

Thursday, 26th September, 1991

MINUTES OF SPECIAL CONVOCATION

Thursday, 26th September, 1991
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence), Bastedo, Cass, Cullity, Curtis, Elliott, Feinstein, Goudge, Kiteley, Krishna, Lamont, Lax, McKinnon, Manes, Mohideen, Murray, Palmer, Peters, Richardson, Rock, Scott, Topp and Yachetti.

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"IN PUBLIC"

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ELECTION OF BENCHER

It was moved by Mr. Rock, seconded by Mr. Murray that Stephen Goudge be elected a Bencher.

Carried

Mr. Goudge entered Convocation and was welcomed by the Treasurer.

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ADMISSIONS COMMITTEE

RE: EDWARD HENRY LUCK, Toronto

Application for Readmission

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Thomas Lockwood appeared for the Society. Mr. W. Trudell appeared for the applicant who was present.

There was no objection by counsel to members of the original Committee participating in Convocation.

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

(Application in Convocation file)

Submissions were made by both counsel in support of the application.

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

It was moved by Mr. Rock, seconded by Mr. Murray that the Application for Readmission be approved.

Carried

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

Counsel and the applicant retired.

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DISCIPLINE COMMITTEE

RE: HELEN LORRAINE TERRY, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society and Mr. Douglas Crane appeared for the solicitor. The solicitor was not present.

Counsel requested an adjournment on consent.

Thursday, 26th September, 1991

It was moved by Mr. Rock, seconded by Mr. Murray that the matter be put over to the next Special Convocation.

Carried

Counsel retired.

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ADMISSIONS COMMITTEE

RE: JOSEPH RIZZOTTO, Toronto

Application for Admission

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Cullity withdrew and did not participate.

Mr. Gavin MacKenzie appeared for the Society. Mr. Douglas McTavish appeared for the applicant who was present.

Mr Rock presented the Application for Admission which was filed as Exhibit 1.

(Application in Convocation file)

Submissions were made by the applicant's counsel and reference was made to a Memorandum and Exhibit Book, copies of which were before Convocation. The Memorandum was filed as Exhibit 2 and the Exhibit Book as Exhibit 3.

Submissions were made by Society's counsel.

Questions were taken from the Bench.

Mr. McTavish made submissions in reply.

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

It was moved by Mr. Rock, seconded by Mr. Murray that the Report regarding the Application for admission be adopted and that Mr. Rizzotto not be admitted as a student-at-law.

Not Put

It was moved by Mr. Bastedo, seconded by Mr. Topp that the Application not be adopted and that Mr. Rizzotto be admitted as a student-at-law.

Withdrawn

It was moved by Mr. Manes, seconded by Mr. Yachetti that the matter be referred back to a new Committee for a re-hearing and report to Convocation.

Carried

It was moved by Mr. McKinnon but failed for want of a seconder that consideration of this report be deferred pending an opinion being obtained on jurisdiction.

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

Counsel and the applicant retired.

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CONVOCATION ADJOURNED FOR A SHORT RECESS

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CONVOCATION RECONVENED

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PRESENT:

The Treasurer, Bastedo, Cass, Cullity, Curtis, Elliott, Feinstein, Goudge, Krishna, Lax, McKinnon, Manes, Mohideen, Murray, Palmer, Peters, Richardson, Rock, Scott, Topp and Yachetti.

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Thursday, 26th September, 1991

DISCIPLINE COMMITTEE

RE: DONALD STEWART JONES, Oshawa

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society and Mr. Brian Greenspan appeared for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 11th September, 1991, together with an Affidavit of Service sworn 17th September, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 11th September, 1991 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by Mr. Brian Greenspan, counsel to the solicitor 26th September, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert J. Carter, Q.C., Chair
Denise Bellamy
Shirley O'Connor

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

Gavin MacKenzie
for the Society

DONALD STEWART JONES
of the City
of Oshawa
a barrister and solicitor

David M. Humphrey
for the solicitor

Heard: September 4, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 19, 1991, Complaint D28/91 was issued against Donald Stewart Jones, alleging that he was guilty of professional misconduct.

The hearing was heard in public, on September 4, 1991, before this Committee composed of Robert J. Carter, Q.C., Chairman, Denise Bellamy and Shirley O'Connor. Mr. Jones attended the hearing and was represented by David M. Humphrey. Gavin MacKenzie appeared as counsel for the Law Society.

DECISION

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

Complaint D28/91

2. (a) during the years 1989 and 1990, he misappropriated client trust funds and trust funds deposited by his parent and partner, Ralph Jones, to pay interest and repay principal to investors with investments in land development projects in which the Solicitor was directly involved;
- (b) during the years 1989 and 1990, he engaged in a sharp and illegal practice by using a series of bank accounts for the companies involved in the development projects to cover up the trust and cash shortages. At times the trust shortage was as high as \$720,000.00. He would issue cheques in a kiting scheme to cover up the shortages;

- (c) during the years 1988, 1989, and 1990, he solicited and obtained investment monies from clients. The investment funds were then invested in projects in which the Solicitor had a significant interest. Many of the investments did not have any security, contrary to Rule 7;
- (d) during the years 1988, 1989 and 1990, he failed to make adequate disclosure to enable clients to make an informed decision about a possible conflict of interest position, contrary to Rule 5(vii);
- (e) during the years 1988, 1989 and 1990, he failed to require that investors, including employees of the Jones & Jones law firm, receive independent legal advice before investing in projects in which the Solicitor had a significant interest, contrary to Rule 5(viii);
- (f) during the years 1988, 1989 and 1990, he failed to discharge with integrity duties owing to his clients and other members of the law firm. He continued to receive investment funds from clients even though a significant cash flow problem existed and trust funds had been misappropriated. He failed to inform the other members of the firm of the severity of the problem, contrary to Rule 1;
- (g) during the years 1988, 1989 and 1990, he failed to serve his clients in a conscientious and diligent manner, contrary to Rule 2;
- (h) between September, 1988 and October, 1990 inclusive, he intentionally misrepresented facts relating to the assignment of a mortgage in the amount of \$70,000.00 to a Jones & Jones client and investor, Harold Segal (Lages Holdings Inc.), to obtain funds. He assigned a mortgage owing to himself to Lages even though he knew that the mortgage had been previously assigned to the CIBC;
- (i) he failed to file with the Society within six (6) months of the termination of his fiscal year ending January 31, 1990 a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act.

EVIDENCE

The following Agreed Statement of Facts was filed as the basis of the hearing. A Book of Exhibits was also filed but Counsel both agreed that the Committee need not refer to it unless circumstances occurred to necessitate such reference. No such circumstances arose and accordingly because of its volume and lack of use it is not reproduced here.

Counsel agreed that the Statement of Facts supported a finding that the particulars of professional misconduct were established and that the allegations of professional misconduct was established and the Committee found the complaint and particulars established.

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D28/91 and is prepared to proceed with a hearing of this matter on September 4, 1991.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed this Agreed Statement of Facts with his counsel and admits the particulars contained therein.

IV. FACTS

4. The Solicitor is 41 years of age and was called to the bar on April 5, 1979.

5. The solicitor and his father, Ralph Jones, were partners in the law firm of Messrs. Jones & Jones in Oshawa (the "Law Firm"). The Solicitor maintained a large real estate practice.

6. The Society received a complaint in September of 1990 in which it was alleged that the Solicitor sold a property which he owned in Huntsville, Ontario, but failed to discharge a collateral mortgage although he had given sufficient funds to discharge the said mortgage. This led to an audit investigation of the Law Firm.

Facts Relating to Particular 2(a) - Complaint D28/91

7. An audit of the files of the Law Firm revealed that the Solicitor became involved in the acquisition of a number of properties through several companies that either he or his wife partially or wholly owned. The purpose of the acquisition was to assemble properties for development or re-development in Oshawa, Huntsville and Bobcaygeon. Some of the companies involved included the following:

- Kast Management Corporation
- The Huntsville Development Corporation/Allan McMillan
- January First Decision Corporation
- January Second Decision Corporation
- The Bullrushes Corporation (and 812686 Ontario Inc.)
- Bloor Apartments (773610 and 773611 Ontario Inc.)
- Elgin Centre/Robert Woods Jr.
- 483377 Ontario Limited

hereinafter referred to collectively as the "Companies".

8. Donald Jones solicited funds from investors through the Law Firm. The funds were received into the Law Firm's trust account to be invested. The money was then transferred into a client loan account and disbursed at the discretion of the Solicitor.

9. Donald Jones also solicited funds on behalf of the Companies directly. In these instances the investors issued cheques directly to one of the Companies (e.g. Kast Management Corporation).

10. The investors were offered high interest rates and bonus structures. Attached as Appendices "A" and "B" are lists of investors, the interest paid, and security determined as of May 16, 1990 and November 11, 1990, respectively.

11. In the summer of 1989, the Solicitor began to encounter cash flow problems due to changes in the zoning/planning and building codes in both Oshawa and Huntsville. In addition, high interest rates and the short term nature of the investments made it difficult for the Solicitor to manage and meet the constant cash flow requirements.

12. Serious cash flow problems began in August and September of 1989, and worsened between October 1989 and May 1990. To finance interest payments and investor principal repayments the Solicitor and the Law Firm's bookkeeper, Nadine Leavens, under the Solicitor's direction:

- a. utilized any new client investment funds to make interest or principal repayments on previously existing borrowings. Cheques were issued and signed by the Solicitor and another authorized Law Firm signing authority, usually Ms. Leavens;
- b. utilized funds received into the Law Firm, in trust, from Ralph Jones which were intended for Ralph Jones' unrelated personal business purposes. The Law Firm maintained separate trust ledgers for two companies, Courtice Construction Limited ("Courtice") and Custom Holdings Limited. Both companies are owned by Ralph Jones. Some of the funds from these ledgers were accessed by the Solicitor to make interest and principal payments to investors in his development projects without the knowledge or authority of Ralph Jones. Attached as Appendix "C" is a document prepared by Ralph Jones listing the funds he deposited into the Law Firm's trust account for personal business purposes;
- c. at the end of the month, the Solicitor issued cheques on the Law Firm's trust account for deposit into bank accounts of the Companies involved in the development projects. The trust cheques were used to cover the outstanding cheques issued on these companies. This "kiting" scheme was used to cover up the Law Firm's overdrawn trust account. Attached as Appendix "D" is a summary prepared by the Society's investigator titled "kiting" scheme;

- d. the Law Firm's bookkeeper then made the necessary journal entries to transfer the funds from any available unrelated trust ledger into a trust ledger of Courtice. Each month disbursements and receipts recorded in Courtice would balance and as a result not trigger exceptions on the Law Firm's computer software package. As a result the shortage remained unnoticed by other members of the firm;
- e. the bookkeeper also maintained an accurate record of the trust shortages, interest payments, new investments, investment principal repayments, other related payments, and transfers in the Courtice trust ledger. The Courtice trust ledger was used as a control record for most of the payments made through the Law Firm to the development projects;
- f. attached as Appendix "E" is a copy of the Courtice trust ledger. Attached as Appendix "F" are copies of the monthly Courtice trust ledgers which balance, and as a result did not reveal to the other members of the firm the serious cash flow problems. Attached as Appendices "G" and "H" are copies of the journal entries required to properly reflect the firm's trust shortage.

Facts Relating to Particular 2(b)

- 13. During the years 1989 and 1990, the Solicitor used a series of bank accounts for the Companies to cover up the trust and cash shortages.
- 14. At times the Law Firm's trust account shortage was as high as \$720,000.
- 15. The Solicitor issued cheques in a "kiting" scheme to cover up the shortages in the Law Firm's trust account. The particulars of the scheme are set out in paragraph 12(c) and Appendix "D" herein.

Facts Relating to Particular 2(c)

- 16. During the years 1988, 1989 and 1990, Donald Jones solicited and obtained investment monies from clients. Some investment funds were then invested in projects in which the Solicitor had a significant interest.
- 17. Appendices "A" and "B" provide lists of investors and show total investments in the sums of \$3,552,100 as of May 16, 1990 and \$3,574,000 as of November 11, 1990, respectively.
- 18. A significant amount of the investment funds were then either received into the firm's trust account and loaned out to one of the Companies at the discretion of the Solicitor or invested directly into one of the Companies.
- 19. Donald Jones received funds from employees of the firm and their family members. Nadine Leavens (the Law Firm's bookkeeper), her husband and members of their immediate family all loaned funds either through the Law Firm or directly to one of the development companies. In addition, Jayne Hughes, an associate member of the Law Firm, loaned funds to the Solicitor along with her husband and parents.
- 20. As indicated in Appendices "A" and "B" many of the investments were either partially secured or did not have any security whatsoever.
- 21. The Solicitor used these funds to finance development projects in which he had a significant interest.
- 22. A long time client of the Law Firm, Marjorie Fudge, lives on a disability pension. Her only other sources of income are rent received from a daughter who lives with her, and interest from an investment made through the Law Firm.
- 23. In 1988 she met with the Solicitor to obtain financial advice and discuss the negotiation of a loan in the sum of \$15,000. The Solicitor arranged for the loan and then persuaded Ms. Fudge to place a \$105,000 mortgage on a home which she had inherited debt free from her mother in 1984. Of the \$105,000 in mortgage funds, \$15,000 was paid to Ms. Fudge to meet her original loan request and \$90,000 was invested by the Solicitor in one of his development projects.

Facts Relating to Particular 2(d)

- 24. During the years 1988, 1989 and 1990, the Solicitor failed to make adequate disclosure of his personal interest to several of his client investors in Appendices "A" and "B" including Margorie Fudge so that they might make an informed decision concerning his possible conflict of interest position.

Facts Relating to Particular 2(e)

- 25. During the years 1988, 1989 and 1990, the Solicitor failed to require that the investors listed in Appendices "A" and "B", including Marjorie Fudge and employees of the Law Firm, receive independent legal advice before investing in projects in which the Solicitor had a significant interest.

Facts Relating to Particular 2(f)

26. During the years 1989 and 1990, the Solicitor continued to receive investment funds from clients even though he knew that a significant cash flow problem existed and that the trust funds had been misappropriated.

27. In the latter part of 1989 and in 1990, the Solicitor knew that much of the funds being received from investors were to be used to refinance the "kiting" scheme described above and the funds were solicited from clients for that purpose.

28. In December 1989, a Law Firm client, Earnest Kahn, who had in excess of \$600,000 invested through the Law Firm, requested the sum of \$236,000. At that time the cash flow problem was so severe that the funds from unrelated trust accounts had to be misappropriated to provide the payment to Mr. Kahn. Appendix "I" is a copy of the Kahn trust ledger and a summary of the bookkeeper entries required to provide the funds necessary for the payment.

29. Until May of 1990, the Solicitor intentionally hid the severity of the cash flow problem from the other members of the firm.

30. On February 23, 1989, the Solicitor obtained an additional loan of \$40,000 from Lages Holdings Inc. ("Lages") for Marjorie Fudge. The president and owner of Lages, Mr. Harold Segal, had been a client of the Law Firm for over 30 years. The mortgage funds were to be repaid to Lages on or by November 15, 1990.

31. In August and September of 1990, post-dated cheques received from Ms. Fudge by Lages began to be returned and were marked "NSF" (not sufficient funds).

32. In December of 1989 the Solicitor negotiated another loan in the sum of \$90,000 for Ms. Fudge. The security for the loan was to be a first mortgage registered against her home in favour of Household Trust. The mortgage was arranged through Royal Mortgage Services, a mortgage broker partnership which rents space from the Law Firm.

33. Although the Solicitor had undertaken to clear any encumbrances from the title to Ms. Fudge's property prior to registration of the said mortgage, when the mortgage was registered on December 18, 1989, the Solicitor failed to discharge the prior registered Lages mortgage although funds to discharge the Lages mortgage were received from Household Trust. The Household Trust mortgage was thus placed in a second position.

34. The Solicitor used the funds to provide working capital for the Law Firm or to provide funds for the Law Firm's trust account.

Facts Relating to Particular 2(g)

35. The Solicitor, by failing to properly secure clients' investments, by investing in projects in which the Solicitor had a significant interest, by operating the "kiting" scheme, by misappropriating clients' investment monies, by allowing himself to be put in a conflict of interest position and by failing to advise clients to seek independent legal advice, failed to serve his clients in a conscientious and diligent manner.

Facts Relating to Particular 2(h)

36. Mr. Harold Segal, president and owner of Lages, a company used to make investments, had been a client of the Law Firm for over 30 years. He has used the services of the firm to place personal funds into mortgages and similar investments.

37. In August of 1988, he invested \$100,000 through the firm, which monies were advanced to Richard Woodley, an employee of the firm on loan for a one year period.

38. Mr. Woodley repaid the money within one month and the Solicitor approached Mr. Segal and inquired if he would invest a further \$70,000.

