MINUTES OF SPECIAL CONVOCATION

22nd June 1989
9:30 a.m.

PRESENT:

The Treasurer (Mr. Lee K. Ferrier) and Messrs. Bragagnolo, Cullity, Epstein, Mrs. Graham, Messrs. Ground, Lamek, Levy, Mrs. MacLeod, Messrs. Manes, McKinnon, Ms. Poulin, Rock, Shaffer, Spence, Strosberg, Thom, Topp, Wardlaw, Mrs. Weaver, and Mr. Yachetti.

.....

DISCIPLINE COMMITTEE

.....

"PUBLIC"

.....

Re: EBERHARD VON KETELHODT, Toronto

Mr. P. Lamek, Chair, placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Mr. Jaffey. Mr. Shaun Devlin appeared for the Society.

There was a request on consent for an adjournment to the next Discipline Convocation in September.

It was moved by Mr. Topp, seconded by Mrs. MacLeod, that the matter be adjourned to the next Discipline Convocation.

Carried

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: DOUGLAS H. FORSYTHE, Nepean

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor did not attend. He was represented by Mr. Robins, a student-at-law in Mr. Pinkofsky's office. Mr. Reg Watson appeared for the Society.

There was a request by Mr. Robins on behalf of the solicitor for an adjournment to the September Convocation due to problems involved in contacting the solicitor who was attending a French language course in Quebec City. The Society opposed the adjournment.

The solicitor, counsel, public and the reporter withdrew.

Messrs. Levy and Yachetti did not participate in the matter.

It was moved by Mrs. MacLeod, seconded by Mr. Lamek, that the matter be adjourned peremptory to the Discipline Convocation in September.

Lost

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's decision and that the matter would be stood down so that Mr. Pinkofski could attend Convocation on behalf of his client.

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: DAVID E. WATERHOUSE, Niagara Falls

Mr. Lamek placed the matter before Convocation.

The reporter sworn.

The solicitor attended with his counsel, Mr. E. Greenspan, Mr. Reg Watson appeared for the Society.

Mr. Greenspan requested an adjournment to the Discipline Convocation in September.

Mr. Greenspan indicated he wanted to review with a psychiatrist a report recently received regarding the solicitor's problems with alcoholism.

The Law Society opposed the request for adjournment.

Mrs. Macleod and Mr. Bragagnolo withdrew.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Rock, seconded by Mr. Ground, that the matter be adjourned to September on an undertaking by the solicitor not to practise.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's decision.

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: ROBERT A. HORWOOD, Mississauga

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

This was the continuation of a matter which was commenced at the April Convocation at which time the report was adopted. At that time Mr. Horwood waived his right to have the same Benchers who considered the matter in April consider the matter at this time.

The solicitor attended on his own behalf. Mr. Reg Watson appeared for the Society.

Mr. Watson indicated that the form 2/3's had not been filed and that the replies to the audit letter had not been received and were

still outstanding. Mr. Horwood replied that he had delivered a letter to the audit department and that the forms had not been filed as the accountant was still in the process of preparing the returns.

The matter was stood down to determine whether in fact Mr. Horwood had delivered a reply to the audit letter of deficiencies.

The solicitor, counsel, public and the reporter retired.

.....

"PUBLIC"

.....

Re: ROBERT EMERSON PRITCHARD, Sault Ste. Marie

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Mr. John Walker. Mr. Reg Watson appeared for the Society.

Convocation had before it the Report of the Discipline Committee, dated 9th June, 1989, together with an Affidavit of Service sworn 13th June, 1989, by Louis Kotholos that he had effected service on the solicitor by registered mail on 12th June, 1988 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed 22nd June, 1989 by the solicitor (marked Exhibit 2). Copies of the Report having been sent 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

James M. Spence, Q.C., (Chair)
Colin D. McKinnon, Q.C.
Helen King MacLeod

In the matter of
The Law Society Act

and in the matter of
ROBERT EMERSON PRITCHARD
of the City
of Sault Ste. Marie
a barrister and solicitor

H. Reginald Watson
for the Society

John C. Walker, Q.C.
for the solicitor
Heard: June 7, 1989

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

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 17, 1989, Complaint D27/89 was issued against Robert Emerson Pritchard alleging that he was guilty of professional misconduct.

The matter was heard on the 7th day of June, 1989, by this Committee composed of James M. Spence, Q.C., as Chair, Colin D.

McKinnon, Q.C. and Helen King MacLeod. Mr. Pritchard attended the hearing and was represented by John C. Walker, Q.C.. H. Reginald Watson appeared as counsel for the Law Society of Upper Canada.

DECISION

The Complaint

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

(Para. 2; Complaint D27/89)

"(a) He failed to serve the following clients in a conscientious, diligent and efficient manner in that he failed to follow their instructions to launch appeals respecting their criminal convictions and/or sentences in a timely fashion:

CLIENT NAME	SENTENCING DATE	CLIENT'S INSTRUCTIONS
Robert Stuart Irvine	October 19th, 1981	Appeal sentence
Robert Stuart Irvine	March 31st, 1983	Appeal convictions
Mario Briglio	November 19th, 1986	Appeal conviction and sentence
Peter Pennett	January 5, 1987 February 6th, 1987	Appeal sentences
Donat Elair Cyr	January 14th, 1987	Appeal convictions and sentences
Dennis Gibbs	April 16th, 1987	Appeal conviction and sentence

(b) He misled the clients referred to in particular 2(a) respecting the status of their appeals."

Evidence

The evidence with respect to the allegations of professional misconduct was outlined in the following Agreed Statement of Facts, received as Exhibit No. 2 by the Committee:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D27/89 and is prepared to proceed with a hearing of this matter on June 7th, 1989.

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 D27/89 with his counsel, John C. Walker, Q.C., and admits the particulars contained therein.

IV. FACTS

4. The Solicitor was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on March 26, 1971.

5. The Solicitor has practised in Huntsville, Kingston and Sault Ste. Marie, Ontario. His practice has been essentially confined to the practice of criminal law since in or about 1976.

