent to the client, showed a disbursement of \$19,900.00. The difference of \$12,491.00 constitutes the amount forming the basis of Particular (b) of the Complaint. Mr. Houlahan concedes that he used the \$12,491 for his personal benefit. He says he expected to receive a second invoice from the surveyor.

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The determination as to whether Mr. Houlahan had a dishonest intent at the time the monies were transferred from his trust account to pay his personal expenses requires a consideration of the creditability of the explanations he has given for his actions. Based on a review of the Agreed Statement of Facts, the written statement given by Mr. Houlahan to Ms. Ferguson on October 12, 1990 and his oral testimony before the Committee, we are unable to conclude that Mr. Houlahan had an honest belief that he was entitled to these monies. As is noted in the majority decision, Mr. Houlahan has given two explanations. This is one explanation too many. If in fact he believed, as stated in his examination-in-chief, that he had not received his fee on the Foster file and was accordingly entitled to have his personal expenses paid from the monies remaining in his trust account, (clearly improper in any event), then why did he not give this explanation to Ms. Ferguson in October 1990? If he truly believed that he was entitled to these monies for fees, then it would have been natural for him to say to Ms. Ferguson: "these were my monies and I was entitled to them". The story which he told Ms. Ferguson with respect to the estimated fee for the surveyor is, in my opinion, entirely inconsistent with the explanation which he gave during his testimony before the Committee. We are unable to believe Mr. Houlahan and we accordingly conclude that he knowingly misappropriated these funds. We would therefore find Mr. Houlahan guilty of Particular (b) of the amended complaint.

#### RECOMMENDATION AS TO PENALTY

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The majority of the Committee recommends that with respect to particulars 2(a), (b) and (d) of the Complaint, the Solicitor be suspended for a period of six months. At the conclusion of the period of suspension, the Solicitor be required for a period of two years thereafter to file monthly trust comparison statements with the Law Society audit department.

#### REASONS FOR RECOMMENDATION

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The Committee considered all of the authorities presented by counsel for the Solicitor and counsel for the Law Society. On the facts and circumstances of this case, and on considering the mitigating factors submitted by the counsel for the Solicitor, the Committee felt that a period of suspension was adequate and in reaching this decision, the Committee considered the following mitigating circumstances.

##### 1. Particular 2(a)

This particular was admitted by the Solicitor. His explanation was that he placed complete trust and reliance on his bookkeeper who had been with him for thirteen years. In doing so however, he failed in his obligation to comply with the Law Society regulation with respect to maintenance of books and records. His bookkeeper suddenly left her employment in October 1990 taking with her his books and records. His failure in regard to this particular became apparent shortly after her departure when the books and records came into the possession of the Law Society. It was then quickly determined that the Solicitor's books and records were neither current nor accurate. For example, trust comparisons were eight months in arrears. As a result of this neglect, the Solicitor incurred accountant's fees of approximately \$27,000.00.

2. Particular 2(b): The Foster Estate

This estate had been in the Solicitor's office since 1949. By 1989, a parcel of real estate was sold for \$1,400,000.00. This was the only asset remaining in the estate. On February 15th, the Solicitor's fees of \$20,000.00 were paid from the trust account. An amount was reserved in the trust account with respect to a future bill to be received from the surveyor estimated at \$12,500.00. It was submitted that the beneficiaries would never have been entitled to these funds in any event. In June of 1990, the bookkeeper advised the Solicitor that his fees of \$20,000.00 with respect to the transaction were still available. It was the Solicitor's evidence that he had forgotten that his fees had been fully paid and consequently he was entitled to withdraw funds against this account and use them for his own personal benefit.

3. Effect on Solicitor's Practice

Because of the publicity attendant on these proceedings, the Solicitor's reputation amongst some of his clients has suffered greatly and as a result his practice has been devastated. It is unlikely that his practice will recover from the effects of these proceedings for a very long time, if ever. He has also suffered the severe financial loss as a result of the conduct of his former bookkeeper including the expense of paying an accountant to reconstruct his books.

4. Particular 2(b): Other Mitigating Circumstances Considered by the Committee

The unauthorized taking of trust money was a single isolated instance after a rather lengthy and successful career and may in part be attributed to his wilful blindness to the improper and unsatisfactory way in which the bookkeeper was maintaining his books and records. The money taken was repaid in full very soon after the complaint was made and there is no possibility of a claim against the Lawyers Fund for compensation. In addition, the Solicitor cooperated with the Society in negotiating an Agreed Statement of Facts.

5. Character References:

The Committee considered fifteen letters submitted in support of the Solicitor. The letters were from a wide spectrum of persons who were leaders of the legal community, the government community, and the community at large. Indeed, they were a very impressive indication of the wide range of support for the Solicitor and were a testimonial to the Solicitor's reputation as to his ability, honour and dignity. Counsel stated that in the Solicitor's Ottawa community, there was a feeling of disbelief that the Solicitor would be guilty of conduct that was dishonest.