39. The Solicitor is president and owner of 483377 Ontario Ltd. ("483377"). 483377 sold an apartment building on September 15, 1988. Attached as Appendix "J" is a copy of the Transfer/Deed of Land from the sale of the apartment building registered September 22, 1988. The purchasers obtained a mortgage through the Canadian Imperial Bank of Commerce ("CIBC") in the amount of \$370,000, registered on August 2, 1988 (Appendix "K"). 483377 took back a mortgage in the sum of \$70,000 from the purchasers (Appendix "L"). Mr. Segal agreed to accept an assignment of the vendor take back mortgage from 483377 as an investment. The Solicitor sent to Lages, to the attention of Mr. Segal, a reporting letter dated September 16, 1988 in which he stated that Lages would receive an assignment of the vendor mortgage (Appendix "M"). The Solicitor registered an Assignment of Mortgage (Appendix "N") which purported to assign the vendor take back mortgage to Lages.

40. On October 16, 1990, Mr. Segal decided to have a search performed on the subject property when he discovered a problem with another investment he had made through the Solicitor. The search revealed that the \$70,000 mortgage which the Solicitor had assigned to Lages, had been previously assigned to the CIBC (attached as Appendix "O" is a copy of the abstract of title to the subject property). Attached as Appendix "P" is a copy of the assignment of the mortgage to the CIBC dated October 31, 1988.

41. On October 12, 1990, the Solicitor, through 483377, sent Lages a confirmation of an extension of the mortgage for one year secured by the assignment registered on February 23, 1989 (Appendix "Q").

42. The Solicitor intentionally misled Harold Segal and Lages by purporting to assign a mortgage which had been previously been assigned to the CIBC. The Solicitor intentionally misrepresented the facts of the security to Mr. Segal and falsely provided documents which indicated that the assignment of the mortgage was valid.

Facts Relating to Particular 2(i)

43. The Solicitor failed to file with the Society within six months of the termination of his fiscal year ending January 31, 1990, a statutory declaration in the form prescribed by the rules and a report duly completed by a public accountant signed by the member in the form prescribed by the rules thereby contravening Section 16(2), Regulation 573 made pursuant to the Law Society Act, R.S.O. 1980, c.233, s.63 as amended.

Facts Relating to the Solicitor's Conduct During the Law Society Investigation

44. On Thursday, September 27, 1990, the Solicitor informed Nadine Leavens (the Law Firm bookkeeper) that Mr. Terry Penney of the Law Society was about to commence an audit investigation of the books and records of the Law Firm. The Solicitor knew and approved of Ms. Leavens taking the accounting records of the Law Firm to her home and remaining there until he instructed her otherwise.

45. Ms. Leavens worked at home on the books and records of the Law Firm to avoid any contact with Mr. Penney on September 28 and October 1, 2, 3 and 4, 1990.

46. Mr. Penney commenced the Law Society's audit investigation on October 9, 1990. The Solicitor instructed Ms. Leavens to provide no information to Mr. Penney about the Companies involved in the development projects which were directly related to the cash flow and trust fund shortages.

Effect of Misappropriations on Law Firm Trust Accounts

47. As a result of the above mentioned and other misappropriations of a client's trust funds there were at times a shortage in the trust ledger as high as \$720,000. In October of 1990 Ralph Jones invested his own personal funds into the Law Firm to eliminate the above trust shortage. The Solicitor has admitted to Terry Penney that he was responsible for the sizable trust shortage and that he misappropriated a large amount of money from the Law Firm's trust account.

DATED at Toronto this 4th day of September, 1991."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Donald Stewart Jones be disbarred.

REASONS FOR RECOMMENDATION

No evidence was called on the hearing as to penalty and no material put before us. Counsel for the Society submitted that in view of the conduct of the Solicitor as described in the Agreed Statement of Facts, the only appropriate penalty was disbarment.

Counsel for the Solicitor made no submissions.

The Committee agreed with Counsel for the Society and recommended the above penalty.

Thursday, 26th September, 1991

Donald Stewart Jones was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 5th day of April, 1979.

ALL OF WHICH is respectfully submitted

DATED this 11th day of September, 1991

"Robert Carter"

Robert J. Carter, Q.C., Chair

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

There were no submissions by either counsel.

The Report was adopted.

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

Submissions were made by both counsel.

The Recommendation as to Penalty was adopted.

Counsel retired.

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RE: STEPHEN ANTHONY MICHAEL CHERNOFF, Scarborough

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Messrs. Thom and Topp withdrew and did not participate.

Mr. Gavin MacKenzie appeared for the Society. Mr. MacKenzie advised that counsel for the solicitor, Mr. Brian Bellmore would not be attending Convocation. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 22nd July, 1991, together with an Affidavit of Service sworn 19th August, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 30th July, 1991 (marked Exhibit 1), and an Affidavit of Service sworn 29th August, 1991 by Frances Galati that she had effected service on the solicitor by registered mail on 19th August, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

D.H.L. Lamont, Q.C., Chair

Stuart Thom, Q.C.

Brendan O'Brien, Q.C.

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

Gavin MacKenzie
for the Society

STEPHEN ANTHONY MICHAEL CHERNOFF
of the City
of Scarborough
a barrister and solicitor

Brian Bellmore
for the solicitor

Heard: May 28, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 1, 1990, Complaint D186/90 was issued against Stephen Anthony Michael Chernoff, alleging that he was guilty of professional misconduct. This complaint was withdrawn and replaced with Complaint D186a/90 issued on May 15, 1991. On January 18, 1991, Complaint D6/91 was issued against the Solicitor. This Complaint was withdrawn.

The hearing was heard in public on May 28, 1991 before this Committee composed of D.H.L. Lamont, Q.C., Chairman, Stuart Thom, Q.C. and Brendan O'Brien, Q.C. The Solicitor appeared at the hearing and was represented by Brian Bellmore. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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

Complaint D186a/90

- 2(d) he is guilty of professional misconduct in that in the years 1989, 1990 and 1991, he misappropriated substantial funds from the following clients: Jacob Rosenberg Investments Limited, Allan Simon, Bob Goldstein, Allan Spring, and Christine Winders, amongst others, for his own use.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

Law Society counsel advised that he would only be proceeding with Complaint D186a/90 - 2(d).

At the outset of the hearing, both counsel stated their agreement as to procedure which they proposed for hearing evidence, and if professional misconduct was determined, then as to the submissions on penalty. This procedure was followed in the presentation of evidence on behalf of the Law Society, and no cross-examination of that evidence by the Counsel for the Solicitor.

Rather than summarize the evidence, the Committee was of the view that it was best to incorporate the transcript of the evidence into these reasons. The evidence was that of an insurance adjuster, James Ivers who met with the Solicitor on three separate occasions questioning him about the complaints of the persons named in the Complaint and others.

The transcript of the evidence is in Schedule "A" to these reasons.

This evidence fully substantiates the charge.

We noted that the Solicitor was represented by senior counsel experienced in these matters.

Based on the undisputed evidence, the Committee found that the Solicitor was guilty of professional misconduct on the allegation of misappropriation as set out in 2(d) of the Complaint.

Complaint D6/91 was withdrawn on consent.

RECOMMENDATION AS TO PENALTY

The Committee unanimously recommends that Stephen Anthony Michael Chernoff be disbarred.

REASONS FOR RECOMMENDATION

When submissions were made as to penalty, the Law Society counsel stated that disbarment was the only penalty to be considered in view of the finding of guilt of professional misconduct for misappropriation for over \$800,000.00.

Counsel for the Solicitor presented as the only evidence for the Solicitor a report of Dr. Allan B. Steingart, Psychiatrist. The report is attached as Schedule "B". We considered this as indicating a most unhappy situation, but in our opinion it does not provide an excuse for the misappropriation of trust funds involving substantial sums over a period of three years.

Thursday, 26th September, 1991

Stephen Anthony Michael Chernoff was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 29th day of March, 1977.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of July, 1991

"D. Lamont"

D.H.L. Lamont, Q.C., Chair

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

Carried

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

Submissions were made by Society's counsel.

The Recommendation as to Penalty was adopted.

The solicitor was disbarred.

Counsel retired.

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RE: MARION YUEN YEE WONG, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Ronald Cohen appeared for the Society and Mr. Brian Greenspan appeared for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 9th August, 1991 together with Affidavits of Service sworn 19th August, 1991 by Frances Galati that she had effected service on the solicitor by registered mail on 15th August, 1991 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by Mr. Brian Greenspan, counsel for the solicitor 26th September, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Roger D. Yachetti, Q.C., Chair

Kenneth E. Howie, Q.C.

Thomas J.P. Carey

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

MARION YUEN YEE WONG
of the City
of Toronto
a barrister and solicitor

Ronald Cohen
for the Society

Brian Greenspan
for the solicitor

Heard: April 30, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 6, 1991, Complaint D205/90 was issued against Marion Yuen Yee Wong alleging that she was guilty of professional misconduct.

The matter was heard in public on April 30th, 1991 before this Committee composed of Roger D. Yachetti, Q.C., Chair, Kenneth E. Howie, Q.C. and Thomas J.P. Carey. Mr. Brian Greenspan appeared on behalf of Ms. Wong. Ms. Wong was not in attendance. Ronald Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D205/90

2. a) As a Solicitor employed by the Metro Toronto Chinese and South East Legal Asian Clinic, she:
 - i) misled clients of the Clinic, including Susan Lim, Grace Chan and Theresa Ip, by advising them that they were required to pay sums of money to her in order to receive the provision of legal services from the Clinic;
 - ii) improperly obtained a monetary benefit from clients of the Clinic, including Susan Lim, Grace Chan and Theresa Ip, on the basis of misleading statements as a requirement for payment for legal services;
 - iii) improperly failed to disclose to officials of the Clinic information regarding her receipt of monies from clients of the Clinic;
- b) Between December, 1987 and December, 1988, she knowingly and wilfully disregarded a condition of her employment with the Metro Toronto Chinese and South East Asian Legal Clinic which prohibited her from carrying on a private practice while working as an employed solicitor with the Clinic;
- c) Between December, 1987 and April 25, 1989, she failed to obtain the required coverage under the Law Society's Errors and Omissions insurance policy while carrying on a private practice;
- d) She failed to effect an orderly transfer of files to other solicitors when she resigned her position as an employed solicitor with the Metro Toronto Chinese and South East Asian Legal Clinic;
- e) She failed to make satisfactory arrangements for the care and conduct of active client files when she terminated her working relationship with the law firm of Altwerger, Baker, Leggett & Lax;
- f) She has failed to reply to communications from the Society requesting a reply about the complaints of Robert W. Braiden, Ai Chaun Li, Eliza Chan, Rebecca Wong, Lewis S.C. Wong, Edward Shiu-lung Ho, Sam Chan and Alan R. Smith;
- g) She has failed to serve her clients in a conscientious, diligent and efficient manner by:
 - i) failing to promptly and completely report to clients, Robert W. Braiden, on behalf of The Royal Bank of Canada, Rebecca Wong, Lewis S.C. Wong, Ai Chuan Li, Eliza Chan, Stephen Leung, Edward Shiu-lung Ho, Sam Chan and approximately twenty-two others on completion of transactions and to provide an accounting of funds received and/or disbursed;
 - ii) failing to provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation by failing to provide as instructed legal services for or on behalf of her clients, including mortgagee clients of Ron Waksdale of Confirmed Investments Ltd., Fiona Fan, Kam Shaun Cheung, Sheila Lam, Man Ling Chan and Tu Ann Duong, and acting without authority in respect of legal services provided for or on behalf of her client, Ellis Li;
- h) She has failed to honour an Undertaking given to another solicitor, Mr. Joachim Loh.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D205/90 and is prepared to proceed with a hearing of this matter on April 30, 1991.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D205/90 with her counsel, Brian Greenspan, and admits the particulars contained therein.

IV. FACTS

4. The Solicitor was called to the Bar on April 15, 1987. On February 9, 1990 the Solicitor undertook to the Law Society not to practise law until the conclusion of a discipline hearing in respect of an earlier complaint and until the investigations of further complaints have been concluded.

Particular 2(a)

5. On September 28, 1987 the Solicitor was hired as a staff lawyer with the Metropolitan Toronto Chinese and South East Asian Legal Clinic (the "Clinic") where she was employed until February 28, 1989. It was clearly understood as a term of her employment that the Solicitor could not continue in the private practice of law while at the Clinic nor could she charge fees to clients for legal services. While employed at the Clinic the Solicitor misled clients of the Clinic, including Susan Lim, Grace Chan and Theresa Ip, by advising them that they were required to pay sums of money to her in order to receive legal services from the Clinic. The Solicitor advised some clients of the Clinic that they were required to make payments which were described as fees for court costs. Susan Lim, Grace Chan and Theresa Ip were each charged approximately \$500 for matrimonial matters. In numerous instances the Solicitor charged clients for services such as swearing Affidavits and notarizing documents. The Solicitor did not disclose to officials of the Clinic information regarding her receipt of money from clients of the Clinic nor did she account to the Clinic for funds received from clients.

Particular 2(b)

6. The Solicitor had been specifically advised by the legal aid director and by the Board of Directors of the Clinic that she would not be permitted to conduct a private practice while employed there. The Solicitor disregarded this condition of employment between December, 1987 and December, 1988 by engaging in private practice, in particular, an extensive real estate practice throughout 1988. The Solicitor utilized Clinic resources to facilitate her own private practice.

Particular 2(c)

7. Although the Solicitor carried on an extensive private practice from at least as early as December, 1987, she failed to obtain the required coverage under the Law Society's Errors & Omissions Insurance Policy until April 25, 1989. On that date the Solicitor paid the Errors and Omissions levy. She was suspended on June 23, 1989 for non-payment of the late filing fee in respect of annual forms.

Particular 2(d)

8. When she resigned from the Clinic in February, 1989, the Solicitor failed to effect an orderly transfer of client files. The Solicitor's departure from the Clinic was sudden and, notwithstanding assurances given to the Clinic Director, the Solicitor failed to prepare transfer memos and to brief staff on most of her active files.

Particular 2(e)

9. In the spring of 1989, the Solicitor rented space from a group of lawyers at 347 Bay Street, Toronto. In mid-May, 1989, the Solicitor failed to return from a vacation at the appointed time, which failure prompted lawyers in that office to contact the Law Society. Stephen Altwerger of that office advised that the Solicitor had in her possession a number of client files which required immediate action and that efforts to communicate with her to obtain instructions had been unsuccessful. By chance, the Solicitor was discovered working for a law

firm in Willowdale in early June, 1989. She had failed to advise the lawyers practising at 347 Bay Street, Toronto, of her new arrangements and had failed to advise the members of the Willowdale law firm of any outstanding legal work in respect of her previous law office. The Solicitor was subsequently dismissed from the Willowdale law firm.

10. As a result of a complaint from the Director of the Clinic in April, 1989, the Law Society undertook an investigation of the Solicitor. The Society experienced significant difficulties in its attempts to reach the Solicitor, either by telephone or through correspondence. The Solicitor also failed to co-operate in terms of providing books and records. As a result, discipline Complaint D76/89 was sworn November 20, 1989. The particulars of misconduct alleged in that Complaint were that the Solicitor failed to co-operate with a Law Society investigation:

- i) by not responding to communications from Society staff;
- ii) by refusing to make books and records available to Society staff,
and;
- iii) by refusing to respond to inquiries by Society staff respecting certain complaints.

A hearing took place before a Discipline Committee on June 13, 1990. The hearing proceeded with an Agreed Statement of Facts dated June 13, 1990 and appended hereto as "Appendix A". The Committee found the Solicitor guilty of professional misconduct. The penalty portion was adjourned to permit the Solicitor an opportunity to reply to outstanding correspondence and to bring her books and records up to date in compliance with Law Society requirements.

11. The penalty portion of the hearing was scheduled to take place on September 13, 1990. On that date an adjournment was requested by the Solicitor's counsel, Brian Greenspan, based on the fact that it was necessary to retain an accountant to put the Solicitor's books and records in order. The penalty portion of the hearing took place on March 27, 1991 at which time the Solicitor was Reprimanded in Committee.