6. As a result of a complaint by Donat Elair Cyr to the Law Society, which precipitated a request by the Law Society to the Solicitor to respond to the complaint; the Solicitor wrote to the Law Society by letter dated March 11, 1988 and reported to the Law Society on a voluntary basis his failure to act expeditiously and promptly on behalf of the said Donat Elair Cyr and four other clients referred to in the letter dated March 11th, 1988 concerning criminal charges involving those five clients. In the letter of March 11th, 1988, the Solicitor:

(a) Reported the details of his failure concerning each of the five clients in a frank manner;

(b) Outlined the work yet to be completed on behalf of each of the five clients;

(c) Outlined the work that was then being done;

(d) Sought the assistance of other counsel where necessary in order to complete the necessary work for each client expeditiously.

(e) Reported that he had begun a program of counselling in order to understand his lack of action on these files.

7. After the omissions were reported by the Solicitor to the Law Society, he met from time to time with Discipline Counsel to report the progress concerning the completion of the work to be done for each of the five clients. The Solicitor met with Discipline Counsel acting on behalf of the Law Society on May 20, 1988 in Toronto. At that time it was agreed that the Solicitor continue with the remaining appeals subject to the Society obtaining a favourable report from the psychiatrist [sic] working with the Solicitor and subject to him arranging for supervision by a solicitor in Sault Ste. Marie. The Solicitor consulted N. Douglas Gaetz, Q.C., a Barrister and Solicitor practicing at Sault Ste. Marie, Ontario, who delivered reports form time to time to the Law Society concerning the progress of the completion of the work to be done. The Solicitor met weekly with N. Douglas Gaetz, Q.C. beginning on June 9, 1988. The appeals were perfected by June 24, 1988. The Society spoke with the Solicitor's psychiatrist [sic], Dr. Keleher, who advised that he felt that the Solicitor should do the appeals in that it would be an important part of the Solicitor's therapy as well as a positive experience for the Solicitor.

8. With respect to the Robert Stuart Irvine matter:

(a) Robert Stuart Irvine pleaded guilty to an offence of possession of an explosive with an intent to endanger life on October 19, 1981 and was sentenced to twelve years in jail on that same date. That plea was entered before a District Court Judge in Toronto.

(b) Robert Stuart Irvine was subsequently charged with offences of arson (two), theft and possession of stolen property arising in the District of Algoma and was transferred to Sault Ste. Marie for a trial on those charges. He retained the Solicitor to act as his trial counsel on those charges.

Subsequent to the retainer, Irvine discussed the question of an appeal of the sentence of the twelve years with the Solicitor. The Solicitor was retained to appeal the sentence and with his assistance an Inmate Notice of Appeal was prepared for that purpose and given to the Superintendent of the District Jail in Sault Ste. Marie. An application for Legal Aid was taken from Robert Irvine and sent to the Legal Aid Office in Sault Ste. Marie following which a Certificate was issued to the Solicitor for this

appeal. The Solicitor failed to prepare a Solicitor's Notice of Appeal. Inquiries were made from time to time by Robert Irvine as to the status of the appeal and the Solicitor misled him as to the status of the appeal.

(c) On March 31, 1983 Robert Stuart Irvine was convicted of the offences of arson and possession of stolen property for which he had been transferred to Sault Ste. Marie. On April 27, 1983, he was sentenced to two years on one count of arson and one year consecutive, on the second count of arson. Those sentences were made consecutive to the twelve-year term he was then serving. Robert Irvine was sentenced to a term of one month concurrent on the charge of possession.

Robert Stuart Irvine instructed the Solicitor to appeal the convictions for the arson offences. The Solicitor failed to file the Notice of Appeal as instructed.

(d) Robert Stuart Irvine inquired from time to time as to the status of his appeal and was misled as to the status of the appeal by the Solicitor.

(e) The Inmate Notice of Appeal, filed by Mr. Irvine himself, for some reason never got forwarded to Toronto by the Superintendent of the District Jail. No information concerning that oversight is available.

(f) Applications to extend the time for appeal with respect to the Irvine matter as well as the matters concerning Gibbs, Pennett, and Cyr were forwarded on March 15, 1988 and heard on March 29, 1988.

(g) With respect to Robert Stuart Irvine, the application as it related to the appeal of sentence was allowed. The application insofar as it related to the appeal of convictions was dismissed because of the delay and because the appeal was on the facts alone; and since it was for the trial judge to determine the facts, there did not seem to be any reasonable prospect of succeeding.

(h The appeal with respect to the sentence of twelve years was heard on November 30, 1988. The appeal was allowed and the sentence was reduced to a term of nine years.

9. With respect to the Mario Briglio matter:

(a) Mario Briglio was convicted of an offence of sexual assault on September 19, 1986. On November 21, 1986, he was sentenced to three years for that offence. Mario Briglio retained the Solicitor to appeal the conviction and sentence with respect to that offence. A Notice of Appeal was prepared, served and filed. A bail application was made on behalf of Mario Briglio and denied. The Solicitor ordered and received the transcript of the trial.

(b) The Solicitor failed to complete the Appellant's Factum and the Appeal Book so that the appeal might proceed to hearing. Mario Briglio inquired concerning the status of the appeal. He was misled by the Solicitor as to its status.

(c) In December, 1987, the Solicitor was instructed by Mario Briglio to turn the transcript of the trial over to other counsel. That was done and the appeal was completed by other counsel. The appeal was allowed and a new trial ordered.

10. With respect to the Peter Pennett matter:

(a) On January 5th, 1987, Peter Pennett was sentenced to forty months on charges of break, enter and theft (two charges),

possession of stolen property, break and enter with intent (two charges) and breach of recognizance (three charges).

(b) Peter Pennett instructed that an appeal be taken against those sentences.

(c) On February 6th, 1987, Peter Pennett was sentenced to fourteen months and fifteen days on each of five charges of possession of stolen property concurrent to one another, but consecutive to time already being served. Peter Pennett instructed the Solicitor to appeal those sentences.

(d) The Solicitor failed to file the Notices of Appeal as instructed and misled Peter Pennett as to the status of the appeal.

(e) The applications with respect to Peter Pennett were dismissed on the basis that they were not likely to succeed and the appeals were essentially disposed of on the merits and not based upon the delay in bringing the application.

11. With respect to the Donat Elair Cyr matter:

(a) Donat Cyr was convicted of offences of possession of a narcotic for the purposes of trafficking, possession of a restricted drug for the purpose of trafficking, and simple possession of a narcotic on December 22, 1986.