6. Particular 2(d): Pretaking of Fees

In the case of all nine transfers, each of the clients was a member of the family or a friend of the solicitor. Each of the clients had been advised as to the amount of the fee the Solicitor would charge and in many of the cases the fee chargeable was reduced by reason of the special nature of the relationship between the Solicitor and the client. When acting as solicitor for an institutional lender, the Solicitor's fee had been a matter of agreement between the lender and the Solicitor.



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Notwithstanding these mitigating circumstances, the Committee noted that there were two prior audits by the Law Society and on each occasion it had been drawn to the Solicitor's attention that transferring fees from a trust account prior to rendering an account to the client is a breach of the Rules and on each of these occasions the Solicitor had assured the Society that the practice would be discontinued and that accounts would be rendered before funds were transferred from trust. Nonetheless, the Solicitor continued with this course of conduct which cannot be condoned or trivialized by reason of the special circumstances existing between the Solicitor and his clients.

7. In all cases of misappropriation, the Solicitor is required to leave the profession unless there are clearly exceptional mitigating circumstances such as drug or alcohol dependency or other special circumstances which result in a finding of diminished responsibility. In this case such mitigating circumstances do exist.

8. The majority of the Committee therefore recommends that on particulars 2(a), (b) and (d), the Solicitor be suspended for a period of six months and at the conclusion of the period of suspension, for a further period of two years he be required to file monthly trust comparisons with the Law Society audit department.

9. The entire Committee addressed the matter of an appropriate penalty in the event that Convocation accepts the dissenting decision. The Committee recommends that in the event that Convocation accepts the decision of the dissenter, on paragraphs 2(a), (c) and (d), the appropriate penalty would be a reprimand in Convocation.

John Ronald Houlahan was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 21st day of March, 1969.

ALL OF WHICH is respectfully submitted

DATED this 7th day of June, 1993

Mary P. Weaver, Q.C.  
Chair

#### DISSENT

IN THE MATTER OF THE LAW SOCIETY ACT, R.S.O. 1990

AND IN THE MATTER OF JOHN RONALD HOULAHAN  
of the City of Ottawa, Barrister and Solicitor

#### DISSENTING REASONS

John Ronald Houlahan was called to the Bar of Ontario in 1969 and has practised in Ottawa continuously since that date. He has carried on a general practice with emphasis on real estate and municipal law as a sole practitioner and in partnership with other lawyers. At the times material to this complaint; he was a sole practitioner.

The solicitor has admitted professional misconduct on three of the four particulars of the complaint. He denies the details of particular 2(b) of the complaint, that is:

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"b) During 1989 and 1990, he misappropriated \$12,491.00 from his client, the Estate of Richard Robert Foster;"

Mr. Houlahan denies he misappropriated these funds. He states he had no dishonest intent with respect to the use of that money, while admitting that funds were transferred from trust when they should not have been transferred.

Mr. Houlahan had employed for 13 years a bookkeeper in whom he placed the utmost faith and confidence. Mr. Houlahan's defence to particular 2(b) is that his bookkeeper misled him as to the true state of his books and that he believed the funds which he transferred from the Foster Estate were in fact fees which he had previously earned and which had not been transferred into his general account.

The issue before the Committee was whether the solicitor misappropriated the funds as alleged in particular 2(b) or whether he lacked the requisite mens rea to be found guilty of the particular as alleged.

The Committee heard evidence from Margot Devlin and from the solicitor with respect to the investigation and the facts behind the complaint itself. In addition, the solicitor's wife gave evidence to the effect that they were very well off financially and there was no reason for her husband to take any money. A former judge, Garry Guzzo, who had known the solicitor for over 30 years, testified that Mr. Houlahan had an exemplary reputation for honesty and integrity. Peter Vice, the former Assistant City Solicitor and past President of the County of Carleton Law Association also testified that Mr. Houlahan's reputation was "sterling" with respect to both honesty and integrity.

The essential facts are not in dispute. An Agreed Statement of Facts was before the Committee. Mr. Houlahan's mental state both at the time he signed a statement for the investigator and at the time of the use of the trust funds in question was very much an issue. Ms. Devlin in her testimony indicated that Mr. Houlahan was "surprised" that amounts in excess of \$12,491.00 had been drawn from the Foster Estate and that he was "very shocked the entire meeting" when she first attended at his office to investigate the complaint. She indicated that while she was there he was a very troubled man and that he was very shocked at a number of things he was learning during the course of the Law Society's investigation.