Particular 2(f)

12. The Solicitor has failed to reply to communications from the Society in respect of several separate complaints. The particulars are as follows:

- a) By letter dated August 17, 1989 the Society wrote to the Solicitor enclosing a copy of a complaint letter dated August 10, 1989 from Robert W. Braiden, assistant manager of mortgage operations at the Royal Bank of Canada. A reply was requested within a period of two weeks. No response was received to the Society's letter. On February 5, 1990 a representative from the office of Brian Greenspan, the Solicitor's counsel, attended at the Society's office to pick up the complaint letter and the letter from the Society noted above;
- b) By letter dated August 17, 1989 the Society wrote to the Solicitor enclosing a copy of the complaint letter of Ai Chuan Li dated July 12, 1989. A reply was requested within a period of two weeks. No response was received to the Society's letter. On February 5, 1990, a representative from Mr. Greenspan's office attended at the Society's office to pick up the complaint letter and the letter from the Society noted above;
- c) By letter dated September 26, 1989 the Society wrote to the Solicitor enclosing a copy of complaint letter dated August 1, 1989 from Eliza Chan. A reply was requested within a period of two weeks. No response was received and, on January 3, 1990 a Society staff member telephoned the Solicitor's office and left a message on her answering machine. The call was not returned and, on January 8, 1990 a Society staff member again called the Solicitor's office. The staff member was informed that the Solicitor's office was no longer at that phone number. On February 5, 1990 a representative of Mr. Greenspan's office picked up from the Society the letter of complaint along with the Society's letter to the Solicitor;
- d) By letter dated December 19, 1989 the Society wrote to the Solicitor enclosing copies of a complaint letter received October 27, 1989 from Rebecca Wong and Lewis S.C. Wong. A reply from the Solicitor was requested within a period of two weeks. The Society's letter was returned by the post office marked "no longer at this address". It had been sent to the Solicitor's then last known business address at Suite 1002, 347 Bay Street, Toronto. On February 5, 1990 the letter was sent to the Solicitor at her home address, with a copy to Mr. Greenspan;

- e) By letter dated December 18, 1989 the Society wrote to the Solicitor enclosing a copy of a letter of complaint from Edward Shiu-lung Ho dated October 10, 1989. A reply from the Solicitor was requested within a period of two weeks;
- f) By letter to the Solicitor dated December 19, 1989 the Society wrote to the Solicitor enclosing a copy of a complaint letter from Sam Chan dated October 16, 1989. A reply was requested within a period of two weeks. The letter was sent to the Solicitor's then last known business address at Suite 1002, 347 Bay Street, Toronto but was returned to the Society marked "moved". On February 5, 1990 a copy of the letter was mailed to the Solicitor's home address with a copy to Mr. Greenspan;
- g) By letter dated November 2, 1989 the Society wrote to the Solicitor at her home address enclosing a copy of a September 12, 1989 complaint letter of Alan Smith, a solicitor with the firm Kennedy, Dymond. The same correspondence was sent to the address on Bay Street along with a letter from the Society dated January 4, 1990. In both letters a reply from the Solicitor was requested within a period of two weeks.

13. No reply from the Solicitor has been received by the Law Society to any of the correspondence noted above. There has been no request for an extension of time nor any explanation for the failure to reply offered to the Law Society.

Particular 2(g)(i)

14. The Society received a letter of complaint dated August 10, 1989 from Robert W. Braiden, assistant manager, mortgage operations at the Royal Bank of Canada. Mr. Braiden advised that on October 4, 1988, a mortgage advance of \$100,000 was wired from the Royal Bank's Dundas and Chestnut branch to the Solicitor, in trust, pursuant to a mortgage commitment signed by the Solicitor's client respecting a certain property. No report on the transaction was received by the bank from the Solicitor, although the mortgage was registered and mortgage payments were current.

15. The Society has also been advised by Marguerite Angus of the Royal Bank that no reporting letters have been received from the Solicitor who acted for the bank in the following five mortgage transactions:

- a) mortgagors/purchasers Dave Tsui and Serena Fung, 108 Ashbridge Drive, Scarborough, closed February 23, 1989. The Society's Staff Trustee forwarded to the bank the duplicate registered charge, sheriff's certificate and insurance binder on April 19, 1990;
- b) mortgagor/purchaser Ellis Li, 38 Clematis Road, North York, closed June 30, 1988. The Staff Trustee sent the duplicate registered charge, sheriff's certificate and insurance binder on May 7, 1990;
- c) mortgagor/purchaser Stephen Cheng, 51 Kennedy Crescent, Scarborough, closed April 29, 1988. The duplicate registered charge and insurance binder were sent to the bank on May 7, 1990 by the Staff Trustee;
- d) refinancing for mortgagors Anne Kao Su-Ni Pseng and George Bun-Yung Tseng, 64 McNicoll Avenue, North York, closed May 20, 1988. The Staff Trustee forwarded the duplicate registered charge, sheriff's certificate and insurance binder on May 7, 1990; and
- e) mortgagors/purchasers Kwok-Yuen Louis and Jimmy Louie, 19 Lowry Square, Scarborough, closed February 15, 1988. The Staff Trustee sent the duplicate registered charge, sheriff's certificate and insurance binder to the bank on June 6, 1990.

16. Rebecca Wong and Lewis S.C. Wong by a letter of complaint received by the Society on October 27, 1989, stated that they had not yet received a reporting letter with respect to the sale of their condominium Unit 1101, 1 Massey Square, Toronto, which closed on December 16, 1988. The complainants received from the Solicitor a hand-written note dated December 16, 1988 showing disbursements and also showing that the balance owing to them was \$21,795.78. A cheque for that amount was enclosed. In the note the Solicitor indicated that she would prepare a detailed account upon her return on January 9, 1989. The reporting letter was never received.

17. By letter dated July 12, 1989 Ai Chuan Li complained to the Society that the Solicitor had acted for him on a closing of the purchase of 268 Montrose Avenue, Toronto. The closing had taken place on June 17, 1988. The client had not received a reporting letter on the transaction nor an accounting of funds. The file was returned to the client by the Society's Staff Trustee on October 17, 1989.

18. By letter of complaint dated August 1, 1989 to the Society the complainant, Eliza Chan, disclosed that the Solicitor had completed the purchase transaction of 597 Fairview Road West, Mississauga in trust for her. The transaction closed on April 19, 1989. Ms. Chan had not received a report nor documents with respect to the purchase nor an accounting of funds. The file was retrieved by the client from the Society's Staff Trustee on November 27, 1989.

19. By letter received at the Society on September 12, 1989, Stephen Leung complained that the Solicitor had not fully accounted to him for funds in connection with the purchase of 188 Spadina Avenue, Unit 701 which closed in April, 1989. The client also had not received a reporting letter. The client retrieved the file from the Staff Trustee in July, 1989.

20. By letter dated October 10, 1989 the complainant, Edward Shiu-lung Ho wrote to the Society advising that the Solicitor had acted for him in the purchase of 2 Liszt Gate, No. 6, Willowdale. The transaction had closed April 7, 1989. The complainant stated that before the closing they had delivered a sum of money to the Solicitor which, according to the Solicitor, was to cover expenses in connection with the purchase. The Solicitor failed to report to the complainants and did not forward a Statement of Account for services rendered. The client retrieved the file from the Staff Trustee on October 28, 1989.

21. By letter dated October 16, 1989 Sam Chan advised the Society that prior to the closing of the purchase transaction of 61 Wickson Trail, Scarborough, that had taken place on May 5, 1989, the complainant's father-in-law had given the Solicitor for deposit in trust the sum of \$213,750 and that the father-in-law was advised by the Solicitor that the amount required to complete the transaction was \$212,324.76. The complainant had concerns about a possible overpayment to the Solicitor but was unsuccessful in his attempts to contact her. The complainant contacted another solicitor, Alan Smith, who reported on the transaction. The Solicitor has failed to account for the funds in trust; Mr. Smith's attempts to contact the Solicitor had been unsuccessful.

22. The following clients of the Solicitor, unless otherwise indicated, did not receive reporting letters with respect to their transactions. In some instances the Society's Staff Trustee retrieved the files on behalf of the client:

- i) Yuk Kam Ng purchase/mortgage transaction which closed October 28, 1988;
- ii) H.R. Sheiding of the Income Trust Company (mortgagee) and William Chang (purchaser) in respect of 16 Marblemount Crescent, Scarborough, the closing of which transaction took place in April 15, 1989. The mortgagee retained a new solicitor to report on the transaction. The account was paid by the Solicitor;
- iii) Philip Cheung of the Hong Kong Bank of Canada (mortgagee) and Joyce and Edward Luk (purchasers) in respect of 1055 Shawnmarr Road, Unit 18, Mississauga. The closing took place December 15, 1988;
- iv) Harris and Cindy Siu, purchaser/mortgage transaction in respect of 1705 McGowan Road, Suite 401, Scarborough, which closing took place on April 3, 1989. The clients did not receive an accounting nor a refund of approximately \$1,200 from the Solicitor's trust account;
- v) Simon Siu, purchase transaction in respect of 278 Mississauga Valley Boulevard, Mississauga, which closing took place April 21, 1989;
- vi) Clarence Wong of the Bank of Nova Scotia (mortgagee) and Yai Ming and May Ying Cheung, in respect of two transactions (42 Wyndcliffe Crescent, Downsview [refinancing] and 60 Cresthaven Drive, North York [purchase and mortgage]); the closing occurred March, 1989 and October, 1988, respectively;
- vii) Robert Braiden of the Royal Bank of Canada (mortgagee) and Glorie Leung (purchaser) in respect of 1131 Sandhurst Circle, Unit 153, Scarborough, which transaction closed July 4, 1988;
- viii) Jameson Li, purchase/mortgage transaction in respect of 2800 Midland Avenue, Unit 23, Scarborough; the closing took place April 28, 1989;
- ix) Kam Sing and Alice Chow, in respect of 8 Sadlee Cove Crescent, Scarborough; the transaction closed in July, 1988. The file was never found;
- x) Shirley Lo of the Toronto Dominion Bank (mortgagee) and Lai Mak (purchaser) in respect of 28 Sunbird Crescent, Scarborough; the closing took place September 16, 1988;
- xi) Warren C. Key of the Toronto Dominion Bank (mortgagee) and Junichi and Kuniko Takata, a collateral mortgage transaction in respect of 2734 Midland Avenue, Scarborough, which transaction closed September 23, 1988;

- xii) Tina Tsui of the Canadian Imperial Bank of Commerce (mortgagee) and Joan Bailey-Forbes (purchaser in respect of 1975 Rosefield Row, Unit 47, Pickering which transaction closed June 20, 1988. The bank did not receive a report and the only material in the file was a duplicate registered charge which was forwarded to the bank by the Society's Staff Trustee on April 3, 1990;
- xiii) Canada Trust (mortgagee) and Be Nho Luong (purchaser) in respect of 24 Kerbar Road, Scarborough, which transaction closed February 19, 1988;
- xiv) Shirley Wilson of the Toronto Dominion Bank (mortgagee) and Chung Yiu Leung and Siu Mei May Leung, in respect of 112 Northwood Road, North York, which transaction closed February 1, 1988.

Particular 2(q)(ii)

3. By letter dated December 9, 1988 Ron Waksdale, president of Confirmed Investments Inc., complained to the Society that the Solicitor had failed to register a mortgage respecting a certain property on behalf of Mr. Waksdale's clients, the mortgagees, pursuant to instructions dated January 15, 1988 sent to the Solicitor. The mortgage was for the principal sum of \$20,000. The mortgagors received an advance of \$19,550 by certified cheque dated January 20, 1988. As of the date of the complaint letter, December 9, 1988, the mortgage had not been registered. The mortgagors, however, acknowledged liability and had made payments under the mortgage.

24. Fiona Fan had retained the Solicitor with respect to the purchase of certain property in Scarborough. She had requested that a clause be inserted in the Agreement of Purchase and Sale where the vendors warranted the chattels. The Solicitor did not insert the clause and, accordingly, no warranty as to chattels was given by the vendors. Upon taking possession, Ms. Fan discovered that the air conditioning was not functioning. She had received a repair estimate for approximately \$1,000.

25. Jo chim Loh had been the solicitor for Kam Shaun Cheung. Mr. Loh had advised the Society that he had referred Mr. Cheung to the Solicitor for independent legal advice concerning a Separation Agreement. The document was reviewed with the client by the Solicitor; however, the Solicitor did not prepare a Certificate of Independent Legal Advice.

26. By letter dated February 23, 1989 Sheila Lam advised the Society that she had engaged the Solicitor in a matrimonial matter. Initial consultation had taken place on November 17, 1987. In January or February, 1988 the Solicitor had advised Ms. Lam that she had prepared a separation agreement. Subsequently Ms. Lam changed solicitors and, upon attending on February 10, 1989 at the Metro Toronto Chinese and South East Asian Clinic where the Solicitor was employed, she retrieved her file and maintains that the Solicitor did not pursue the matrimonial matter in accordance with her instructions.

27. Man Ling Chan, a client of the Clinic, had retained the Solicitor to complete a divorce. The Solicitor had not commenced the divorce proceedings and did not account for the sum of \$575 which she had obtained as a retainer from Ms. Man in order (according to the Solicitor) to complete the work. The arrangement had not been known to the Clinic.

28. By letter dated October 27, 1989, Alan Smith, a solicitor, reported to the Society upon a purchase and mortgage transaction that had initially been handled by the Solicitor. Ellis Li had purchased in trust a townhouse in Scarborough for a Mr. Lee and a Ms. Fung, with partial financing from the Bank of Montreal. The purchase and mortgage transactions closed on May 31, 1989. The purchase and mortgage documents were registered by the Solicitor. The Solicitor did not report to the purchasers; however, Mr. Smith took over the matter and eventually provided a report. The mortgage had purportedly been signed by someone holding a Power of Attorney for Lee and Fung; however, only one Power of Attorney had been registered for one of the purchasers but not for the other. The purchasers stated that they had not signed any Powers of Attorney. While the named attorney held a Power of Attorney for Ellis Li, she held no such Power of Attorney for Fung or Lee. The named attorney in the registered Power of Attorney had advised Mr. Smith that the signatures on the mortgage were not hers. It had been contemplated by the purchasers that properly executed Powers of Attorney would be utilized in the transaction; however, the Solicitor appears to have signed the Powers of Attorney herself without the authority of Fung or Lee.

Particular 2(h)

29. Joachim Loh was a solicitor for the purchasers of Unit 1011, 1 Massey Square, Toronto in respect of a transaction that closed on December 15, 1988. At closing the Solicitor undertook personally to provide a discharge statement respecting the mortgage to Guaranty Trust, to discharge two mortgages in favour of Guaranty Trust and Eaton Trust, and to provide registration particulars thereof. Neither discharge was registered by the Solicitor. The Society's Staff

Trustee's office obtained possession of the file. A discharge for the Eaton Trust mortgage was found in the file and forwarded to Mr. Loh but the discharge for the Guaranty Trust mortgage was not found. Mr. Loh eventually contacted Guaranty Trust, obtained the duplicate discharge and registered it himself.

30. Both the Compensation Fund and the Errors & Omissions Departments of the Law Society have been involved in this matter. The Errors & Omissions Department had one file open and there have been two claims to the Compensation Fund totalling under \$800.

31. In or about December, 1989, the Solicitor retained Brian Greenspan to represent her. As already noted, on February 9, 1990 the Solicitor executed an Undertaking not to practise law until the conclusion of pending discipline hearings and until investigations on further complaints have been concluded.

32. Subsequently, Ms. Wong's level of co-operation with the Society increased.

33. Ms. Wong retained an accountant in an attempt to reconstruct her books and records. Given the state of the books and records, however, it was determined by the accountant that reconstruction was not possible.

V. PENALTY

34. The Solicitor was found guilty of professional misconduct on June 13, 1990. The penalty portion of the hearing was held on March 27, 1991 at which time the Solicitor was Reprimanded in Committee. The Solicitor has no other discipline record.

35. The Solicitor has provided a psychiatric report and asks that it be considered along with this document.

36. The Solicitor submits that she be permitted to resign. Should such permission be granted, and should the Solicitor fail to resign then the Solicitor submits that she ought to be disbarred.

37. The Society joins in this submission.

DATED at Toronto, this 30th day of April, 1991."

RECOMMENDATION AS TO PENALTY

This Committee accepts the joint recommendation of Counsel, that Marion Yuen Yee Wong be granted permission to resign and should the Solicitor fail to resign then the Solicitor be disbarred.

REASONS FOR RECOMMENDATION

The Solicitor was called to the Bar on April 15, 1987, and almost immediately thereafter she embarked on a course of professional misconduct which is truly remarkable. Were it not for the psychiatric report of Dr. Filipczuk, your Committee would be at a loss to understand how she managed to complete the Bar Admission Course and then proceed to practice in the manner exemplified by the particulars of the complaint.

The report of Dr. Filipczuk, which should be before Convocation, persuades your Committee to recommend allowing the Solicitor to resign as an alternative to disbarment. It is ironic, in light of the litany of failures contained in the particulars of professional misconduct, and yet understandable, that Dr. Filipczuk should find that:

"Miss Wong's underlying personality (sic) is that of a compulsive nature, meaning that she is meticulous, precise and dedicated to perfectionism."

Further on in his report, Dr. Filipczuk states:

"As she migrated more towards her occupational responsibilities she was confronted by a rising fear of losing control of her personal life, meaning issues relating to her family and marriage. As there was little compromise available, the frustration led to a type of obsessional neurosis which ultimately culminated in a picture of clinical depression. As typical in these instances, there is no subjective perception of depression which manifests (sic) itself cognitively as a loss of concentration, attention and intellectual capacity as well as physically which reports (sic) in fatigue, loss of sleep and ultimately exhaustion. At these times even simple decisions seem overwhelming."

Dr. Filipczuk concludes by suggesting that as of the date of his report (November 13, 1990), he could see no reason why the Solicitor could not return to the practice of law. That may be a matter for the consideration of the Admissions Committee at some future time.

At this time, we are prepared to accept the joint submission of counsel, and will recommend to Convocation that it consider doing the same.

The Solicitor's psychiatric condition is a very substantial mitigating factor. Convocation has, on numerous occasions in the past, allowed resignation in these circumstances.

Marion Yuen Yee Wong was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 15th day of April, 1987.

ALL OF WHICH is respectfully submitted

DATED this 9th day of August, 1991

"R. Yachetti"
Roger D. Yachetti, Q.C., Chair

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

Carried

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

Submissions were made by Mr. Greenspan.