(b) On January 14, 1987, Donat Cyr was sentenced to nine months on each charge concurrent with one another, but consecutive to a sentence then being served. Donat Cyr instructed the Solicitor to file an appeal against the convictions and sentence. The Solicitor failed to file the Notice of Appeal and he misled Donat Cyr as to the status of the appeal.

(c) An Order was made extending the time for the appeal of conviction and sentence and the appeal was heard on March 22, 1989 and the appeal was dismissed.

12. With respect to the Dennis Gibbs matter:

(a) Dennis Gibbs was convicted of the offence of break and enter and theft on April 16, 1987 and sentenced to two years less one day concurrent to a sentence that he was then serving. Dennis Gibbs instructed the Solicitor to file a Notice of Appeal against the conviction and sentence. The Solicitor failed to file the Notice of Appeal and he misled Dennis Gibbs as to the status of the appeal.

(b) An Order was made extending the time for the appeal. The appeal was placed on a short list for the purpose of fixing a hearing date; but Dennis Gibbs subsequently instructed in writing that the appeal be discontinued as his parole period had expired.

13. A written report was sent to the Law Society with respect to the status of the various applications as of May 17, 1988.

DATED at Toronto this 2nd day of June, 1989."

The Committee accepted the Agreed Statement of Facts and made a finding of professional misconduct as particularized in Complaint D27/89.

RECOMMENDATION AS TO PENALTY

The parties filed Exhibit No. 3, which included a joint submission recommending a penalty of one month's suspension from the practise of law.

Part of Exhibit No. 3 constituted the report of Doctor Gary Keleher, a clinical psychologist who had been consulted by the Solicitor.

Counsel for the Solicitor recommended that the report be read in camera. Counsel for the Society resisted, citing s.9 of the Statutory Powers Procedure Act.

Following argument heard in camera, the Committee determined, Mrs. MacLeod dissenting, that the report contained intimate personal matters, and that having regard to the circumstances, including the fact that the Solicitor practises in a small centre, namely Sault Ste. Marie, the desirability of avoiding disclosure of its contents outweighed the desirability of adhering to the principle that hearings be open to the public. Considering the fact that the hearing itself and the penalty administered are open and would be disclosed to the public, the majority of the Committee was not persuaded that the right of the public to know, in this case, was in any way fettered by the reading of the psychological report in camera.

Following the reception of character evidence, the evidence of the Solicitor himself, and the submissions of counsel, we unanimously recommend that the Solicitor, Robert Emerson Pritchard, be suspended from the practise of law for a period of one month.

REASONS FOR RECOMMENDATION

The Solicitor, Robert Emerson Pritchard, a sole practitioner in the field of criminal law, enjoys an excellent reputation in his community as a lawyer who is competent, honest, hard-working, well-prepared, courteous and respectful, as may be evidenced by the letters of recommendation filed on his behalf as part of Exhibit No. 3 from judges, lawyers and others, attached hereto as Schedule "A".

The Solicitor, after many successful years of practise, developed a problem in coping with the work required to be done in certain appeals, as a result of which clients were misled by the Solicitor and some of whom were legally prejudiced. For this misconduct the Solicitor deserves a serious penalty.

In mitigation of penalty, the Committee was impressed with the following facts:

(1) the Solicitor's general reputation for competence, honesty and integrity;

(2) the fact that the Solicitor has practised since 1971 without incident;

(3) the fact that the Solicitor sought the aid of a professional psychologist, and in the opinion of that professional, has benefitted to the point where it can be said that the Solicitor is highly unlikely to offend again. To borrow the words of Dr. Keleher, the Solicitor "will now be an even more effective lawyer, more understanding of his clients' needs and better able to serve them, given his growing acquaintance with his own dilemmas and his very considerable attempts to solve them";

(4) the fact that the Solicitor voluntarily brought to the attention of the Society particulars of misconduct that might otherwise have gone unrevealed, thereby prejudicing himself, but prompting the respect of this Committee. In addition, the Solicitor has fully co-operated with officials of the Law Society in the course of their investigation;

(5) the evidence of the Solicitor himself, wherein he testified that he had progressed considerably in understanding the psychological causes of his previous breaches of conduct, so that he may deal with those causes in a manner that will avoid any future breaches. The Committee was impressed with the honest, contrite and forthright manner in which the Solicitor gave his testimony;

(6) the fact that all breaches have been corrected, to the extent possible, either by the Solicitor personally or by other solicitors;

(7) the fact of the joint submission as to penalty by the Solicitor and both counsel.

Robert Emerson Pritchard was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 26th day of March, 1971.

ALL OF WHICH is respectfully submitted

DATED the 9th day of June, 1989

"Colin McKinnon"
Colin D. McKinnon, Q.C.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Report of the Discipline Committee dated 9th June, 1989 be adopted.

Carried

It was moved by Mr. Lamek, seconded by Mr. Topp, that the solicitor be suspended for one month effective 1st July, 1989.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: DAVID ARTHUR ALLPORT, Mississauga

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor attended with his counsel, Mr. J. Douglas Crane. Mr. J. Robert Conway appeared for the Society.

Mr. Rock withdrew and did not participate in the deliberations.

Convocation had before it the Report of the Discipline Committee, dated 12th June, 1989, together with an Affidavit of Service sworn 13th June, 1989, by Louis Kotholos that he had effected service on the solicitor by registered mail on 13th June, 1989 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed 12th June, 1989 by the solicitor (marked Exhibit 2). Copies of the Report having been sent 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

Dennis R. O'Connor, Q.C. (Chair)
Patrick G. Furlong, Q.C.
Denise E. Bellamy

In the matter of The Law Society Act	J. Robert Conway for the Society
and in the matter of DAVID ARTHUR ALLPORT of the City of Toronto a barrister and solicitor	J. Douglas Crane, Q.C. for the solicitor Heard: March 9, 1989

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

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 11, 1989, Complaint D109a/86 was issued against David Arthur Allport alleging that he was guilty of professional misconduct.

The matter was heard in public on March 9, 1989 before a committee composed of Dennis R. O'Connor, Q.C. as Chair, Patrick G. Furlong, Q.C. and Denise Bellamy. Mr. Allport appeared and was represented by J. Douglas Crane, Q.C. J. Robert Conway appeared as counsel for the Law Society.