What Mr. Houlahan learned as a result of the investigation by the Law Society was that his trust records were absolutely chaotic; his bookkeeper had apparently altered cheques, for example from \$700.00 to \$9,700.00; his bank had cashed an unsigned cheque in the amount \$6,581.65 which did not appear in his ledgers anywhere; and there were large amounts of billed fees and disbursements which had not been transferred from his trust account to his general account but which were shown on the ledger cards to have been transferred. Evidence indicated that these amounts totalled in excess of \$43,000.00. Mr. Houlahan had to hire forensic accountants to recreate his books at a cost of \$27,000.00. As a result of that reconstruction, he learned that some \$95,000.00 was not properly accounted for in his general ledgers during the period February 1st to October 1st, 1990. This amount has been shown on his financial statements as an operating loss.

The most damning evidence against the solicitor appears to be the written statement he signed dated October 12, 1990 which statement was prepared by Ms. Devlin and revised by the solicitor. A considerable amount of time at the hearing was spent on this statement, who prepared it, when it was revised, etc. The statement was prepared by Ms. Devlin, reviewed and amended by Mr. Houlahan. There was some dispute as to the nature and extent of the amendments and whether all the amendments were made by Mr. Houlahan. The essence of the evidence with respect to the statement however, appears to be, in the majority's view, that Mr. Houlahan did not, at the time he signed that written statement, indicate to the

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Law Society investigator that he believed the money he was transferring was actually earned fees which inadvertently remained in his trust account. In fact, Mr. Houlahan did not mention for some considerable period that his bookkeeper had told him that there were untransferred fees available for his use in that file.

Having listened to Mr. Houlahan and Ms. Devlin and having reviewed both the original statement and the revised statement signed by Mr. Houlahan, I cannot find that much turns on whether Mr. Houlahan stated at the time he signed the statement that he believed the monies being transferred represented fees. I do not find any inconsistency in the written statement and his later explanation. He freely admitted in his written statement that he had drawn funds in excess of \$12,491.00 and that he had received a legal fee of \$20,000.00. His evidence was that this was based upon the information provided to him by Ms. Devlin given that his books were, at the time he signed the statement, missing and were, when returned to him, completely chaotic. His recollection was that he charged a \$20,000.00 fee to the file and that is reflected in the statement he signed.

I cannot image a worse nightmare than that which befell Mr. Houlahan over the period October 9th to 19th, 1990. Mr. Houlahan testified that the day after Thanksgiving, he went to his office as usual and was on the telephone when the pastor from his church walked in. The pastor told the solicitor "the Law Society is here" and also that "they said you were stealing money from your trust account". When the solicitor went to speak to the investigators, and was asked to show them his books, he said "[the bookkeeper] is not here today but I'll get you the books. They'll be in her office." He then testified they went out and found the bookkeeper's desk had been cleaned completely; there wasn't a shred of paper in her office. The bookkeeper had given two weeks' notice and left. The evidence indicated that in fact when the bookkeeper left his office, she took all the books and records, including the solicitor's personal books and records and income tax returns, then she contacted the police and the Law Society.

Any person faced with the sudden presence of an investigator from the Law Society combined with the sudden disappearance of his bookkeeper and all his records would, understandably, be in a state of shock. They could easily sign a statement without fully appreciating the import of it. The evidence was that Mr. Houlahan cooperated fully and completely with the investigators from the moment they arrived in his office. He not only immediately replaced all the money missing from his trust account but replaced more than was required given that he had untransferred fees and disbursements remaining in trust. It was submitted and, I accept, that his cooperation extended as far as to include signing the statement prepared by the Law Society without pondering its nuances. He virtually adopted the statement as his own because the only information he had was the information supplied to him by the Law Society investigator. The omissions from the statement were only apparent in the calmer, fuller light of the future.

The solicitor is guilty of professional misconduct. He followed the improper practice of often paying his personal accounts with fees which were not transferred and therefore using trust cheques. He has admitted this is professional misconduct. He was grossly negligent in the supervision of his books and records as he entrusted them totally to his bookkeeper with personally disastrous results. This too is professional misconduct. However, this solicitor had no apparent motive for misappropriating \$12,491.00 or any amount of money. He made an extremely good living, as did his wife; there was no evidence of his having debts, excessive or otherwise. There was no evidence that he suffered from any mental or physical addiction or disability; no explanation appears to be offered for the alleged misappropriation other than bare speculation that the solicitor must have been greedy. This is contrary to the evidence. He had untransferred fees almost four times the amount which he is alleged to have misappropriated. Evidence of his good character, sterling reputation and service to the community abounded through personal testimony and his curriculum vitae.