It was moved by Mr. Topp that the Recommendation be amended, that if the solicitor did not resign by December 1st, 1991 she would be disbarred.

Mr. Rock accepted this amendment.

Counsel, the reporter and the public withdrew.

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

Counsel, the reporter and the public were recalled and informed of the motion for a higher penalty.

There was no objection by counsel for the solicitor to having those Benchers participate who sat on the original panel.

The matter was stood down at the request of Mr. Greenspan.

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Ms. Mohideen entered Convocation.

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RE: ALBERT JOHN BICKERTON, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society. The solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 10th June, 1991, together with an Affidavit of Service sworn 7th August, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 8th July, 1991 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 26th September, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

John D. Ground, Q.C., Chair
Maurice Cullity, Q.C.
Mrs. Laura Legge, Q.C.

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

Kenneth G. G. Jones
for the Society

ALBERT JOHN BICKERTON
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: March 19, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 16, 1990, Complaint D116/90 was issued against Albert John Bickerton alleging that he was guilty of professional misconduct.

The hearing was heard in public on March 19, 1991 before this Committee composed of John D. Ground, Q.C., Chair, Maurice Cullity, Q.C. and Mrs. Laura L. Legge, Q.C. Mr. Bickerton appeared and was not represented by Counsel. Ken Jones appeared on behalf of the Law Society.

DECISION

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

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

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D116/90 and is prepared to proceed with a hearing of this matter on January 29, 1991.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D116/90 and admits the particular contained therein.

IV. FACTS

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

5. As the Solicitor did not file his Form 2 or Form 3, each year he was subject to a late filing levy of \$5.00 per day. When this levy amounted to \$600.00 he was subject to suspension pursuant to Section 36 of The Law Society Act. In order to avoid suspension the Solicitor paid the late filing fees for each year and continued in the practise of law. However, he did not file the

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

V. PREVIOUS DISCIPLINE

6. In 1989, the Solicitor was found guilty of professional misconduct in that he failed to account to a client for the proceeds of a sale of property and he failed to co-operate with a Law Society audit investigation. As a result, the Solicitor was reprimanded in committee and ordered to pay costs of \$2,000.00.

7. On June 5, 1990, the Solicitor was again found guilty of professional misconduct. On that occasion, three particulars of professional misconduct were found to be established: two of the particulars related to the Solicitor's failure to reply to communications from the Society. The remaining particular concerned the Solicitor's failure to comply with an earlier order of the Discipline Committee to pay costs, as set out in the preceding paragraph herein. As a result of this second finding of professional misconduct on the part of the Solicitor, it was recommended that he be reprimanded in Convocation. A copy of the Report and Decision of the Discipline Committee is attached. On January 24, 1991, Convocation adopted the recommendation of the Discipline Committee, and the Solicitor was reprimanded in Convocation.

DATED at Toronto this 29th day of January, 1991."

RECOMMENDATION AS TO PENALTY

The Committee recommends that, if the Solicitor completes the filings of his annual reports for the fiscal years ended January 31, 1989, 1990 and 1991 by March 27, 1991 he be reprimanded in Convocation and that, if he fails to do so, he be suspended for a period of three months and from month to month thereafter until all such filings are made.

REASONS FOR RECOMMENDATION

As evidenced by the Agreed Statement of Facts, the Solicitor has over the years been found to be guilty of professional misconduct by reason of failure to comply with the requirements of the Law Society with respect to the filing of forms, failure to comply with the Rules of Professional Conduct with respect to replying to communications from the Society and, in one instance, failing to account to a client for the proceeds of sale of a property. The Solicitor has also, on one occasion, failed to cooperate with the Law Society audit investigation. The pattern of behaviour, in the view of the Committee, falls short of the level of ungovernability which would lead to a recommendation of suspension or disbarment but is of a sufficiently serious nature that the penalty should be more than a reprimand in Committee and should be such that the Solicitor is motivated to file the annual reports in default. (The Committee is advised that the Solicitor filed the required annual reports either on the afternoon of March 27th, 1991 or the morning of March 28th, 1991).

Albert John Bickerton was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 13th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED this 10th day of June, 1991

"J. Ground"
J.D. Ground, Chair

There was no objection by the solicitor to Mr. Topp participating.

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

There were no submissions.

The Report was adopted.

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

Submissions were made by Society's counsel and the solicitor.

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

The Recommendation as to Penalty was adopted.

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

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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RESUMPTION OF MARION YUEN YEE WONG MATTER

Representations by both counsel were made in support of the solicitor being permitted to resign.

Counsel, the reporter and the public withdrew.

The motion for disbarment was lost.

The recommendation that the solicitor be permitted to resign no later than December 1st, 1991 was adopted.

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

Counsel retired.

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RE: JOHN ROBERT ELLIOTT, Guelph

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Messrs. Bastedo and Manes did not participate.

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 26th June, 1991, together with an Affidavit of Service sworn 30th July, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 8th July, 1991 (marked Exhibit 1) together with Acknowledgement, Declaration and Consent signed by the solicitor 26th September, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas G. Bastedo, Q.C. Chair
Ronald D. manes
Mrs. Netty Graham

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

JOHN ROBERT ELLIOTT
of the City
of Guelph
a barrister and solicitor

Reginald Watson
for the Society

Donald Crawford McKinnon
for the solicitor

Heard: December 12, 1989

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 27, 1989, Complaint D61/89 was issued against John Robert Elliott and on December 4, 1989 Complaint D99/89 was also issued alleging that he was guilty of professional misconduct.

The matter was heard in public on December 12, 1989 before this Committee composed of Thomas G. Bastedo, Q.C., as Chair, Ronald D. Manes and Mrs. Netty Graham. Mr. Elliott attended the hearing and was represented by Donald Crawford McKinnon. H. Reginald Watson appeared as counsel for the Law Society.

DECISION

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

Complaint D61/89

- (a) He failed to take any action to follow the instructions of his clients, Mr. and Ms. Martin, with respect to their dispute regarding their mortgage and thereafter attempted to conceal his inaction by falsely advising them that a settlement had been achieved.
- (b) He falsely advised Mr. and Ms. Martin and their bankers, the Royal Bank of Canada, that funds from the settlement referred to in particular 2(a) would be available shortly, which advice he knew or ought to have known was false and would be relied upon by Mr. and Ms. Martin and the Royal Bank of Canada.

Complaint D99/89

Joseph Pancik

- (a) He misapplied the sum of \$58,000.00 more or less, by disbursing trust funds to his matrimonial client, Joseph Pancik, thereby breaching his undertaking dated July 34rd, 1987 that the funds were to be held in an interest bearing trust account.

Frank Basso

- (b) He failed to take any action to follow the instructions of his client, Frank Basso, respecting a wrongful dismissal action.
- (c) He attempted to mislead his client, Frank Basso, by falsely informing him that he had obtained an offer of settlement for \$15,000.00.

Michell Begg

- (d) He failed to take any action to follow the instructions of his client, Michelle Begg, respecting an action for damages.
- (e) He attempted to mislead his client, Michelle Begg, by falsely informing her of the status of the action and that he had obtained a settlement.

Monty Fitch

- (f) He failed to take any action to follow the instructions of his client, Monty Fitch, respecting a wrongful dismissal action.
- (g) He attempted to mislead his client, Monty Fitch, respecting the status and settlement of the action.

Deborah Brittenden

- (h) He failed to take any action to follow the instructions of his client, Deborah Brittenden, respecting an application to vary a support order.
- (i) He attempted to mislead his client, Deborah Brittenden, respecting the status and settlement of her matter.

Doug Trimble

- (j) On or about December 23rd, 1988, he attempted to mislead the employer of his client, Doug Trimble, by falsely advising it that the garnishee matter with which it had been served had been resolved and that it would be provided with a discontinuance.

Good vs. Kothari

- (k) He failed to take any action to follow the instructions of his client, Chandrakant Kothari, to launch an appeal.
- (l) He attempted to mislead his client, Kothari, by falsely advising his client respecting the status of the appeal.

Jain vs. Kothari

- (m) He breached his undertaking given on the sale of a franchise by failing to affect the registration of a trademark.

Howell

- (n) He failed to follow the instructions of his client, Howell, to proceed with an appeal of a criminal conviction for careless driving.
- (o) He attempted to mislead his client, Howell, by falsely informing her of the status of her appeal.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D61/89 and D99/89 is prepared to proceed with a hearing of these matters before the Discipline Committee on December 5th, 1989.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D61/89 and D99/89 with his counsel, Donald C. McKinnon and admits the particulars contained therein.

IV. BACKGROUND FACTS

Complaints D61/89 and D99/89

4. The Society received a complaint dated May 4th, 1989 from Catherine Martin respecting the Solicitor's failure to take action on her behalf and his subsequent failure to be candid with his client. The Society conducted an investigation which produced evidence to substantiate the concerns of Ms. Martin and Complaint D61/89 was issued alleging professional misconduct. At the same time, the matter was referred to the Society's Audit Department. A comprehensive review of the Solicitor's practice was undertaken which revealed the matters which are the subject of Complaint D99/89. The Solicitor has assured the Society that it is now aware of all of the outstanding problems.

V. FACTS

Mr. and Mrs. Martin

5. Mr. and Mrs. Martin gave a mortgage to Municipal Savings and Loan Corporation (Municipal). A dispute arose as to the amount of money owing. A Power of Sale was issued and Municipal subsequently obtained default judgment and thereafter proceeded to garnishee Mr. Martin's income.

6. In 1984, the Martins retained the Solicitor as Municipal had commenced new garnishment proceedings. The clients instructed the Solicitor to bring an application for an accounting as they felt that monies were owing to them. The Solicitor took no steps to follow the instructions of the clients.

7. In September of 1988, the clients were advised by the Solicitor that Municipal had offered about approximately \$30,000.00 as an out of court settlement. The Solicitor indicated they could probably receive approximately \$40,000.00 and they instructed the Solicitor to settle for that amount. The Solicitor confirmed the settlement and advised them that the money would be available shortly after Christmas.

8. In February 1989, the Solicitor informed them that he had received approximately \$40,000.00 which was being held at the bank until the cheque cleared. They indicated to the Solicitor that they wanted to purchase a vehicle and the Solicitor advised them and their banker that he had the money in his possession to cover the cost of the vehicle. On February 16th, 1989, Mr. and Mrs. Martin purchased the vehicle for \$11,000.00 using money borrowed from the bank until the settlement funds were received.

9. The Solicitor finally confessed to his clients that he had not launched the action, that there was no settlement and that no monies would be forthcoming from Municipal. However, he did provide them with a cheque for \$10,000.00. He advised the Society that he borrowed these funds from his parents. Due to the clients' reliance upon the assurances of the Solicitor they incurred substantial debts, including the new vehicle. The clients' financial situation is now worse due to their reliance on the Solicitor's misrepresentations.

Complaint D99/89

Joseph Pancik

10. The Solicitor acted for Joseph Pancik and Mr. Richard Gazzola acted for Slata Pancik in a matrimonial matter. On July 3rd, 1987, the Solicitor undertook in writing to Mr. Gazzola to hold one-half of the proceeds from the sale of the matrimonial home in a daily interest trust account. The Solicitor opened such an account and deposited \$54,485.51 pursuant to his undertaking.

11. The Solicitor retained the money in trust until December 12th, 1988. On that day, the Solicitor issued trust cheque No. T10080 in the amount of \$58,000.00 payable to his client, Joseph Pancik. The Solicitor did this in breach of his undertaking knowing that neither Mr. Gazzola or Zlata Pancik had authorized the release of the trust funds in which Ms. Pancik claimed an interest.

12. The Solicitor did not advise anyone of what he had done and the matter did not come to light until August of 1989. In a letter dated August 8th, 1989, Mr. Gazzola notified the Solicitor's partner that he had obtained judgment in the amount of \$52,035.51 plus costs payable to Zlata Pancik and he requested payment from the funds being held by the Solicitor pursuant to the undertaking. The Solicitor's partner checked the relevant client trust ledger card and at that time discovered that the funds had been paid out in December of 1988 and were not available to satisfy the judgment. The partner immediately contacted the Law Society and reported the problem. In order to make up the trust shortage, the partner deposited \$63,484.28 of his personal funds into the firm trust account. The matter is currently being reviewed by the Society's Errors and Omissions Department with a view to determining whether a payment should be made to the partner. The Solicitor is not in a position to make restitution for the trust funds he paid to Mr. Pancik.

Frank Basso

13. In March of 1986, Mr. Basso retained the services of the Solicitor to commence an action for wrongful dismissal. The Solicitor did not follow his client's instructions and took no steps to commence the action. However, on July 4th, 1989, the Solicitor misled his client by falsely informing Mr. Basso that there was an offer to settle from the defendants for \$15,000.00. Mr. Basso stated that he would accept the offer and the Solicitor advised him that he would have the cheque within two weeks.

Michelle Begg

14. In August of 1988, Ms. Begg retained the Solicitor to commence an action for damages in the amount of \$1,000.00. The only action taken by the Solicitor was to prepare a claim, however, it was not issued and no further steps were taken by the Solicitor. Notwithstanding this, the Solicitor falsely advised Ms. Begg as follows:

1. That he had issued a claim on her behalf.
2. In April of 1989 that the defendant had agreed to settle out of court for \$1,000.00.
3. In May of 1989, that he had received a settlement cheque from the defendant.

15. On July 28th, 1989, the Solicitor gave Ms. Begg a cheque in the amount of \$1,000.00 drawn on the Solicitor's personal account. The cheque was returned due to insufficient funds and the Solicitor issued a replacement cheque on August 3rd, 1989. That also was returned due to insufficient funds.

16. On August 21st, 1989, the Solicitor met with the Society's auditor and discussed the Begg matter but was unsuccessful. At a subsequent meeting on August 31st, 1989, the Solicitor finally admitted his misconduct.

Monty Fitch

18. In June of 1989, Mr. Fitch retained the Solicitor to commence an action for wrongful dismissal against his former employer. The Solicitor did not issue the claim or take any steps to follow his clients instructions. Subsequently, the Solicitor misled Mr. Fitch as follows:

1. He falsely advised Mr. Fitch that he had issued a claim and that the action was progressing.
2. The Solicitor falsely advised him that the defendant had settled out of court for \$10,000.00 and that he was in receipt of a settlement cheque.

19. The Solicitor provided Mr. Fitch with a settlement cheque in the amount of \$10,000.00 drawn on the Solicitor's personal bank account. The cheque was not honoured due to insufficient funds. The Solicitor issued a replacement cheque on August 9th, 1989 which was successfully cashed by Mr. Fitch. The Solicitor's position is that he borrowed \$10,000.00 from a mortgage broker to pay Mr. Fitch.

Deborah Brittenden

20. In June of 1988, Ms. Brittenden retained the Solicitor to represent her in an application to vary a support order. The Solicitor did not follow her instructions and took no action. Subsequently, the Solicitor misled her as follows:

1. In July of 1988, the Solicitor falsely informed her that he would be attending in court when no arrangements had been made.
2. In August of 1988, the Solicitor falsely advised her that the matter had been completed and he had obtained an order to increase her support payments which would start in September of 1988.
3. In November of 1988, the Solicitor falsely advised his clients that the increased payments would start in December of 1988.

Doug Trimble

21. In October of 1988, Mr. Trimble and his employer were served with a notice of garnishment in connection with a debt owed by Mr. Trimble to Ida Trimble. On December 23rd, 1988, the Solicitor wrote to the employer falsely advising that the matter had been settled and that the solicitors for Ida Trimble would provide a discontinuance of the garnishment. Subsequently, Ms. Trimble's solicitor again demanded garnishment of Mr. Trimble's wages and the employer complied. the matter was finally settled in March of 1989 with a payment from Mr. Trimble to Ms. Trimble.

22. The matter came to the attention of the Society through the Solicitor's partner who had been approached by Mr. Trimble in August of 1989. Mr. Trimble was complaining about the work performed by the Solicitor, that some cheques given to him by the Solicitor had been returned due to insufficient funds and that his employer was now attempting to collect from him the amount which it had paid to Ms. Trimble pursuant to the garnishment order.

Good vs. Kothari

23. In January of 1989, Mr. Kothari instructed the Solicitor to launch an appeal in respect of a judgment obtained against him by G.R. Holdings Company Limited. In fact, the Solicitor took no steps to launch the appeal and subsequently misled his client by advising him that he had taken steps to appeal the judgment.

Jain vs. Kothari

24. In December of 1988, Mr. Kothari retained the Solicitor to act on the sale of a franchise to Mr. Jain. At the closing, the Solicitor undertook to transfer a lease to Mr. Jain and register the use of trademark.

25. The Solicitor was unable to complete the transfer of the lease to Mr. Jain as Mr. Jain failed to pay his half of the transfer fees. However, the Solicitor took no steps to complete his undertaking to register the use of the trademark for Mr. Jain and exposed his client, Mr. Kothari to a potential lawsuit as a result of his breach of undertaking.

Howell

26. The Solicitor represented Ms. Howell on a charge of careless driving. Ms Howell was convicted and instructed the Solicitor to launch an appeal. The Solicitor failed to follow her instructions and took no action.