DECISION

The Complaint

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

(Paragraph 2; Complaint D109a/86)

"(a) He filed to be on guard against becoming the tool or dupe of unscrupulous clients, namely, William G. Player and certain senior executives of Seaway Trust Company, in several improper real estate transactions between William Player and Seaway Trust Company from January 1981 until November 1982."

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. Admitted.

II. BACKGROUND

2. The Solicitor is 51 years of age, married with two children, and was called to the Bar in 1963.

3. After he was called, the Solicitor practiced with the firms of:

Robertson, Lane
McMillan, Binch
Broadhurst, Ball

and at the present time he is practising on his own. The Solicitor's practice has largely been in the real estate field.

4. After leaving McMillan, Binch, he joined the Mississauga law firm of Broadhurst & Ball in 1981. Peter Broadhurst of that firm introduced him to William Player, whom Mr. Broadhurst had brought into the firm as a client. Player's legal work became a major source of revenue for the firm.

5. During the course of approximately a year and a half, Player's legal work occupied the majority of the Solicitor's time. The Society's Auditor examined a large number of transactions in which the Solicitor represented Seaway as lender on mortgage loans to Player and to Player's corporations. Some of these transactions were proper and viable, but 17 of them raised the concerns summarized in this Agreed Statement of Facts. Those 17 transactions covered 52 mortgages.

6. The Solicitor co-operated fully throughout the investigation. He made himself available for lengthy interviews by the Society's staff, and he also authorized police investigators to provide the Society's staff with complete transcripts of his several voluminous interviews with the Police. The Solicitor frequently attended the interviews by the Police and by the Society's staff without Counsel, despite the gravity of the matter.

7. What follows is a summary of the results of the Society's investigation into the seventeen transactions in question. The Solicitor agrees that the Society is in possession of credible evidence to substantiate this summary and the concerns raised in this summary. The Solicitor elects not to contest such evidence or the issues of misconduct arising from this document in these discipline proceedings. Because he desires to conclude these proceedings after many pre-trials with Law Society counsel on an agreed basis. After which he wishes to quickly re-establish himself in his existing law practice.

III. MISCONDUCT

THE PLAYER SCHEME

8. Player purchased the subject properties at arm's length and simultaneously re-sold ("flipped") them to non-arm's length nominees at significantly increased prices which, in some cases, were based on MURB values. Using the "flip" prices, the properties were then financed, usually by Seaway Trust Company ("Seaway"), to amounts well in excess of the original arm's length purchase price. The Solicitor was unaware that Player was applying these amounts to his personal purposes.

9. The Solicitor, however, had nothing to do with the negotiation of any of the Player transactions, nor did he have any involvement with setting figures or the values of various mortgages. Nor was he aware of any fraud.

10. Player pleaded guilty in July 1987, to a number of fraud charges which included the 17 transactions referred to herein in which the Solicitor represented Player, his corporations and Seaway Trust.

11. Counsel for the Society has obtained cogent evidence that Player was able to accomplish these dishonest purposes because he was a secret owner of Seaway. This evidence tends to show that Player relied heavily upon accomplices within the employ of Seaway, including high-ranking Seaway officials, to achieve his dishonest objectives.

12. The Society is satisfied that the Solicitor knew nothing of this conspiracy to commit fraud or of Player's secret ownership interest in Seaway. Further, both the Society's Auditor and its Counsel have concluded that the Solicitor was not dishonest. What has emerged is the picture of a solicitor who was harried by overwork and by his wife's serious health problems, and who was used by Player as a "mechanic" to clothe tainted transactions with documentary respectability. Further, Player and his accomplices frequently -- and probably deliberately -- imposed unreasonable time constraints on the Solicitor, causing him to be preoccupied with meeting those deadlines. Consequently, he did not consider the significance and effect of the transactions in the face of the following pattern:

(1) Player seemed able, without fail, to acquire substantial properties without having to put up any cash;

(2) like Player, the nominee buyers on the "flips" did not put up any cash to complete their purchases. They were acting, to the Solicitor's understanding, as mere nominees for investors who would put up cash pursuant to the MURB structure;

(3) all of the Solicitor's instructions came from either Player, his companies or his company's accountants (Thorn Riddell), lawyers, or business advisors, or Seaway officials, and he received no instructions from the nominee client buyers to whom Player purported to resell the properties;

(4) only the trust companies involved (usually Seaway, but in a few other transactions, other trust companies) put up any cash and did so in amounts which exceeded the purchase cost to the Player corporations.

SPECIFIC EXAMPLES

The Lumsden Building

13. Player's corporation, Kilderkin Investments Limited ("Kilderkin"), purchases this downtown Toronto office building from an arm's length seller in February, 1982, for an apparent $8.6 million.

14. Player then immediately "flipped" the property for $20 million to a non-arm's length consortium consisting of Kilderkin, Seaway and Greymac Properties Inc. (Greymac being controlled by Leonard Rosenberg), on the understanding that the building would be renovated and have a long-term lease-back contract. Acting on specific instructions, the Solicitor represented everyone except the original arm's length vendor. The Solicitor's office drafted trust agreements. New mortgages totalling $10.0 million were simultaneously placed on this property which the Solicitor knew had been acquired for $8.6 million. Additionally, the principals of the consortium caused approximately $8.0 million cash of public depositor moneys from Seaway and the Greymac Group of companies to be paid to the Solicitor to the credit of

Kilderkin (i.e., Player) for part of the balance due on the non-arm's length purchase. The remainder of the consideration involved in this transaction was a promissory note for $2 million from Kilderkin to Kilderkin which amount formed part of the $20 million consideration as expressed in the relevant Land Transfer Tax Affidavit. Player directed the Solicitor to pay $4 million of the $8 million to corporations, which, unbeknownst to the Solicitor, but later discovered by investigators, were controlled by the principals of the corporations in the purchaser/consortium. These principals ultimately received all of this money for their own personal benefit or use. One of the principals, Robert Braun, had been the manager of Seaway Trust and was leaving that company. He was paid $2 million cash from the Solicitor's trust account. This payment represented Mr. Player purchasing a secret ownership interest in Seaway from Braun which interest had not been disclosed to the regulators. The Solicitor was aware of the payment to Braun but had no knowledge of its purpose or of Braun's secret ownership interest.