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The solicitor has given an extremely plausible explanation as to why he transferred the money from his trust account. In his own words "in June, I had been on vacation -- in fact, I had been away for a period of time and when I arrived back in my office [the bookkeeper], who also handled my personal financial affairs, paying bills and so on, indicated that while I was away, my En Route Travel Card account, or invoice, had arrived and various other expenses associated with my account and I indicated, of course, they would have to be dealt with, paid, and she said, "I have some good news because you did not get your fee on the Foster file of \$20,000.00", and on that basis she paid them, albeit, ought not to have been paid directly from trust but she said that that was earned fees untransferred remaining in the trust account."

While I think it is safe to say that the whole Committee found it incredible that Mr. Houlahan would not know whether a \$20,000.00 fee had been transferred earlier in the year or not, his evidence was that he had unlimited overdraft account at the bank should he need money and, as a result, he paid little or no attention to his books but left them completely in the care of his bookkeeper. He has paid a very heavy professional price for taking such a cavalier approach to his books and records. He has paid a very heavy financial price, estimated to be \$95,000.00 or so. He has admitted professional misconduct with respect to three of the four particulars alleged against him and he has undoubtedly suffered both physically and emotionally from the stress of the events surrounding this investigation and the sudden allegations made by his long time employee.

I find no evidence to persuade me that this solicitor acted dishonestly with the requisite mental intent necessary to make out a case of misappropriation of funds. I accept that Mr. Houlahan, because of his complete abdication of responsibility over his books and records, had absolutely no idea that the bookkeeper was lying to him when she indicated that his \$20,000.00 fee still remained in the Foster Estate file. As the bookkeeper did not testify before the Committee, we have only Mr. Houlahan's version of the events upon which to rely. I find his explanation credible and believable when viewed in the overall context of the conduct of his practice. I am not troubled by the written statement dated October 12, 1992, as it was signed by the solicitor at a time of great confusion and duress given the suddenness and severity of the events which were unfolding about him. I am fortified in my conclusion by the complete lack of motive attributable to the solicitor and the fact that he promptly repaid more than the amount which he was alleged to have misappropriated. Indeed, at the time of hearing, he was still acting for the Foster Estate and anticipated bringing the file to its normal conclusion sometime in the future. I do not excuse or condone his conduct. I simply find it was not a misappropriation.

An allegation of misappropriation of funds is, to my mind, one of the most serious allegations which can be made against a solicitor. Mr. MacKenzie in his paper of March 16, 1992 entitled Law Society Discipline Proceedings, at page 48, when addressing the question of the standard proof required to establish a complaint of professional misconduct says, "it is now established that as a minimum, clear and convincing proof based upon cogent evidence is required. It is also clear that the standard of proof rises with the gravity of the allegation and the serious of the consequences. Where the allegation is that the solicitor is guilty of misconduct which is also a criminal offence, the standard of proof is so close to the criminal standard of proof beyond a reasonable doubt that there is no practical difference between the standards." Dealing with the totality of the evidence before the Committee, given Mr. Houlahan's evidence and the lack of any evidence from the bookkeeper, I find particular 2(b) has not been

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proven beyond a reasonable doubt. The solicitor's evidence is capable of being believed and I am not satisfied the Society's case has been proven as to particular 2(b). The other particulars of the complaint are both admitted to and supported by the evidence.

Dated this 25th day of November, 1992.

E. Susan Elliott

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

The solicitor's counsel made submissions in support of the minority recommendation relating to the issue of misappropriation.

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CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M.

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CONVOCATION RESUMED AT 2:15 P.M.

PRESENT:

The Treasurer, Arnup, Carter, Copeland, Cullity, Curtis, Epstein, Graham, Hill, Howie, Lamont, Murray, Palmer and Thom.

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ADMISSIONS COMMITTEE - MICHAEL JOHN SPICER

Mr. Thomas Lockwood, counsel for the Society requested an adjournment on consent to November 25th, 1993.

The adjournment was granted.

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IAN THOMAS MCEACHERN

The Treasurer brought to the attention of Convocation a letter from Mr. McEachern who requested an adjournment.

It was moved by Mr. Epstein, seconded by Ms. Curtis that the disposition of the matter be set aside and that Convocation adjourn the matter until October 22nd, 1993.

Ms. Graham did not participate.

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The Treasurer withdrew and Mr. Howie took over as Chair.

JOHN RONALD HOULAHAN - cont'd

There were questions from the Bench.

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

It was moved by Mr. Arnup, seconded by Ms. Graham that Convocation accept the minority report.

Carried

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

The Recommendation as to Penalty if Convocation accepted the decision of the dissenter was a reprimand in Convocation.

Both counsel urged acceptance of the joint submission of the Committee of the minority report.

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

It was moved by Mr. Carter, seconded by Mr. Hill that the solicitor be reprimanded in Convocation.

Counsel, the solicitor, the reporter and the public were recalled and informed of the decision of Convocation and the Chair administered the reprimand.

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CONVOCATION ROSE at 3:00 P.M.

Confirmed in Convocation this            day of            , 1993.

Treasurer