27. As a result of the conviction, Ms. Howell's drivers licence was suspended. When she was notified of the suspension, she spoke with the Solicitor. He falsely advised her that he had launched the appeal and also indicated that in a letter from him on the firm letterhead addressed to: "To Whom It May Concern". The Solicitor advised Ms. Howell that if the police stopped her she could use his letter.

DATED at Toronto this 12th day of December, 1989."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said John Robert Elliott be permitted to resign.

REASONS AS TO RECOMMENDATION

The series of events which occurred in 1987, 1988 and 1989 are set out in some length in the Agreed Statement of Facts which came before this Committee. At the hearing on December 12, 1989, the Solicitor admitted the particulars in the two complaints, and there was a joint submission to the Discipline Committee that the Solicitor be permitted to resign. However, subsequently, it became clear that while the Solicitor had assured the Society that it was aware of all of the outstanding problems, several matters were outstanding which the Solicitor did not, in fact, disclose to the Law Society. Thereafter, the Solicitor and his counsel, and counsel for the Society, believed that these matters should be brought before the Discipline Committee, and they were brought before this Committee in written submissions.

Essentially, three different matters, other than those appearing in the Agreed Statement of Facts, came before this Committee. First, the Solicitor borrowed \$10,000 from one of his clients, and failed to repay it. It remains unpaid. He also attempted to purchase one of his client's homes and put in an Agreement of Purchase and Sale with a deposit cheque of \$2,000 which was returned by the bank due to insufficient funds. The second incident arose out of a retainer by the Solicitor by a client who had retained him to launch a suit for damages. The Solicitor deliberately misled the client, and used the \$10,000 which he borrowed from the first client to pay the second client, pretending that the \$10,000 was an advance payment on settlement funds. Third, the Solicitor was retained by clients to pursue a dispute with a contractor, and falsely misled the clients into believing that he was pursuing the matter and that he will receive settlement funds when, in fact, he had done neither.

While the Solicitor takes the position that these events occurred during a very difficult period in his life, there is no doubt that the Solicitor represented to the Society in 1989 that the Society was "now aware of all of the outstanding problems".

Also received in evidence was a letter from Dr. Gerald Kirsch, the Solicitor's physician. Dr. Kirsch's letter states that the Solicitor was advised to leave his practice as he could not function effectively in it, that the Solicitor had been suffering through a major depressive illness, and that he was on the road to recovery and was "functioning quite effectively in his position with a book store chain".

The Committee accepts that the Solicitor is unfit to practice in his profession, it agrees with the submissions of counsel for the Solicitor that the events in 1987, 1988 and 1989 occurred during a very difficult period in the Solicitor's life, and should be viewed in that perspective. The events that came to light in the spring of 1990 were, in fact, similar to matters which had already been before the Committee. The Committee is of the view that no useful function can be fulfilled by recommending that the Solicitor be disbarred. The Solicitor has not been practising since August 15, 1989, and appears to be usefully functioning in society at this time.

John Robert Elliott was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 6th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1991

"T. Bastedo"

Thomas G. Bastedo, Chair

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

Carried

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

Carried

Counsel retired.

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CONVOCATION ADJOURNED FOR LUNCHEON AT 12:50 P.M.

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CONVOCATION RECONVENED AT 2:20 P.M.

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PRESENT:

The Treasurer (James M. Spence), Bastedo, Cass, Cullity, Curtis, Elliott, Feinstein, Goudge, Lax, McKinnon, Manes, Mohideen, Palmer, Rock, Scott, Thom, Topp, Weaver and Yachetti.

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"IN PUBLIC"

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RE: TIMOTHY JOHN LUTES, Orillia

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

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

Convocation had before it the Report of the Discipline Committee dated 3rd July, 1991 together with the Affidavit of Service sworn 30th July, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 8th July, 1991 (marked Exhibit 1) and the Acknowledgement, Declaration and Consent signed by the solicitor 26th September, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

In the matter of
The Law Society Act

Ronald Cohen
for the Society

and in the matter of
TIMOTHY JOHN LUTES
of the City
of Orillia
a barrister and solicitor

Not Represented
for the solicitor

Heard: February 26 and 27, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 24, 1990, Complaint D170/90 was issued against Timothy John Lutes alleging that he was guilty of professional misconduct.

The hearing was heard in public on February 26 and 27, 1991 before this Committee composed of Robert J. Carter, Q.C., Chair, Miss Frances Kiteley and Mr. Ross Hall. The Solicitor did not appear at the hearing nor was he represented. Ronald Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D170/90

2. a) He failed to meet the financial obligations arising from his practice, incurred to Dr. Lowry and Star Business Machines Ltd. (Ron Thompson, complainant);
- b) He misled the Law Society by falsely advising the Society that he had made the payments necessary to satisfy the financial obligations to Dr. Lowry and Star Business Machines, when in fact he had not done so;
- c) He failed to reply to the Law Society in respect of a complaint from C. Hewson Bourne, solicitor;
- d) He breached his Undertaking to the Law Society dated June 20, 1990, as follows:
 - i) he failed to file his Forms 2/3 for the fiscal years ending in 1988 and 1989 by June 29, 1990 (or two weeks following that date);
 - ii) he failed to meet with a representative of the Society's Audit department by June 28, 1990;
 - iii) he failed to reply to correspondence from the Law Society within two weeks of his receipt thereof (Bourne, Tsubouchi and Hubbard complaints);
 - iv) he failed to reply to telephone communications from the Society's audit examiner and audit counsel within two business days following receipt of the messages;
 - v) he failed to communicate with a representative of the Discipline, Complaints or Audit department each Monday until Convocation deals with his pending discipline matter;
 - vi) he failed to ensure that telephone answering machines were connected to his office and residence telephone lines and that the machines were operational;
- e) In the course of representing his clients, Falcon and Sykes, he:
 - i) breached his Undertaking given to the opposing solicitors (Mr. Tsubouchi and Mr. Hubbard respectively) to obtain, register and provide proof of registration of properly executed mortgage discharges and, in the case of the Undertaking given to Mr. Hubbard, to pay all outstanding realty taxes as set out in the Statement of Adjustments;

- ii) failed to reply to correspondence from Mr. Tsubouchi and Mr. Hubbard regarding these matters, thereby failing to conduct himself towards these solicitors in a manner characterized by courtesy and good faith;
- iii) failed to reply to correspondence from the Law Society regarding complaints made by Mr. Tsubouchi and Mr. Hubbard;
- f) He failed to serve his clients, Dennis Hodgson, Judy Cromwell, Helen Phillips, Falcon and Sykes, in a conscientious, diligent and efficient manner.

REASONS

Ron Thompson, owner of Star Business Machines Ltd. was called by the Society. He produced three invoices to Mr. Lutes for material in his law office. The dates and amounts as follows:

Invoice No.	Date	Amount
016881	05/01/89	79.92
016699	05/01/89	29.68
016240	03/21/89	<u>103.68</u>
		213.28

A final reminder was sent to Mr. Lutes on January 31st, 1990. When contacted by the Law Society with Mr. Thompson's complaint on March 22nd, 1990, he indicated that he would review the matter and reply. On June 15th, 1990, he sent a letter to the Society enclosing a copy of a letter to Mr. Thompson enclosing in Mr. Thompson's letter a cheque for \$213.28. Mr. Thompson never received that letter. Similar correspondence was produced with respect to a \$75.00 account to Dr. Lowrey. Accordingly we found particulars 2 a) and b) established.

Letters of complaint by solicitor, C. Hewson Bourne about the Solicitor were forwarded to the Solicitor requesting a reply. None was received and particular 2 c) was established.

An undertaking by the Solicitor to the Law Society dated June 20th, 1990, was produced and evidence called to establish all the breaches of that undertaking as set out in particulars 2 d)(i) to (vi). We accordingly found those to be established.

Solicitor Tsubouchi and Hubbard were called to produce undertakings by the Solicitor in respect to real estate transactions and both gave evidence as to their breach, and his failure to reply to their inquiries. He also failed to reply to the Law Society in answer to its request concerning solicitors Tsubouchi and Hubbard's complaints. Particular 2 e)(i) to (iii) were therefore established.

Clients Falcon and Sykes were clients of the Solicitor in the transactions where solicitors Tsubouchi and Hubbard acted on the other side. This failure to live up to the undertaking given in those transactions established in particular 2 f). Evidence that he was retained to provide legal services for clients Hodgson, Cromwell and Phillips, and did not do so completed the establishment of particular 2 f).

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Timothy John Lutes be disbarred.

REASON FOR RECOMMENDATION

Having found all the particulars established, we viewed the matter as very serious. In particular his active attempts to deceive the Law Society by producing fake letters indicating he had paid the Lowrey and Star Business Machines Ltd. accounts was particularly serious. The virtually complete disregard of his obligations in his undertaking to the Law Society proved him to be ungovernable.

On February 17th, 1987, the Solicitor was before a Committee of the Law Society and was found to have:

- (a) failed to maintain required books and records;
- (b) deliberately avoiding co-signing controls agreed to by him in an Undertaking to the Law Society;

- (c) failure to file an account for \$16,323.65;
- (d) failing to file his Form 2/3 from November 30, 1983 to the then date.

The Committee recommended he be reprimanded in Convocation and that was approved in Convocation.

On August 20th, 1990, the Solicitor was before a Committee of the Law Society on a complaint alleging failure to file reports for the years ending February 28th, 1988 and February 28th, 1989 as required by Section 16(2) of the Law Society Act regulation. He was suspended for two months and thereafter until the reports were filed.

These two previous appearances and the circumstances of the present hearing are the reason for our recommendation.

Timothy John Lutes was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 6th day of April, 1982.

ALL OF WHICH is respectfully submitted

DATED this 3rd day of July, 1991

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

The Affidavit of Mr. Lutes was filed as Exhibit 3 and a letter from Mr. Gregg Harvey as Exhibit 4.

It was moved by Mr. Rock, seconded by Mr. Yachetti that the Report be adopted.

There were no submissions by Society's counsel.

Mr. Greenspan made submissions on behalf of the solicitor. Mr. Greenspan stated that the letter referred to in particular 2(b) of the Complaint contained in the Report only became false because of the operation of Revenue Canada.

Mr. MacKenzie stated that the Report should not be amended.

Mr. Greenspan advised that he was not seeking an amendment but wanted the particular in the Report read in light of Mr. Lutes' Affidavit.

The Report was adopted.

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

Representations were made by both counsel. Mr. Greenspan sought a penalty of permission to resign rather than disbarment. Mr. MacKenzie said that the issue for Convocation was to decide whether Exhibits 3 and 4 warranted a change in penalty.

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

The motion to disbar the solicitor was lost.

It was moved by Mr. Cass, seconded by Ms. Lax that the solicitor be permitted to resign.

Carried

Mr. Topp rose on a point of privilege to see if he could participate. The Discipline Clerk sought instructions from Mr. Greenspan who indicated he had no objection.

Mr. Yachetti withdrew and did not participate. Ms. Weaver now became the seconder on Mr. Rock's motion.

It was moved by Mr. Topp, seconded by Ms. Palmer that the solicitor be suspended for 9 months and thereafter practice as an employed solicitor only for 12 months.

Withdrawn

It was moved by Mr. Topp, seconded by Ms. Palmer that pursuant to section 34 the rights and privileges of the solicitor be suspended for 9 months and that the solicitor not resume practice until a section 35 hearing is held and he is found fit to practise.

Not Put

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision. The Treasurer indicated that the file of the Law Society would carry a full record of the proceedings including the Affidavit and medical report and matters referred to there in the event Mr. Lutes applies to be readmitted.

Counsel and solicitor retired.

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RE: LEE EDWARD WARD, Carleton Place

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society. The solicitor appeared on his own behalf.

There was no objection to the members of the original Committee participating in Convocation.

Convocation had before it the Report of the Discipline Committee dated 10th September, 1991, together with an Affidavit of Service sworn 25th September, 1991 by Louis Katholos that he had effected service on the solicitor by registered mail on 11th September, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 26th September, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas G. Bastedo, Chair
Sandra Chapnik
Netty Graham

In the matter of
The Law Society Act

Ronald Cohen
for the Society

and in the matter of
LEE EDWARD WARD
of the Town
of Carleton Place
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 26, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 26, 1990, Complaint D234/90 and on June 14, 1991, Complaint D78/91 was issued against Lee Edward Ward, alleging that he was guilty of professional misconduct. The hearing was heard in public on June 26, 1991, before this Committee composed of Thomas G. Bastedo, Chair, Sandra Chapnik and Netty Graham. The Solicitor did not appear at the hearing nor was he represented. Ronald Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D234/90

- 2a) He has failed to provide a reply to the Society regarding a complaint by Frank G. Gillis, despite letters dated April 19 and September 19, 1990 and telephone requests to him and promises from him on July 16, August 13 and September 7, 1990.

Complaint D78/91

- 2a) During the period June, 1990 to March, 1991, the Solicitor failed to co-operate with an investigation being carried out by a Law Society examiner.

Evidence

The evidence before the Committee contained a statement of facts which was agreed with the exception of paragraph 11. Paragraph 11 will be dealt with further, and the "Agreed Statement of Facts" which was drafted by the Law Society and which was submitted to the Solicitor is as follows:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

The Solicitor admits service of Complaint D234/90 and is prepared to proceed with a hearing of this matter on April 30, 1991.

II. IN PUBLIC/IN CAMERA

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 D234/90 and admits the particular contained therein.

IV. FACTS

4. The Solicitor was called to the Bar on April 19, 1978 and is a sole practitioner practising in Carleton Place.

5. The complainant, Frank Gillis, is a solicitor practising in Glace Bay, Nova Scotia. The complainant advised in a letter to the Law Society dated March 9, 1990 that he represented Bernard Lee who had, several years previous, retained the services of the Solicitor to represent him with regard to a civil action in which Mr. Lee's spouse was fatally injured.

6. The complainant stated in his letter that the Solicitor had reported to Mr. Lee that a settlement had been negotiated and that a final release had been signed by Mr. Lee. The complainant stated that he had been retained by Mr. Lee in that Mr. Lee had not received any settlement monies and could not determine the status of the matter.

7. The complainant, in his letter, expressed the view that there had not been adequate documentation provided to verify the existence of the settlement, nor had he been able to obtain a copy of an order on behalf of Mr. Lee. The complainant advised that he had never received from the Solicitor any documentary verification of the settlement.

8. By letter dated April 19, 1990 the Society wrote to the Solicitor and provided a copy of the correspondence it had received from the complainant. A reply in writing was requested within two weeks.

9. No reply having been received, a Society staff member telephoned the Solicitor's office on July 11th, 12th and 13, 1990. The Solicitor returned the calls on July 16, 1990 and advised that he would be replying to the correspondence from the Society and that the Society could expect a response by July 27, 1990.

10. No reply having been received, a Society staff member telephoned the Solicitor's office and left messages on August 9th and 10, 1990. The Solicitor returned the calls on August 13th and advised that the Society would receive a reply within the next few days.

11. No reply having been received, on September 6, 1990 a Society staff member telephoned the Solicitor's office and left a message. The Solicitor returned the telephone call on September 7th and advised that he would be mailing his response to the Society by September 11, 1990.

12. No reply having been received, a registered letter dated September 19, 1990 was sent to the Solicitor. The Solicitor's attention was drawn to the Rule of

Professional Conduct obliging lawyers to respond promptly to communications from the Law Society and that failure to do so could lead to disciplinary action being taken. The letter advised that if no response were received within seven days the matter would be referred to the Chair of the Discipline Committee for further instructions.

13. No reply was received by the Society nor has there been any request for an extension of time nor explanation for the Solicitor's failure to reply.

Prior Discipline

14. On September 29, 1987 the Solicitor was Reprimanded in Committee and ordered to pay the Society's costs in the amount of \$1,000 for his failure to serve clients in a conscientious, diligent and efficient manner and for his failure to reply to the Law Society.

DATED at Toronto this 29th day of April, 1991."

The Solicitor amended the "Agreed Statement of Facts" by adding to paragraph 11 the following words:

"reply sent Sept. 18, 1990. L.W."

The Solicitor for the Law Society did not accept the Agreed Statement of Facts, as amended by the Solicitor, because of that addition. The Agreed Statement of Facts as amended by the Solicitor, was signed by the Solicitor. Therefore, with the exception of the dispute between the parties as to whether a reply was sent on September 18, 1990, by the Solicitor, the facts are agreed.

RECOMMENDATION AS TO PENALTY

First, in the event that Mr. Ward does not cooperate with the Law Society prior to the next Special Convocation, the Committee recommends that he be suspended for a period of three months.

Second, in the event that Mr. Ward does cooperate and such cooperation will be attested by a report by the Law Society staff to this Committee, then the penalty will be a Reprimand in Convocation.

REASONS FOR RECOMMENDATION

In this matter, Lee Edward Ward, a Solicitor practising in the Town of Carleton Place, has been charged with two complaints; one complaint alleging that during the period June 1990 to March 1991, he failed to cooperate with an investigation being carried out by the Law Society; and second, that he failed to provide a reply to the Society regarding a complaint by one Frank G. Gillis.

The Law Society called as a witness, Miss Marlene Chapman, who is a senior examiner in the Audit Department and Miss Susan Carlyle, who is a staff lawyer.