15. Player has pleaded guilty to fraud in the amount of $13,353,616.00, more or less, in connection with this transaction. Two of the other principals of the corporations in the purchaser/consortium, Markle and Rosenberg, have also been charged with fraud, and the remaining principal, Braun has been granted immunity by the Crown in exchange for his (i.e., Braun's) testimony concerning this and other transactions.

The London Armouries

16. This obsolete armory, zoned for commercial use and located in downtown London, Ontario, was acquired at arm's length by Player in June, 1981, for $1.25 million. Nine months later, in March, 1982, he "flipped" it to a consortium of which he was a 50% owner for $7.5 million. No cash changed hands. This non-arm's length sale was ostensibly financed primarily by a $4.5 million mortgage to another Player company. The $7.5 million purchase price was the future value of the property would have once the consortium had built a large hotel on the property. At the time of this flip the property zoning would not permit the building of a hotel on the site. The Solicitor has no personal knowledge of the facts set out in this paragraph, but for the purposes of this Agreed Statement of Facts, he takes no issue with them.

17. The day following the March 1982 non-arm's length "flip" which created the mortgage, Player assigned the $4.5 million mortgage to Seaway, who agreed to pay Player the full face value of it. Seaway retained this Solicitor the day before the closing of the mortgage purchase. The Solicitor closed the transaction without obtaining a mortgage statement to confirm the debt outstanding on the mortgage and without obtaining certain guarantees called for in the Seaway purchase commitment. This was because a representative of Seaway, had given the Solicitor the unusual (and unknown to the Solicitor, corrupt) instructions that there was no need to obtain a mortgage statement before closing, and that Seaway would be satisfied if the required personal guarantees were obtained after closing. The Solicitor attempted to obtain the personal guarantees after closing, but was unsuccessful. A Seaway representative ultimately told the Solicitor that Seaway would obtain the personal guarantees. The Society contends that the Solicitor ought to have regarded these instructions as suspect, and that his failure to do so enabled Player to defraud Seaway of $4.5 million.

18. The transaction was fraudulent because in fact no construction was ever done and Player simply pocketed the moneys for his personal purposes before construction, which was never started. There was no debt owing on the mortgage when it was assigned for cash of $4.5 million. The Solicitor has no personal knowledge of the facts set out in this paragraph, but for the purposes of this Agreed Statement of Facts, he takes no issue with them.

The Cadillac Fairview Transaction

19. The Player scheme required constant escalation in order to make the payments on prior fraudulent mortgage loans as they matured. This escalation reached its zenith in the Cadillac Fairview apartment flip in November, 1982. In this transaction, the Solicitor, along with several other lawyers and law firms, represented Player, Seaway, Greymac Trust and Crown Trust. Seaway, Crown and Greymac had their own solicitors in addition to the Solicitor, and his involvement was limited to taking instructions from thee firms to do the required conveyancing.

20. This series of transactions began with Rosenberg's corporate interests purchasing 50 apartment buildings in Toronto from the Cadillac Fairview Corporation Limited ("Cadillac Fairview") for $270 million. Rosenberg then resold his rights under the purchase agreement for the 50 buildings to Player for $312.5 million. Whether Rosenberg's sale to Player was arm's length at actual value is debatable, but Counsel for the Society takes no issue with the Solicitor's work for Player on that aspect of the transaction.

21. Player, when closing the $312.5 million purchase on November 5th, 1982, simultaneously "flipped" the 50 buildings to 50 numbered companies for $500 million. The ultimate owners of the 50 purchasing companies were stated to be Saudi's who wished to remain anonymous. This "flip" was, despite its magnitude and the stated presence of foreign investors, simply a reprise of the Player pattern which by this time the Solicitor was quite familiar with. The similarities were as follows:

(1) Player was able to immediately resell substantial properties at a considerable profit -- in this case for 60% ($187.5 million) more then he paid for them the same day. This resale price was 85% ($230 million) more than Cadillac Fairview, a very knowledgeable vendor, had accepted for the same properties 2 1/2 months earlier;

(2) Player was able to complete his substantial purchase ($312.5 million) without putting up any cash;

(3) title to the ultimate purchasers, the Saudi investors, was taken by numbered corporations who had no responsibility for servicing the $162 million in mortgage loans advanced by the Solicitor's clients, Seaway, Greymac and Crown Trust Companies, because Kilderkin was responsible for these payments. Further, thee purchaser corporations had no assets, leaving Seaway without recourse against the borrowers if the realizable value of the properties fell below the total value of the outstanding encumbrances;

(4) the sole officer and director of the numbered corporations who were the ultimate purchasers was an individual, represented by the law firm of Kitamura, Yates whom the Solicitor knew had had a previous significant business relationship with Player, was Player's employee, and a prior Player nominee, and who was indemnified as the purchasers agent by the Seller Player;

22. Because this was an evident repeat of the Player patter, the Society contends that the Solicitor should have realized and informed his lending clients, Seaway, Greymac and Crown Trust, that the security for their $162 million loan was meager or at least raised this issue with the solicitors who acted for Seaway, and who asked him to close the transaction. This was because his clients' mortgage securities were subordinate to $213 million in prior mortgages and purported to secure $62.5 million in equity beyond the $312.5 million Player was simultaneously paying for the properties. Notwithstanding this omission, the Society concedes the lending clients knew of the $312.5 million Player purchase price but were committed to these loans because of personal benefits they would receive due to the improper use of the public deposit moneys.

23. On November 23, 1982, approximately 2 1/2 weeks after the closing, tenants' concerns caused the Government of Ontario to intervene in this transaction. It appointed a commission, (the "Morrison Commission") to make a special examination of the books, accounts and securities of, and to inquire generally into the conduct of Seaway and other trust companies involved in the Cadillac Fairview transaction. Government regulators and Court-appointed Receiver/Managers took control of those trust companies and other Player and Rosenberg companies in January 1983. No payments were made on the Cadillac Fairview mortgages, and the properties were eventually sold in the summer of 1987, for $418 million. The trust company lenders are claiming a loss of $102.4 million on the $152 million they advanced. This claim includes the payments to prior mortgagees to protect their subsequent mortgage positions, net of operating expenses. Not included is over 4 1/2 years of interest on their $152 million advanced.

IV. CONCLUSIONS

24. The Society is in possession of expert advice to the effect that the pattern described in this summary should have become evident to the Solicitor, and that he ought to have become concerned at some point during his retainer that the transactions were suspect, and further that he ought to have realized that he should not have continued to act. The Solicitor elects not to challenge this position or to argue against it or the consequential findings of professional misconduct in these proceedings.

25. Seaway and Greymac have lost substantial amounts on the 17 transactions referred to herein. There is ongoing litigation in which the Canadian Deposit Insurance Corporation is seeking recovery of its losses from Player, certain senior Seaway officials and the Solicitor and his partners.

DATED at Toronto this 9th day of March, 1989."

RECOMMENDATION AS TO PENALTY

The Committee accepts the joint submission of the Society's Counsel and Counsel for the Solicitor, and recommends that David Arthur Allport be suspended from the practice of law for two months.

REASONS FOR RECOMMENDATION

The charge of failing to be on guard against becoming the tool or dupe of unscrupulous clients is an unusual one. Viewed in the abstract, it might even seem like the type of offence that would likely attract a fairly minor penalty.

In this instance, though, the repercussions attached to becoming the tool or dupe of unscrupulous clients were extremely serious. The case itself has attracted much publicity and notoriety. Indeed, experienced counsel for the Society initially felt that the gravity of the situation warranted a submission for at least a lengthy suspension, and possibly for termination of membership. This Committee had been inclined to agree.

However, after much deliberation and analysis, the Committee decided that every effort should be made to ensure that David Allport is penalized only for the offence he committed and not for the notoriety the case has received. In coming to its decision, the Committee considered the following principles:

1. The ability to practise law is not a right; it is a privilege. Those who practise law must fulfil certain qualifications and demonstrate to the governing body that they know the rules, and that they possess the ability to practise in a manner consistent with the rules. Those who practise law in Ontario can be taken to be aware of the reasonable standards required of lawyers and the dangers occasioned to others if they fall below those standards. They should be assumed to know the consequences of their acts.

2. Lawyers are part of a self-governing profession. As such, that self-governing profession has a duty to protect the public and to be seen to be protecting the public. It does this by ensuring that members of the profession adhere to standards of conduct that justify the trust and confidence placed in them by the public and by treating unsatisfactory conduct in a serious and open manner.

3. An appropriate penalty which protects the public should take into consideration, among other things, the seriousness and consequences of the offence, the offender, and any aggravating or mitigating circumstances.

The Committee found that David Arthur Allport had been a dupe of an unscrupulous client. It also found that he had not been dishonest, and that he had not been aware of any fraud or conspiracy to commit fraud.

In examining why the Solicitor had allowed himself to be duped, the Committee considered the following:

1. William Player:

   a) He was considered a good-paying client;

   b) At the time of these transactions, he had acquired a reputation in the real estate community as an innovative and prolific deal maker;

   c) Frequently, he imposed unreasonable time constraints on David Allport involving multiple complex transactions.

2. The Transactions Themselves:

   a) The size of the deals and amounts served to minimize in the Solicitor's mind any possibility of fraud;

   b) Mr. Allport assumed that Seaway's lending policies and procedures had been vetted by its general counsel, Fasken & Calven. In this regard, it is noteworthy that the Society's Auditors have examined the Fasken firm's files and concluded that the firm did not encounter circumstances which should have alerted Mr. Allport to the abuses of those policies and procedures at Seaway Trust;

   c) None of the other five seasoned Toronto law firms acting in the Cadillac Fairview transaction questioned its propriety at the time. David Allport received some of his instructions from some of those firms. Accordingly, he assumed he was dealing with knowledgeable and sophisticated vendors, lenders and purchasers and their respective solicitors. This atmosphere induced him to believe that he would not be required to adopt the same standards that might be expected of a lawyer dealing with clients and parties adverse in interest who were not knowledgeable or sophisticated;

d) The parties valued the properties and struck their deals directly and David Allport was never asked to opine on the business sense of those deals, and therefore, never considered this aspect of the matter.

3. David Allport:

a) At the time of the transactions, he was extremely over-worked;

b) He did not delegate work to others;

c) His wife was extremely ill with Legionnaires' Disease and almost died;

In determining what constitutes an appropriate penalty in this case, the Committee considered the following:

1. Seriousness of the Offence

David Allport was referred to in the hearing as a "corporate scribe". That is, after the first couple of dealings, he likely believed that William Player had a "magic touch". However, after five or six transactions, when he saw that massive profits were being secured with no money down, he should have started asking questions. His behaviour was a significant departure from conduct that could reasonably be expected of a real estate lawyer in the same circumstances.

Accordingly, while the offence of "failing to be on guard against becoming the tool or dupe of unscrupulous clients" is not the most serious that can be committed by a member of the Law Society, this particular transaction is at the higher range of seriousness for this type of offence, insofar as it constitutes "serious duping" with very serious consequences.

2. The Offender

This is the first time David Allport has been before a discipline committee in 25 years of practice.

3. Aggravating Circumstances

a) There were a large number of transactions (17) covering a large number of mortgages (52);

b) The amount of money involved was enormous. For example, William Player has pleaded guilty to fraud in the amount of $13,353,616.00, more or less, in connection with this transaction;

c) Seaway and Greymac have lost substantial amounts of money and litigation is ongoing to recover the money. For example, the damages being claimed for the "flip" involving Cadillac Fairview is $142,209,249.00, involving 73 defendants, including Mr. Allport.