Mr. Ward has wilfully, continuously and without reason, failed to respond to the efforts by the Law Society to discuss with him the complaint of Mr. Gillis. This complaint relates to a file in which Mr. Ward's client, one Bernard Lee, consulted Mr. Ward regarding a motor vehicle fatality. Mr. Lee's spouse was fatally injured and the issue relates to whether Mr. Ward properly carried out his instructions to act on behalf of Mr. Lee in either prosecuting this matter in civil courts, or alternatively, effecting a settlement.

Despite the efforts of the Law Society, Mr. Ward has not produced the file in question and it is not for this Committee to decide whether there is such a file. Suffice it to say, the file has not been produced. The Solicitor for the Law Society in his opening statement indicated to the Committee that despite the receipt by the Law Society of the amended Agreed Statement of Facts in which the Solicitor indicated that a reply had been sent dated September 18, 1990, to the Law Society's telephone messages (see paragraph 11 of Agreed Statement and discussion thereon), the Law Society, in fact, to Counsel's knowledge had not received such a reply.

It is not necessary to detail all of the efforts made by the Law Society to contact Mr. Ward, however, these efforts are on a continuous basis over a period stretching over nearly a year. In particular, Miss Chapman made numerous appointments to meet with Mr. Ward, all of which, with the exception of one, were cancelled or adjourned at Mr. Ward's behest; that one meeting being cancelled by Miss Chapman.

The Committee is extremely concerned about the ungovernability of Mr. Ward and his behaviour, and also is equally concerned about Mr. Ward's clients. Accordingly, after some consideration, this Committee has decided to recommend the following.

First, in the event that Mr. Ward does not cooperate with the Law Society prior to the next Convocation, the Committee recommends that he be suspended for three months from the practice of law.

Second, in the event that Mr. Ward does cooperate and such cooperation will be attested by a report by the Law Society staff to this Committee, then the penalty will be a Reprimand in Convocation. If there is any issue between the Law Society and the Solicitor as to whether the Solicitor has cooperated with the Law Society, then this Committee is available to have that issue determined, allowing the Solicitor to make full representations.

Third, the Committee is extremely concerned about the particular file in question and urges the staff to make further investigations through whatever means are available. We are also concerned about the delay in this matter. Mr. Gillis, who is a solicitor in Nova Scotia, initiated his complaint with Mr. Ward at least as long ago as July of 1989.

Accordingly, the Committee expects the Law Society staff to use whatever investigatory powers are necessary to get to the bottom of this prior to next Convocation.

Lee Edward Ward was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 19th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED this 10th day of September, 1991

"T. Bastedo"

Thomas G. Bastedo, Chair

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

There were no submissions.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Yachetti that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended or reprimanded.

Mr. MacKenzie supported the recommendation for suspension and the solicitor sought a reprimand in Convocation.

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

It was moved by Ms. Elliott, seconded by Mr. Manes that the solicitor be suspended for a period of 1 month to be effective December 1st, 1991.

It was moved by Mr. Manes, seconded by Ms. Curtis that the solicitor be suspended for 1 month effective December 1st and pay the investigation costs of \$1,750.

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

Lost

Counsel, the solicitor, the reporter and the public were recalled and informed that Convocation was proceeding on the basis that the solicitor had been unco-operative and that it was considering the imposition of costs.

There were no further submissions and counsel, the solicitor, the reporter and the public withdrew.

Ms. Elliott's motion to suspend the solicitor for 1 month was not put and the motion to suspend with costs was carried.

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: JOSEPH ANDREW DALRYMPLE, Newcastle

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

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

Convocation had before it the Report of the Discipline Committee dated 2nd August, 1991, together with an Affidavit of Service sworn 19th August, 1991 by Frances Galati that she had effected service on the solicitor by registered mail on 15th August, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 26th September, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

In the matter of
The Law Society Act

Patrick Sheppard
for the Society

and in the matter of
JOSEPH ANDREW DALRYMPLE
of the Town
of Newcastle
a barrister and solicitor

Not represented
for the solicitor

Heard: May 15, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 24, 1990, Complaint D183/90 was issued against Joseph Andrew Dalrymple, alleging that he was guilty of professional misconduct.

The hearing was heard in public, on May 15, 1991, with the exception of the Medical Report which was heard in camera, before this Committee composed of Robert J. Carter, Q.C., Chair, Frances Kiteley and Ross Hall. Mr. Dalrymple attended the hearing and was not represented. Patrick Sheppard appeared as counsel for the Law Society.

DECISION

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

- 2.(a) i) He failed to serve his client, Michael Edgson, in a conscientious, diligent and efficient manner and, thereafter, made false statements to his client in order to deceive him regarding the status of his file;
- ii) He failed to serve his clients, Dorothy Turner, Marion Hodgson, and Margery Ashby, in a conscientious, diligent and efficient manner and, thereafter, made false statements to them in order to deceive them regarding the status of the file;
- iii) He failed to serve his client, Bryan MacLean, in a conscientious, diligent and efficient manner and, thereafter, made false statements to the client in order to deceive him regarding the status of the file;
- iv) He failed to serve his client, Stanley Edwards, in a conscientious, diligent and efficient manner and, thereafter, made false statements to the client in order to deceive him regarding the status of the file;
- (b) He misled the Law Society in connection with the matters leading up to and arising from Complaints D50/89 and D78/89, as follows:

- i) By falsely advising the Society's investigator, Keith Regehr, that the client matters referred to in Complaints D50/89 and D78/89 were the only matters in which he had misled his clients;
 - ii) By falsely advising Dr. Andrew Malcolm that the client matters referred to in (b) (i) hereof were the only files in which he had misled his clients;
 - iii) By falsely testifying before the Discipline Committee that there were no problems with any of his other files;
 - iv) By falsely advising the Society that he had sent a cheque in payment of the costs ordered against him by the Discipline Committee;
- (c) He has breached the order of the Discipline Committee requiring him to pay to the Society costs in the amount of \$2,000.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D183/90 and is prepared to proceed with a hearing of this matter on January 15, 1991.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D183/90 and admits the particulars contained therein.

IV. FACTS

4. The Solicitor was admitted on April 18, 1985 and was an employed practitioner of a two member firm at the time of these particulars.

5. The Solicitor is no longer employed or practising since May 30, 1990.

[Particulars 2(b) & (c)]

5. The Solicitor appeared before a panel of the Discipline Committee on February 27, 1990 in respect of two complaints similar to what is particularized in 2(a) of the particulars of this complaint.

7. The Solicitor was reprimanded in the Committee on the complaints.

8. Further, the Solicitor was ordered to enter into an undertaking to continue with medical treatment, to practice only as an employee or partner of another lawyer, to provide quarterly reports on the status of his files, to apologize in writing to each of the affected clients and to pay the cost of the Society's investigation fixed at \$2,000.

9. The Solicitor told the Committee that he would comply with the above and in fact executed an undertaking in April, 1990.

10. The Solicitor has not paid the ordered costs of \$2,000.00 described in paragraph 8.

11. During the course of the hearing the solicitor gave evidence. He swore that there were no problems in respect of any other files.

12. Subsequent to the hearing, the Society followed up with respect to the payment by the solicitor of the costs ordered by the committee. In May, 1990, the solicitor falsely advised the Society that he had sent a cheque for the costs. He had not done so, and has since admitted this to the Society.

13. At and prior to the discipline hearing of February 27, 1990, the Solicitor advised the Society and the Society's appointed consulting Psychiatrist, Dr. Andrew Malcolm, that there were no other undisclosed problems in his files.

14. Subsequent to this discipline, the following undisclosed problems have been found in his client files:

- a) Edgson - re: matrimonial;
- b) Turner - re: estate;
- c) MacLean - re: matrimonial; and
- d) Edwards - re: purchase and sale of business

[Particulars 2(a) (i)]

15. The Solicitor represented Michael Edgson in a matrimonial matter.
16. The client had been served with a divorce petition and a motion for interim relief. The Solicitor failed to attend the motion. An order was made requiring the client to pay spousal support of \$1,200 per month.
17. The Solicitor admits to misleading the client by telling him that he owed only a one-time payment of \$1,200. The client is now faced with substantial support arrears.
18. The Solicitor also failed to take steps to file an answer to the petition and accordingly default judgment was taken out against the client.
19. The Solicitor admits misleading the client by telling him that the default judgment had been taken out improperly and that he had attended to setting the judgment aside. In fact the judgment was entirely proper and the solicitor took no steps to set it aside.
20. The Solicitor also represented this client in respect of a debt which the latter owed to the Province of Ontario. The debt arose from a transaction in respect of which the client felt that he and his wife were equal partners, and accordingly he instructed the solicitor to request a 50% contribution to the debt from the wife.
21. The Solicitor told the client that he had obtained the wife's agreement to an equal sharing of the debt and was simply awaiting the arrival of the funds for the wife's solicitor, in order that the matter could be settled with the province.
22. The Solicitor admits that no agreement was reached with the wife for any financial contribution and that he took no steps at all in that regard.

[Particulars 2(a) (ii)]

23. The Solicitor represented three elderly women, Dorothy Turner, Marion Hodgson and Margery Ashby, who were involved in a dispute with their brother, the executor of the estate of their late father.
24. The Solicitor was retained to require the brother to properly account for his actions as executor and to obtain for the clients their alleged entitlement under the will.
25. In November, 1985, the solicitor served the brother with a citation to pass accounts. The documents provided by the brother were insufficient.
26. The Solicitor admits that since that time, he misled the clients as follows:
- (a) The Solicitor first told them that their brother provide no accounting at all;
 - (b) The Solicitor later told them that he took steps to have the brother cited for contempt;
 - (c) The Solicitor later told them that the brother had been noted in default and that there was a contempt order against the brother;
 - (d) The Solicitor later told them that he had obtained a default judgment on their behalf in an amount greater than \$100,000.

When this matter came to the attention of the Society, the solicitor had planned to meet with the clients at the court house the following week. He had told them that the purpose of the meeting was to meet with the sheriff regarding the enforcement of the judgment against their brother.

27. The Solicitor has advised the Society that he intended to reveal to the clients that he had been misleading them; however, the Society intervened before he had the opportunity to do so.

[Particulars 2(a) (iii)]

28. The Solicitor represented Mr. Bryan MacLean in a matrimonial matter.
29. There is an interim order against the client which requires the client to pay support of \$600.00 per month. While the preamble to the order expresses that it was made on consent, there is no evidence in the file that the client's consent was ever sought or obtained by the solicitor.

30. The client claims that he had no knowledge of the order.

31. Support arrears accrued and the client's bank account was garnished by SCOE.

The solicitor admits that when the client asked him about this, he told the client the SCOE had no right to take any such step, that it would not happen again and that he would be credited with the amount garnished.

32. The Solicitor knew that the garnishment had been proper and further that he had taken no steps to ensure that this would not happen again.

[Particulars]

33. The Solicitor represented Stanley Edwards in the purchase and sale of a business.

34. The transaction was aborted and the client instructed the solicitor to sue. The solicitor issued a Statement of Claim in June, 1988.

35. The Solicitor variously told the client thereafter that the claim had been served, and that the matter was moving its way up the trial list.

36. These statements were not true.

37. The Solicitor later told the client that judgment had been obtained and later that he had found a bank account which could be seized, but he was having problems with the sheriff's office. He later advised the client that the sheriff had obtained the money owing under the judgment but was reluctant to release it.

38. Subsequently, the Solicitor asked the client to meet with him at the sheriff's office in order to resolve the matter. They did so meet and at the time the client learned the extent which he had been misled.

39. The Solicitor told the client that a law clerk in his office had been responsible for the problems and had been fired. He further advised the client that his insurer would cover the loss.

40. A few days later, the Solicitor advised the client that he would borrow money to pay him as long as the client did not advise his employer or the Law Society.

DATED at Newcastle, Ontario this 23rd day of February, 1991."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Joseph Andrew Dalrymple be disbarred.

REASONS FOR RECOMMENDATION

This matter came on for hearing on February 26th, 1991. At that time an Agreed Statement of Facts was filed. Based on the Agreed Statement of Facts and the consent of the Solicitor, a finding of professional misconduct was made.

The penalty hearing was adjourned to Tuesday, April 16th, 1991, to obtain a medical report from Dr. A.J. Renton.

It appears that there had been no contact between the Solicitor and Dr. Renton after June 19th, 1990 and prior to April 22nd, 1991. On the latter date the Solicitor attended at Dr. Renton's office at the behest of his fiancée. He had been under medication which ran out in March of 1991 following which his prior depression condition returned.

The Solicitor did nothing to obtain the report between February 26th, 1991 and the adjourned hearing date April 16th, 1991, in spite of the fact that we were told the reason for the adjournment was to obtain the report.

On April 16th, 1991, the hearing was adjourned to May 15th, 1991 to continue. On May 15th, 1991, the Committee had before it the following documents:

1. Original Complaint
2. Agreed Statement of Facts
3. Document Brief
4. Letter from Solicitor dated February 23rd, 1991

5. Report dated May 10th, 1991 from Dr. Renton
6. A description of "Depression" from Dr. Renton
7. The Solicitor's Curriculum Vitae

At the hearing the Society called as its witness Robert Vella. In June 1989, the Solicitor was charged with professional misconduct. The hearing was held February 27th, 1990. Mr. Vella had been a witness at that hearing. Prior to that hearing Mr. Vella, Dr. Renton and Dr. Malcolm (a psychiatrist retained by the Society) had all received assurances that the Society was aware of all the Solicitor's problem clients.

The Solicitor on two separate occasions assured the Committee that the Society was aware of all his problem clients.

Accepting these assurances, Mr. Vella agreed to continue to employ the Solicitor and impose strict controls to ensure no future problems.

It appears as though those assurances were not accurate and the matters which are the subject of these proceedings came to light. Mr. Vella's evidence was that when he learned of these problems he also learned that when the clients confronted the Solicitor, the Solicitor tried to lay the blame at the feet of Mr. Vella. For example, when the \$20,000 was supposed to have been recovered for Mr. Edwards, the Solicitor at one stage suggested that Mr. Vella had taken the money. It was the confronting of Mr. Vella by Mr. Edwards that caused the matters to be discovered. The allegations caused Mr. Vella a great deal of embarrassment but Mr. Vella indicated he did not think they caused him any real harm because people who knew him would know they were not true. A more embarrassing event occurred at the Cobourg District Court House. Mr. Vella was there on business and discovered the law suit by the complainants in paragraph 2(a)(ii) in progress conducted by another lawyer. It appeared that many documents with his firm's name on them were being discussed with allegations of impropriety on the part of his firm being made.

Given the Solicitor's admitted misconduct, it is clear he cannot continue to practice. He has no desire to do so and has not since May 30th, 1990.

Counsel for the Society submitted the only penalty was disbarment. The Solicitor requested permission to resign. Given the conduct of the Solicitor a majority of the Committee felt disbarment was required.

One starts with the misconduct of the Solicitor in June of 1989. Given the assurance to the two psychiatrists, his employer and the Committee that he had disclosed all his problems, efforts were made to give him another chance and impose safeguards to prevent future problems. The safeguards included those efforts of Mr. Vella to supervise the Solicitor and his Undertaking to the Law Society which ensured his medical supervision.

The Solicitor lied to all who were trying to help him and lied about those who were trying to help and those clients who were problems. He lied to the Law Society about having sent \$2,000.00 in payment of costs. The Solicitor asked in view of Dr. Renton's report to permit him to resign. We do not see that report as favourable to the Solicitor. The only help is in the last sentence of paragraph 4, page 2:

"It may well be that his personality (fundamentally passive aggressive and tending to misrepresentation to avoid repercussions for irresponsible behaviour) may well predispose him to be depressed (eventually his irresponsible actions are brought to account) but in fairness it must be stated that it could well be the other way around".

That is the best equivocal. We take that to mean it may be that his personality causes irresponsible behaviour, misrepresentation to avoid repercussions when caught and when caught depression but it could be depression causing irresponsible conduct and misrepresentation when caught. The rest of the report suggests the former and not the latter. In any event there is not sufficient evidence to support a conclusion that his actions were caused by a psychiatric condition which should permit him to resign.

Joseph Andrew Dalrymple was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 18th day of April, 1985.

ALL OF WHICH is respectfully submitted

DATED this 2nd day of August, 1991

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

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

There were no submissions.

The Report was adopted.

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

The solicitor asked that Convocation grant him permission to resign. Counsel for the Society asked Convocation to adopt the penalty recommended.

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

The motion to disbar was lost.

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

Carried

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: DAVID HARRIS, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society and Mr. Harris appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 4th July, 1991, together with an Affidavit of Service sworn 19th August, 1991, by Louis Katholos that he had effected service on the solicitor by registered mail on 30th July, 1991, (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 26th September, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert J. Carter, Q.C., Chair
Roderic G. Ferguson, Q.C.
D. Jane Harvey

In the matter of
The Law Society Act

J. Robert Conway
for the Society

and in the matter of
DAVID HARRIS
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: April 24, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On the 24th day of April, 1991, Complaint D120a/88 was issued against David Harris alleging that he was guilty of professional misconduct. The Solicitor admits service of Complaint D120a/88.