4. Mitigating Circumstances

a) David Allport has admitted the facts in this issue and has thereby saved the Society a considerable amount of time. It was estimated that the accounting evidence alone would likely have taken 40 days to hear;

b) Mr. Allport's behaviour upon being told that he was being investigated by the Society was co-operative throughout. He made himself available for thorough questioning by the Society's Counsel whenever asked, sometimes without his own Counsel being present. His responses and demeanor during all these interviews convinced experienced Counsel for the Society that he was not a

knowing party to William Player's criminality. He provided Counsel for the Society with an 80-page transcript of his interviews with the Ontario Provincial Police about his and others' involvement in the "Greymac Affair";

c) Mr. Allport did not realize any significant financial benefit. While the legal fees his firm earned on the transactions were considerable, they were well within reason. He was not drawing as much money out of the firm as his partners. As a result, his partners, Broadhurst & Ball, were overdrawn in capital while he was in a plus position. He not only lost the $50,000 in capital he brought to the firm when he joined it, but, in addition, he received less than his partners, and he lost the $100,000 capital he accumulated at Broadhurst and Ball. In the final analysis, therefore, he did not receive any special benefit from any of the wrongdoing of William Player or anyone else.

d) Mr. Allport has suffered two devastating financial blows. First, the loss of his $150,000 in law partnership capital, and then the inability for several years to earn a living from the practice of law. His family had to sell their home to purchase a smaller one;

e) He has been investigated by the police and has been under the cloud of the Society's investigation and proceedings for approximately three years;

f) Mr. Allport, his wife, and their two children have been struck very hard financially and emotionally by the publicity surrounding the "Greymac Affair". There has been a severe strain on his marriage. In addition, his wife almost died from Legionnaires' Disease;

g) Mr. Allport has since managed to build a sole practice. A lengthy suspension would destroy this practice;

h) His behaviour after the Society's involvement has been co-operative in other respects as well. For example, he readily complied with the Society's request that he cease sharing space with and accepting referrals from a lawyer who is still facing discipline proceedings based on dishonesty. Counsel for the Society accepted this as a demonstration of Mr. Allport's desire to be no longer associated with anyone suspected of serious wrongdoing;

As well, he has co-operated fully in the Society's investigation of a loan he received from a Cayman financial institution, which loan had been arranged by William Player during the Morrison Commission investigation. He informed his law partners of the loan, and repaid it immediately after they asked him to do so (they were concerned that the loan might be construed as a benefit). While this repayment was made before the Society commenced its investigation, Counsel for the Society concluded that this loan transaction substantiates that Mr. Allport exhibited bad judgment as opposed to an absence of integrity;

i) Mr. Allport testified on behalf of the Crown at the preliminary inquiry in the criminal proceedings against William Player's co-accused's, and will be testifying as required at the trial. The Crown has indicated that there is no question but that the voluntary attendances and information provided to the police by Mr. Allport furthered the investigation;

j) The Committees also took into account letters from the following attesting to Mr. Allport's good character. These letters came from clients (former and present), long-time friends, professional

acquaintances, former law partners, neighbors, a Crown and judges (former and present):

(1) Peter Lynch, of Garafrax Holdings, dated February 10th, 1988;

(2) James E. Parkhill, of Parkhill Industries, York, dated June 26th, 1987;

(3) Ronald E. Sobier, McCarthy and McCarthy, dated April 30th, 1987;

(4) K.M. Allbreck, Vice-President and Director, Bolby and Inc., dated April 15, 1987.

(5) Victor Santaguida, President, Cevit Investments Limited, dated April 29th, 1988.

(6) Martin Gammack, President, Chattem (Canada) Inc., dated May 9th, 1988.

(7) Stephen Herceg, President, Willson McGill Development Inc., dated April 27th, 1988.

(8) Donald H. Lamont, Q.C., dated January 18, 1989.

(9) Donald J. Brown, Q.C., dated January 20, 1989.

(10) Gerald C. Dallas, a Principal of Doane Raymond, Chartered Accountants, dated January 19, 1989.

(11) Ross V. Smiley, Q.C., dated January 23, 1989.

(12) R.A. Prowse, M.B.E., Chairman Emeritus, Garland Commercial Ranges Ltd., dated January 20, 1989.

(13) Dr. Bruce Sullivan, dated January 20, 1989.

(14) Nancy J. Spies, Barrister & Solicitor, dated January 24, 1989.

(15) Stephen Elliott, F.C.A., dated January 23, 1989.

(16) Donald Borthwick, Senior Vice-President, Planning and Development McKim Advertising Ltd., dated January 25, 1989.

(17) David I. Bristow, Q.C., dated January 20, 1988 [sic].

(18) The Honourable Willard Z. Estey, Q.C., dated January 25, 1989.

(19) Glen L. Moore, Vice-President & Director, Scotia McLeod Inc., dated January 24, 1989.

(20) Murray D. Segal, Deputy Director, Crown Law Office, Criminal, Ontario Ministry of the Attorney General, dated January 26, 1989.

(21) Andre W. Feith, President, Tranquillity Properties, dated January 23, 1989.

(22) The Honourable Lorraine Gotlib, dated January 31st, 1989.

Conclusion

The Committee wishes to remind the profession of the need to be on guard against unscrupulous clients. The Committee wishes also to make the profession aware that, but for the enormous number of mitigating circumstances in this case, a higher penalty would have been proposed.

David Arthur Allport was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 19th day of April, 1963.

ALL OF WHICH is respectfully submitted

DATED this 12th day of June, 1989

"D. E. Bellamy"
Denise E. Bellamy

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Report of the Discipline Committee dated 12th June, 1989 be adopted.

Carried

Both counsel and their submissions on the question of penalty indicated that it was a joint submission.

The solicitor, counsel, public and the reporter withdrew.

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

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

On being notified of the decision of Convocation, Mr. Crane requested on behalf of the solicitor that the suspension be effective August 5th, 1989, because of ongoing matters in the solicitor's office. He indicated that the solicitor had consented to short service of the report to Convocation and therefore had not had adequate time to make other arrangements for his practice. The Society had no objection.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Yachetti, seconded by Mrs. MacLeod, that the solicitor be suspended for two months beginning 5th August, 1989.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

The solicitor, counsel and the reporter retired.

.....

"IN PUBLIC"

.....

Re: BRUCE PERREAULT, Toronto

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor was present with his counsel, Mr. Charles Mark. Mr. Shaun Devlin appeared for the Society.

Mr. Levy withdrew and did not participate in the matter.

Convocation had before it the Report of the Discipline Committee, dated 14th October, 1988, together with an Affidavit of Service sworn 26th April, 1989, by Dawna D. Robertson that she had effected service on the solicitor by registered mail on 20th April, 1989 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the Solicitor 22nd June, 1989 (Exhibit 2). Copies of the Report having been sent 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

A. M. Rock, Q.C., Chair
H. MacLeod
R. D. Manes

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

BRUCE PERREAULT
of the City
of Toronto
a barrister and solicitor

Shaun Devlin
for the Society

Charles Mark
for the Solicitor

Heard: April 13, 1989

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

The DISCIPLINE COMMITTEE begs leave to report:

DECISION AND REASONS FOR DECISION
OF THE DISCIPLINE COMMITTEE

On the 3rd day of February, 1987, a Complaint was sworn against Bruce Perreault of the City of Toronto, alleging that he was guilty of professional misconduct, and containing the following single particular:

> During the years 1981 to 1985, he deprived his clients and other members of the public of the sum of $200,000.00, more or less, by recourse to misrepresentations which induced these persons to give moneys to the solicitor."