The hearing was heard in public, (with the exception of certain personal financial particulars of the Solicitor which are filed as Exhibit 3 and the Decision of the Discipline Committee dated May 29, 1984, which are filed as Exhibit 4 and are to be considered in camera) on April 24, 1991 before this

Committee composed of Robert J. Carter, Q.C., Chair, Roderic G. Ferguson, Q.C. and D. Jane Harvey.

Mr. Harris was in attendance and was unrepresented. J. Robert Conway appeared as Counsel for the Law Society.

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

Complaint D120a/88

- (a) he failed to serve his client, Rowland Armstrong, in a conscientious, diligent and efficient manner, and he failed to provide Mr. Armstrong with a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation, in that:
 - (i) he arranged for Mr. Armstrong to invest \$72,000.00 in a development project known as "the Lombard Street project" when his own financial interests conflicted with those of Mr. Armstrong;
 - (ii) he failed to ensure that Mr. Armstrong had sufficient security for his investment of \$72,000.00, more or less, in the Lombard Street project;
 - (iii) he failed to reply to many telephone calls and letters from Mr. Armstrong between July and December, 1982;
 - (iv) his reporting letter to Mr. Armstrong gave the erroneous impression that Mr. Armstrong had better security than he actually had;
- (b) he failed to promptly and fully co-operate in the Society's investigation of Mr. Armstrong's complaint to the Society with the result that the Society's investigation was unduly delayed;
- (c) he failed to provide a prompt and full reply to communications from the Law Society regarding complaints which the Society received from the following:

Nicol MacNicol
Lloyd Solish, Q.C.
Robert Lash
Earl Levitt

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

The Solicitor admits service of Complaint D120a/88 and is prepared to proceed with a hearing of this matter on April 24, 1991.

II. IN PUBLIC/IN CAMERA

The parties agree that, with one exception, this matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act. The exception is the information about the Solicitor's personal finances in paragraph , on page . The Solicitor requests that those details be heard in camera, and Counsel for the Society consents to that request.

III. ADMISSIONS

The Solicitor has reviewed Complaint D128a/88 and admits the particulars contained therein. Complaint D120a/88 is a composite of extracts from, and amendments to, the following four previous complaints:

D29/88
D120/88
D26/90
D64/90

These four complaints will be referred to from time to time herein when setting out the history of this matter.

IV. FACTS

A. ARMSTRONG COMPLAINT

(i) Borrowing from Client

The Solicitor is a prominent practitioner in wrongful dismissal law. He represented Rowland Armstrong in a wrongful dismissal matter which culminated in Mr. Armstrong receiving a lump sum settlement in November, 1981.

Before Mr. Armstrong received the settlement monies in November, 1981, he asked the Solicitor for advice as to how he should invest those monies. The Solicitor suggested that Mr. Armstrong invest the settlement monies in the short term by making a loan to a combined commercial and residential development project in downtown Toronto with which the Solicitor was familiar ("the Lombard Street project"). The Solicitor told Mr. Armstrong that he would receive an interest rate of at least 5% per annum over prime, and possibly also a bonus of \$25,000.00 contingent upon certain conditions. That rate of interest was all the more attractive because of the sharp rise in the prime rate around the time. The Solicitor told Mr. Armstrong that it was a sound investment because it would be repaid in six to nine months when the long-term primary financing was in place. The Solicitor was optimistic that the long-term primary financing would be in place by that time because the project was about to be qualified as a "MURB", and the Solicitor believed that "MURB" qualification would facilitate long-term primary financing.

The Solicitor did not disclose to Mr. Armstrong the following factors material to the risk when he persuaded Mr. Armstrong to make the loan:

- (a) that the principal of the Lombard Street project was Ferdinand Wagner, whose most recent development project ("the Jarvis Street project"), which coincidentally was in the same area, had ended in failure leaving Mr. Wagner with judgments and liens totalling approximately \$370,000.00;
- (b) that Mr. Wagner had informed the Solicitor that Mr. Wagner required the proceeds of Mr. Armstrong's loan to pay some of Mr. Wagner's debts on the Jarvis Street project;
- (c) that it was doubtful whether Mr. Armstrong's loan could be adequately secured by a mortgage on the Lombard Street property. By the time the Solicitor persuaded Mr. Armstrong to make a loan to the Lombard Street project, the Lombard Street property was already mortgaged to \$400,000.00, which was \$10,000.00 more than Mr. Wagner had paid for the property four or five months earlier. One of the two mortgages ahead of Mr. Armstrong's mortgage was a \$60,000.00 second mortgage securing a loan from the Solicitor's to the project, and it is quite possible that property did not have sufficient value at the time to fully secure even the Solicitor's mortgage;
- (d) that the Solicitor had a three-way conflict of interest:
 - (i) by recommending that Mr. Armstrong invest in the project, the Solicitor enabled the project to immediately repay the Solicitor a short-term loan of \$16,944.52 which the Solicitor had made to the project;
 - (ii) the project needed additional short-term financing to sustain it until long-term financing could be obtained to complete the project so that the Solicitor's \$60,000.00 would ultimately be repaid;
 - (iii) the Solicitor had another financial stake in the successful completion of the project because he intended to purchase a "MURB" unit as a personal investment. The interest which he forgave on his \$60,000.00 loan to the project was to be treated as a credit towards the purchase of those "MURB" unit.

Mr. Armstrong then invested the following amounts in the Lombard Street project through the Solicitor in loans to the project's operating company, 485325 Ontario Limited ("485325"):

October 5, 1981	\$ 2,765.47
December 8, 1981	29,750.00
January 20, 1982	<u>19,500.00</u>
Total:	<u>\$52,015.47</u>

The Solicitor then asked Mr. Armstrong if he wished to invest any more money through the Solicitor. At this stage, so many years later, a precise account of what the Solicitor said cannot be formulated. For purposes of these proceedings the parties hereto agree that the Solicitor probably told Mr.

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Armstrong that Mr. Wagner, the principal of the Lombard Street project, needed funds for only three months or so to pay some pressing personal debts. The Solicitor told Mr. Armstrong that he would again receive interest at prime plus 5% per anum.

I. Mr. Armstrong agreed to the loan, and he advanced his personal savings of \$20,000.00 to the Solicitor on March 20, 1982. This increased the amount of Mr. Armstrong's investment to \$72,015.47, calculated as follows:

October 5, 1981	\$ 2,765.47
December 8, 1981	29,750.00
January 20, 1982	19,500.00
March 20, 1982	<u>20,000.00</u>
Total:	<u>\$72,015.47</u>

The Solicitor provided Mr. Armstrong with an oral report about his loans on July 8, 1982. However, the Solicitor did not tell Mr. Armstrong that the Solicitor had paid \$16,944.92 of Mr. Armstrong's funds to himself as repayment of bridge financing given by the Solicitor to the Lombard Street project.

Mr. Armstrong telephoned the Solicitor repeatedly from July to December, 1982, requesting a written report and documentation evidencing his loan and repayment. The Solicitor returned the calls on only three occasions.

All of the loans made by Mr. Armstrong were overdue by the end of 1982. The Solicitor paid Mr. Armstrong \$10,000.00 out of the Solicitor's personal funds on January 14, 1983, because the Solicitor believed that he had a personal obligation to ensure that Mr. Armstrong was repaid, because he advised Mr. Armstrong to invest in the project. It is noted in passing only that around this time or perhaps a little later the Solicitor's personal investment in the project had increased to the point where he and the principals of the project regarded him as a partner.

The Solicitor sent Mr. Armstrong a reporting letter on February 9, 1983. The letter inaccurately represented the security received by Mr. Armstrong.

It stated:

".... Security for this loan is represented by an interest held by the undersigned in trust in a mortgage valued at approximately \$375,000 on [the Jarvis Street property].

.... It is the opinion of the undersigned that your funds are properly secured."

A copy of the reporting letter will be put in evidence.

The statement of the security which Mr. Armstrong had was inaccurate because the Solicitor did not hold a documented interest in the \$375,000.00 mortgage referred to in his reporting letter to Mr. Armstrong. What the Solicitor held was an assignment of Mr. Wagner's claim that one of his companies had a \$375,000.00 equitable interest in a \$1.5 million mortgage in the Jarvis Street project. The Solicitor and Mr. Wagner believed that the "equitable interest" was undisputed and could be realized, but whether they were right is difficult to assess. However, it is agreed in any event that the Solicitor's opinion that Mr. Armstrong's funds were properly secured was incorrect for two other reasons:

- (a) subsequent events showed that the Jarvis Street property against which the \$1.5 million mortgage was registered probably did not have sufficient value to secure the equitable interest which Mr. Wagner claimed in the \$1.5 million mortgage. That interest was extinguished under a power of sale eight months after the Solicitor's February 9, 1983 reporting letter to Mr. Armstrong;
- (b) the Solicitor failed to properly secure Mr. Armstrong's investment by preparing the necessary Declaration of Trust showing that Mr. Armstrong was the beneficiary of the assignment of Mr. Wagner's claim to a \$375,000.00 equitable interest in the mortgage. Without such documentation, Mr. Armstrong needed the Solicitor's uniform support to establish that he was the beneficiary of the assignment.

The Solicitor's February 9, 1983 reporting letter also erroneously stated that Mr. Armstrong's \$72,015.47 was collaterally secured by a second mortgage for \$46,000.00 on the Lombard Street property. The \$46,000.00 mortgage actually ranked third behind the following mortgages:

Previous Owner	\$340,000.00
Solicitor	<u>60,000.00</u>
Total:	<u>\$400,000.00</u>

As was stated in subparagraph (4) on page above, it is possible that the Lombard Street property did not have sufficient value at the time to secure the third mortgage for Mr. Armstrong's benefit.

Other than Mr. Armstrong's interest in the \$46,000.00 third mortgage, the only security which Mr. Armstrong received was a promissory note for each of his four advances. The promissory notes were signed by Mr. Wagner on behalf of himself personally and on behalf of two of his companies.

The above concerns about Mr. Armstrong's security notwithstanding, the parties hereto agree that the Solicitor genuinely believed that Mr. Armstrong had reasonable security for the risk he took, considering the yield of prime plus 5%. The Solicitor's belief was founded on the combined collateral to secure Mr. Armstrong's loan, and on the Solicitor's expectation that the project's qualification for "MURB" status would facilitate primary long-term financing from which Mr. Armstrong would be repaid. In fact, a commitment was obtained from Seaway Trust in August, 1982 for long-term financing of \$1,400,000.00. The Solicitor expected that Mr. Armstrong would be repaid from the proceeds of that mortgage. In priority to the Solicitor, however, that commitment eventually fell through when the Government of Ontario took control of Seaway Trust in connection with the "Trust Company Affair".

However, subsequent events showed that Mr. Armstrong did not have adequate security. The next commitment for primary financing was not obtained until December, 1983. Because of that, the Solicitor himself personally repaid Mr. Armstrong in full by making the following payments to him:

April 1, 1983	\$10,000.00
November, 1983	50,000.00
July, 1984	30,000.00
December, 1986	<u>5,000.00</u>
Subtotal:	\$95,000.00
Add January 14, 1983 payment:	<u>10,000.00</u>
Total:	<u>\$105,000.00</u>

The above payments to Mr. Armstrong included interest at 5% above the prime rate in effect from time to time. The net interest rate ranged from 16% to 22%, depending on the prime rate, and the interest was compounded monthly. Mr. Armstrong did not receive the \$25,000.00 bonus because he and the Solicitor agreed that the condition for earning it had not been met.

The primary financing of \$1.6 million for the Lombard Street project was obtained around July, 1984, after the Solicitor had personally repaid Mr. Armstrong all but \$5,000.00 in interest. However, the primary loan was called approximately a year later, and the project was unable to continue afterwards.

(ii) Failure to Co-operate in Investigation

Mr. Armstrong complained to the Law Society by letter dated November 29, 1985 that the Solicitor had not replied to Mr. Armstrong's letters and telephone calls requesting an accounting of approximately \$72,000.00 which Mr. Armstrong had given to the Solicitor to invest for him.

Mr. Armstrong told the Society at that time that he had received payments on account of principal and interest totalling approximately \$100,000.00, and that he was still owed a bonus of approximately \$25,000.00 together with some interest on his principal investment of \$72,000.00.

A representative of the Society informed the Solicitor of Mr. Armstrong's complaint on December 23, 1985, and then examined the Solicitor's file on January 2, 1986.

The Solicitor personally paid Mr. Armstrong a further \$5,000.00 in December, 1986, which was the full balance owing at that time exclusive of the contingent bonus which had been discussed when Mr. Armstrong first agreed to the loans. By this time, the Lombard Street project had been sold under Power of Sale by the first mortgagee, without any recovery of funds for Mr. Wagner, 485325 or the Solicitor.

The file which the Solicitor produced on January 2, 1986 was not complete and so the Society wrote the Solicitor on January 3, 1986 requesting an accounting of Mr. Armstrong's funds together with the Solicitor's comments on the following allegations by Mr. Armstrong:

- (a) the Solicitor had failed to respond to communications from Mr. Armstrong;
- (b) the partial repayment to Mr. Armstrong had been made from the Solicitor's personal account.

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The Solicitor then arranged to meet with Mr. Armstrong on January 8, 1986, and he promised to pay Mr. Armstrong the remaining funds. He explained to Mr. Armstrong that the condition for entitlement to the bonus had not been met. He asked Mr. Armstrong to write the Society a letter indicating that he was withdrawing his complaint, and Mr. Armstrong did so.

The Society wished to continue the investigation, however, to ensure that the Solicitor had provided Mr. Armstrong with a proper accounting and to determine whether the Solicitor had engaged in prohibited borrowing from a client -- that possibility was suggested by the fact that the Solicitor had personally repaid Mr. Armstrong's investment. The Society also wished to determine whether the Solicitor had borrowed from another client in order to repay Mr. Armstrong.

Consequently, the Investigating Auditor, Margot Ferguson, informed the Solicitor on January 27, 1986 that she wished to meet with him to discuss Mr. Armstrong's complaint. The Solicitor said he did not then have the file and that he would obtain it.

Ms. Ferguson telephoned the Solicitor on February 3 & 5, 1986 to request a meeting but the Solicitor did not return her calls. She then wrote the Solicitor on February 21, 1986 indicating that she would attend at his office on March 14, 1986 to discuss the Armstrong matter.

On March 11, 1986, three days before Ms. Ferguson's scheduled visit to the Solicitor's office on March 14, the Solicitor replied to the letter from the Society dated January 3, 1986 (see paragraph , page above). He provided the following information:

- (a) Mr. Armstrong's funds were loaned to a corporation controlled by one Ferdinand Wagner. Mr. Wagner's corporation was engaged in the construction of a townhouse development in downtown Toronto ("the Lombard Street project");
- (b) an accounting of Mr. Armstrong's funds;
- (c) the Solicitor personally repaid Mr. Armstrong's investment because he felt that since he had recommended that Mr. Armstrong invest in the project he had an obligation to ensure that Mr. Armstrong was repaid.

On March 14, 1986 the Solicitor produced the same material which Ms. Ferguson had examined on January 2, 1986. He did not produce the other file which he said he had when he spoke with Ms. Ferguson on January 2, 1986. The Solicitor was unable to produce that other file to Ms. Ferguson on March 14, 1986 because it was probably with Mr. Wagner. The Solicitor himself was in Court when Ms. Ferguson attended at his office on March 14, 1986.

Ms. Ferguson next met with the Solicitor on April 18, 1986. The Solicitor was unable to provide all of the information requested by Ms. Ferguson at that meeting, but he promised to do so later. Ms. Ferguson then wrote the Solicitor on April 24, 1986 setting out the information which the Solicitor promised to provide. Her letter requested that the Solicitor provide the information within a month. The Solicitor did not reply to Ms. Ferguson's April 24, 1986 letter.

The Society wrote three follow-up letters requesting the Solicitor's response to Ms. Ferguson's April 24, 1986 letter. The follow-up letters were dated July 3, 1986, September 2, 1986 and November 27, 1986. The November 27, 1986 letter stated that the matter would be referred to Discipline if the Solicitor did not reply within fifteen days.

The Solicitor responded by letter dated December 10, 1986. He provided some of the information requested, and said that he had to await the return of Mr. Wagner from out of the country in order to answer the remaining questions.

The Society then requested the remaining information as well as other information in letters to the Solicitor dated April 6 and November 4, 1987.

On December 21, 1987 the Solicitor sent a reply to the letters referred to in paragraph , but it was not received by the Society. The Society assumed that the Solicitor had failed to reply to the letters, and consequently, discipline proceedings were commenced against the Solicitor in March, 1988 (D29/88) for the Solicitor's alleged failure to provide meaningful co-operation during the Society's investigation.

The Solicitor provided the Society with a copy of his December 21, 1987 letter in March, 1988 when he received Complaint D29/88. Thereafter, he provided the Society with additional information, and in consideration of his co-operation and his undertaking to use his best efforts to obtain the additional information requested by the Society, Complaint D29/88 was withdrawn on June 14, 1988 with the reservation that the Society could issue a new complaint should the Solicitor again fail to co-operate.

The Solicitor provided the Society with some information orally on August 11, 1988. At the conclusion of that meeting, the Solicitor stated that he believed that there was further information he had yet to supply which he did not then have in his possession. He promised to commit himself full-time to resolving the matter and said that he would contact the Society prior to the end of August, 1988, by which time he hoped to have all the answers and material required.

The additional information was requested by Ms. Ferguson to enable her to determine whether the Solicitor had made disclosure of his interest in the Lombard Street project to Mr. Armstrong, and whether the Solicitor had persuaded other clients to invest in the project so that he could use their funds to repay Mr. Armstrong.

The Solicitor did not, in fact, endeavour to provide the remaining information by the end of August, 1988. He attributes this to finding out subsequent to the August 11 meeting that he had to prepare for an unexpected trial in September, 1988, and to having to take time from work because of his infant child's hospitalization in September, 1988. He did not, however, inform the Society that he would not be able to provide the remaining information by the promised deadline.

The information which the Solicitor needed was contained in documents and records which he had turned over to Ferdinand Wagner to enable Mr. Wagner to manage the Lombard Street project. Some of the documents which the Solicitor had turned over to Mr. Wagner were records of the Solicitor's law practice.

The Solicitor pressed Mr. Wagner on at least two occasions during the fall of 1988 to provide the Solicitor with the documents he needed in order to fulfil the commitment he gave the Society on August 11, 1988. The Solicitor sought Mr. Wagner's assistance because the documents and records he needed were stored by Mr. Wagner with voluminous other records and documents in an unorganized fashion. The Solicitor estimated that it might take him hours to search all of Mr. Wagner's records for the material he needed.

Some of the information which the Solicitor undertook during the spring of 1988 to provide to the Society was in the files and records of Selenium Funding, which had made loans to the Lombard Street project. The Selenium records and files were in the possession of the company's owner, Bart Lackie. The Solicitor made no effort to obtain the required information from Mr. Lackie.

The Solicitor did not, however, inform the Society of the difficulties he foresaw in fulfilling the commitment he gave on August 11, 1988. Consequently, the Society wrote the Solicitor on October 6, 1988 indicating that discipline proceedings would be commenced on account of his failure to provide the information promised.

The formal Complaint was authorized and sworn on January 6, 1989 (D120/88). The Solicitor had still not provided any additional information by that time.

Complaint D120/88 was scheduled to be heard in March, 1989, but it was adjourned to April 13, 1989 so that Mr. Wagner, Mr. Lackie, and others could be subpoenaed if necessary, to compel them to produce the files and records which the Solicitor needed in order to provide Society with the information which he had promised. Some of the records were from the Solicitor's law practice and the Solicitor had given them to Mr. Wagner to assist Mr. Wagner in managing the project. Prior to the April 13, 1989 hearing date Messrs. Wagner and Lackie indicated that they would provide whatever documents and assistance were required. The hearing scheduled for April 13, 1989 was then adjourned to September, 1989 to enable the Solicitor to obtain the necessary information and records from Messrs. Wagner and Lackie and for the Society to review them.

Following the April 13, 1989 hearing the Solicitor instructed his personal solicitor and his personal accountant to provide the Society's Counsel and Ms. Ferguson with whatever information they had, and they did so.

The information thus obtained from the Solicitor's personal solicitor and from his personal accountant did not enable the Society to complete its investigation. Accordingly, Counsel for the Society wrote the Solicitor a letter on April 19, 1989 listing the several items which he wished the Solicitor to obtain from the files and records in Mr. Wagner's possession to enable the Society to complete its investigation. Some of the files and records which Mr. Wagner had were from the Solicitor's law office. The letter requested the Solicitor's response within two weeks.

The Solicitor did not respond to the April 19, 1989 letter from Counsel for the Society. Accordingly, Ms. Ferguson arranged a meeting with the Solicitor on July 14, 1989 to obtain the information requested in that letter. The July 14, 1989 meeting produced no new information.

Most of the items listed in the April 19, 1989 letter remained outstanding when the Discipline Committee next reconvened on September 15, 1989.

The April 19, 1989 letter from Counsel for the Society was filed as an exhibit at the September 15, 1989 session. The Discipline Committee told the Solicitor that he had not made satisfactory efforts since April 13, 1989 to produce all of the information requested by the Society. The Committee adjourned the matter for approximately two weeks, to September 27, 1989, and directed the Solicitor to produce the remaining information to the Society's investigators by that time.

The Society's Auditor and its Counsel accompanied the Solicitor on September 18, 1989 to the place where Mr. Wagner had stored the records which the Solicitor needed to provide the remaining information requested by the Society. As indicated earlier (see paragraph , page), the records were amongst several boxes of documents which had not been organized or catalogued. As luck had it, however, the necessary records were not as difficult to find as the Solicitor and Mr. Wagner had feared a year earlier -- they were located within an hour. The Solicitor then provided all of the remaining information, except a few items, by letter dated September 25, 1989.

The hearing scheduled for September 27, 1989 was then adjourned on consent, sine die, to enable the Society to complete its investigation. The Solicitor provided the remaining information during a meeting with the Society's Counsel and Ms. Ferguson on April 3, 1990.

The hearing of Complaint D120/88 (failure to co-operate) was then brought back on June 28, 1990. Evidence was heard that day, and the hearing continued on August 2, 1990. At the latter sitting, Counsel for the Society and the Solicitor informed the Committee that they wished to explore the possibility of consolidating the three Complaints pending against the Solicitor with a view to formulating a joint submission as to penalty. The matter was next spoken to on November 30, 1990, at which time the parties, on consent, asked the presiding member of the Discipline Committee, R.J. Carter, Q.C., to direct that the consolidated hearing of the three Complaints be scheduled for February or March, 1991.

The parties hereto recognize that determination of a suitable penalty for the Solicitor's failure to co-operate in the Society's investigation of Mr. Armstrong's complaint will depend upon whether the Solicitor deliberately delayed in order to obstruct the Society's investigation. It is the view of Counsel for the Society that the Solicitor's delay stemmed from procrastination -- which was clearly excessive -- rather than from a desire to obstruct the investigation. However, the Solicitor's procrastination unduly delayed completion of the Society's investigation of the following:

- (a) whether the Solicitor had engaged in prohibited borrowing from a client, namely, Mr. Armstrong. The evidence obtained after June, 1988 tended to verify what the evidence already pointed to as of June, 1988: namely, that while the Solicitor did not contravene the rule on borrowing from clients, he had represented Mr. Armstrong on his loan to the Lombard Street project despite the evident conflict between Mr. Armstrong's interests and the Solicitor's own interests, as explained in subparagraph (d) on pages - above;
- (b) whether the Solicitor borrowed from other clients in order to repay Mr. Armstrong. The evidence obtained which the Society obtained from the Solicitor after June, 1988 confirmed that the Solicitor had not done so.

B. FAILURE TO REPLY TO OTHER COMPLAINTS

II. Between December of 1988 and October of 1989 the Society's Complaints Department received complaints from the following about the Solicitor's handling of certain matters and it requested the Solicitor's comments on those complaints:

- Lash Mr. Lash was retained by a former client of the Solicitor, Barry Weinstein, to obtain an accounting from the Solicitor of the funds received and disbursed by the Solicitor pursuant to a settlement which the Solicitor negotiated on behalf of Mr. Weinstein. Mr. Lash complained that the Solicitor had not responded to his requests for the accounting.
- Levitt Mr. Levitt was a client who complained that the Solicitor had failed to provide him with a copy of the executed settlement agreement evidencing the resolution of his matter, as well as a breakdown of the time which the Solicitor expended. The only item which is now outstanding is confirmation that the Solicitor has repaid Mr. Levitt the agreed upon reduction of his account.
- Solish Mr. Solish was the Solicitor for the opposite party in a real estate transaction in which Mr. Harris was personally involved. He complained that Mr. Harris may have breached an escrow condition in relation to the discharge of a mortgage.

MacNicol Mr. MacNicol was a client of the Solicitor who complained that the Solicitor had not responded to his requests for some of the details of the settlement of Mr. MacNicol's claim.

The Solicitor responded to some of the above allegations, but not to all of them. Consequently, discipline proceedings were authorized against the Solicitor on December 11, 1989.

The Solicitor submitted draft responses to the remaining allegations against him on December 22, 1989, before the Complaint authorized on December 11, 1989 was issued and served. The Solicitor did not, however, explain why his responses were marked "Draft". In fact, the Solicitor had intended that the "DRAFT" notation be removed from his responses before he sent them, but he forgot to instruct his secretary to do so. Accordingly, when nothing further was heard from the Solicitor by February 21, 1990, the Solicitor was served with Complaint D26/90 sent by mail that day.

The Solicitor informed the Society on or about April 3, 1990 that his responses were not complete because he did not have time to check his daily journal for notes of any telephone conversations or discussions pertaining to the complaints from the clients referred to above. He also indicated on April 3, 1990 that he sent his responses without checking for such notes because he wanted to send his responses to the Society's Complaints Department before the Christmas break.

The Solicitor could have made the necessary search of his daily journal and could have submitted his responses in final form prior to the date discipline proceedings were authorized against him (December 11, 1989) had he exercised reasonable diligence.

Eventually, the Solicitor met with the Counsel who was representing the Society on Complaint D120/88 (failure to co-operate on investigation of Armstrong complaint) to discuss the subject matter of Complaint D26/90 (failure to reply to Society's letters on five complaints). The meeting took place on April 3, 1990, and at that time the Solicitor provided Counsel for the Society with copies of the draft replies which he had sent to the Complaints Department on December 22, 1989.

Counsel for the Society reviewed the Solicitor's draft responses, and then informed the Solicitor two days later, on April 5, 1990, that the draft responses did not address all of the allegations raised in the four complaints which the Complaints Department had received. There was further discussion of these matters in meetings with the Solicitor on April 27 and May 14, 1990. On the latter date, it was agreed that the investigating lawyer from the Complaints Department, Susan Carlyle, would prepare a memorandum summarizing the allegations which the Solicitor had failed to address.

As indicated above (paragraph , page), on August 2, 1990 Counsel for the Society and the Solicitor informed the Committee hearing Complaint D120/88 that the parties to that proceeding wished to consolidate the three discipline matters outstanding against the Solicitor. The Committee concurred, and Counsel for the Society and the Solicitor commenced their efforts at consolidation.

On November 13, 1990 Ms. Carlyle sent the Solicitor a letter detailing the allegations which the Solicitor had failed to address with respect to four of the complaints referred to in paragraph , at page above. The letter requested the Solicitor's full and detailed response within two weeks.

Two and a half weeks later, on November 30, 1990, Counsel for the Society in these Discipline Proceedings reminded the Solicitor that his response to Ms. Carlyle's November 13, 1990 letter was overdue.

When no response was received from the Solicitor by December 20, 1990, a staff member in the Complaints Department called the Solicitor on that date. The Solicitor was unable to take the call, and accordingly a message was left. The Solicitor returned the call later that day, but then the Complaints Department caller was unavailable. The Complaints Department caller called again and left a message, but the Solicitor did not return that call.

When the Solicitor did not respond by January 4, 1991, the Complaints Department wrote the Solicitor that day, sending the letter by registered mail. The letter requested the Solicitor's response within seven days.

The Solicitor wrote the Complaints Department ten days later, on January 14, 1991, stating that he would provide a written response during the week of January 21, 1991. However, the Solicitor has not yet provided his response.

V. PAST DISCIPLINE

The Solicitor was reprimanded in Committee on May 29, 1984 for:

"failing to serve his clients in a conscientious, diligent and efficient manner and [failing] to provide to his clients a quality of service at least equal to that which one would generally expect of a competent lawyer, as reflected in 15 complaints received by the Society respecting the Solicitor's performance during the past 18 months."

A copy of the decision of the Discipline Committee at that time is attached hereto as Appendix "A". It should be noted that the hearing was held in camera.

VI. JOINT SUBMISSION AS TO PENALTY

The parties hereto submit that the appropriate penalty for the misconduct admitted herein is a recommendation that the Solicitor be reprimanded in Convocation and fined \$5,000.00 and to pay the sum of \$7,500.00 towards the Society's costs. This submission is based on the following:

- (a) the gravity and extent of the misconduct summarized herein;
- (b) the Solicitor's previous discipline record;
- (c) the Solicitor undertakes to confirm to the Society prior to Convocation's consideration of this matter whether his "draft" replies to the complaints referred to in paragraph on page are complete. If he determines that any of his replies are not complete, then he undertakes to provide complete replies prior to Convocation's consideration of the matter. However, should he fail to honour these undertakings, he consents to an amendment to the joint submission on penalty to include a term that he also be suspended until he complies with the undertakings referred to in this paragraph. The foregoing is without prejudice to any further review by the Society of the substantive responses delivered by the Solicitor, if warranted;
- (d) the Solicitor's admissions of misconduct and his joining in the submission as to penalty exhibit remorse, and have saved considerable hearing time and expense;
- (e) the Solicitor personally repaid Mr. Armstrong in full -- approximately \$100,000.00 -- when it became apparent that the Lombard Street project was unable to repay Mr. Armstrong in a timely manner;
- (f) the Solicitor's service to the legal profession:
 - he authored the first text on Canadian wrongful dismissal law and is editor-in chief of the law reports on Canadian Cases on Employment Law;
 - his voluntary participation in LSUC, CBA and CBAO conferences in Ontario and in most of the other provinces. The Solicitor estimates that he has participated in 30 to 35 such conferences since 1979;
 - he voluntarily assisted the Ontario Ministry of Labour in 1989 in its consideration of arbitration model amendments to the Employment Standards Act;
 - during the past year or so he and his law firm have been soliciting financial support from other wrongful dismissal practitioners across Canada towards the establishment of a trust fund to make discretionary grants to parties who wish to litigate a novel and important point in wrongful dismissal law.

DATED at Toronto the 24th day of April, 1991."

RECOMMENDATION AS TO PENALTY

The Committee accepts the joint submission and recommends that the said David Harris be reprimanded in Convocation, fined \$5,000.00 and required to pay the sum of \$7,500.00 towards the cost of the Society's investigation.

REASONS FOR RECOMMENDATION

The Committee accepts the following principles referred to in the Agreed Statement of Facts:

1. The client, Armstrong, has received full reimbursement from the Solicitor including generous amounts of interest.
2. The Solicitor has made significant contributions to the profession over the years in legal writing, lecturing, assisting with the drafting of remedial legislation and in providing access to the courts for parties wishing to litigate a novel or important point in wrongful dismissal law, but who for financial reasons would otherwise not be able to do so.
3. The severity of the offences and the delay caused by the Solicitor, in the investigation thereof is marked.
4. The Solicitor has made the undertakings referred to regarding the complaints of Lash, Levitt, Solish and MacNicol.
5. The Solicitor is now remorseful.
6. Very considerable time and expense will be saved by the proposed disposition of the Complaints.

The following matters were referred to in submissions by the Solicitor and by Counsel for the Law Society.

1. Late, but genuine nonetheless, has been a spirit of real cooperation and an attitude of responsibility on the part of the Solicitor, to the Law Society's complaints and investigation process.
2. The Solicitor is a prominent counsel in the field of wrongful dismissal law and a large part of his practice consists of referrals from other members of the Society. The notoriety of a Reprimand in Convocation and the dissemination of the facts of the complaints will have a correspondingly harder affect on the Solicitor than would usually be the case.
3. The facts do not constitute a disbarment offence, but might justify a short suspension. In light of point 2, above, the Committee is prepared to accept that a fine be a reasonable substitution for a suspension and recommends accordingly.
4. The Solicitor is prepared to recognize the waste of the membership's funds in this lengthy and delayed investigation and has agreed to a demand by the Law Society that it be reimbursed accordingly in the amount of \$7,500.00.

The Committee has confidence that the joint submission made, in the case of the Law Society through one of its most experienced counsel, should not lightly be disregarded.

The Committee points out that it has dealt with this disposition of these complaints in the manner adopted as policy. "Negotiated Resolution Procedures in the Discipline Process" adopted by Convocation on the 26th day of June, 1986", a copy of which is appended hereto as Appendix "A".

David Harris was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 21st day of March, 1975.

ALL OF WHICH is respectfully submitted

DATED this 4th day of July, 1991

"Robert Carter"
Chair

IN CAMERA EVIDENCE

IN CAMERA Content Has Been Removed

[End of in camera submission]

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

There were no submissions by either counsel.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Topp that the Recommendation as to Penalty contained in the Report be amended by deleting the word "fine" on page 25, paragraph 3 and substituting the word "costs".

Counsel and the solicitor made submissions in support of the recommendation as to penalty.

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

It was moved by Ms. Curtis, seconded by Ms. Lax that the solicitor be suspended for 3 months.

Not Put

It was moved by Mr. Cass, seconded by Ms. Elliott that Convocation was not able to accept the recommended penalty and was considering a 3 month suspension.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of the motion for a 3 month suspension.

The solicitor requested an adjournment to consider the matter.

The matter was adjourned to the next Discipline Convocation and the solicitor was to advise the Society as to the question of whether or not he waived the requirement of reconstituting a quorum of Convocation with those members present a seised Convocation.

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CONVOCATION ADJOURNED AT 4:30 P.M.

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Confirmed this *22nd* day of *November*, 1991


Treasurer