Your Committee received in evidence an Agreed Statement of Fact, which is annexed to this Decision as Appendix "A". The Committee also heard evidence on 8 days between August 25, 1987 and March 23, 1988, during which the Committee heard from 17 witnesses.

I. GENERAL BACKGROUND OF THE CASE

During the period September, 1982 to August, 1985, Mr. Perreault took approximately $200,000.00 from clients, whether by way of loan, intended "investment" or straight misappropriation. In the Fall of 1986, Mr. Perreault was charged by the police with 40 counts of fraud and theft relating to those transactions. All counts were subsequently withdrawn at the request of the Crown.

Mr. Perreault now faces a Complaint of professional misconduct with respect to those events. Mr. Perreault admits that he took the money. However, he is relying upon the defence of insanity, alleging

that a combination of psychiatric illness and alcoholism resulted in an impairment of his judgment and insight to the extent that he should not be held culpable for the acts which he has admitted. In order to assess this defence, it will be necessary to review the relevant facts and applicable law.

II. SOLICITOR'S BACKGROUND

Bruce Perreault was born on September 1st, 1947 in Antigonish, Nova Scotia, the third eldest of eight children. There is a family history of both alcoholism and bipolar affective disorder, which is commonly known as "manic-depressive illness." Two of Mr. Perreault's siblings are now being treated for that disease, while a third is displaying symptoms of it.

Mr. Perreault started his university career at St. Frances Xavier University in Antigonish. He was, however, expelled after his first year there. Mr. Perreault felt that his expulsion may have been due to the fact that he had put the University into debt over their Winter Carnival of which, at the time, he was in charge.

Mr. Perreault later attended Loyola College in Montreal, majoring in both political science and English. He also wrote poetry, and two books of his poems were published.

Mr. Perreault entered McGill Law School in 1971 from which he graduated in 1974. During his stay at McGill, he was called in at one point by the late F.R. Scott, then the Dean of the law school, who gave Mr. Perreault some advice. The Dean stressed that Mr. Perreault had a tendency to, he thought, use his poetic mind a bit too much and that Mr. Perreault ought to "calm down". He felt that Mr. Perreault was "doing some odd things" at the law school.

Upon graduation from McGill, Mr. Perreault came to Toronto in January of 1975. He served his articles with Alan F.N. Poole, a prominent family law practitioner.

Up to this point in his life, Mr. Perreault had experienced episodes of unusual behaviour that he could not explain to himself. He sometimes found himself in distant places without realizing why he had gone there. He sometimes behaved in a bizarre fashion exhibiting feelings of grandiosity and displaying poor judgment, without understanding why.

Notwithstanding these unusual episodes, Mr. Perreault succeeded in his studies and impressed Mr. Poole as an able student.

Mr. Perreault married in September of 1975. He feels that by that time, he had developed an addiction to alcohol.

The episodes of unusual behaviour continued sporadically, and were commonly characterized by "delusions" that would lead him to behave as though he was someone else. He remembers being on an airplane with his wife and daughter travelling to Hawaii, and being overcome with the belief that his wife was the daughter of the Governor General. He persuaded the flight attendants of her importance with the result that she was accorded special treatment. He testified that he would sincerely believe such delusions at the time, and that many such episodes have occurred over the years.

Mr. Perreault has testified that in many ways, life to him was "like a movie". Sometimes he was able to step out of the movie, but most of his life was lived in that fashion. On occasions when he would act under the influence of a delusion, and even if his conduct at those times was socially inappropriate or embarrassing, he would not later feel any pangs of conscience or remorse.

Mr. Perreault enrolled in but soon dropped out of the Bar Admission Course in 1976. He became persuaded that he could become a millionaire in the fur business, although he had no background, experience or training in the field. The venture failed, and he returned to the Bar Admission Course in the Autumn of 1977 and was called to the bar in the Spring of 1978. He then began his practice as an associate in the office of Alan F.N. Poole.

Mr. Poole testified. He recalled Mr. Perreault as an able young solicitor, who worked very hard and was liked by both clients and other lawyers. He was initially very satisfied with Mr. Perreault's work. As the years went by, however, Mr. Perreault docketed fewer and fewer hours. By November of 1983, Mr. Poole felt that Mr. Perreault had "stopped working".

Mr. Poole also became concerned about Mr. Perreault's use of alcohol over the years. In 1982, the two men discussed the problem and Mr. Perreault explained to Mr. Poole that he drank because of pressures at home and difficulties with his wife. He also spoke to Mr. Poole about some financial problems, saying that he owed both income taxes and other debts.

Mr. Perreault practiced with Mr. Poole from 1978 until 1984. Mr. Perreault testified that during that period he continued to experience bizarre and unusual episodes. In 1979 he recalls having taken a trip with his family to the Maritimes where he somehow obtained the use of the Queen Mother's limousine, driver, bodyguard and pipers. Once again, he testified that he seemed to be "in a movie". Mr. Perreault became convinced that he was "a special person" and drove through the countryside as though he was royalty. He insisted in his testimony that this incident was not just a prank: rather, he was living out a genuinely held -- if false -- belief.

He testified that he felt unconcerned about financial matters, and did not think about where the money would come from to support himself and his family.

After the birth of Mr. Perreault's first child in September of 1977, he became fixated on the idea that someone was going to kidnap the boy, and alerted the nursery school. The concern was entirely without rational foundation.

Mr. Perreault left Mr. Poole's office to commence his private practice in February of 1984. On March 1st, 1984, he stopped drinking alcohol and joined Alcoholics Anonymous. He has not consumed alcohol since that time.

In January of 1985, Mr. Perreault was confined to the Toronto General Hospital with a serious mental illness. He was admitted while in a psychotic condition, and was kept in hospital until mid-March of 1985. In June of 1985, Mr. Perreault attended at the Law Society, with his then counsel, to reveal the facts giving rise to the Complaint. Mr. Perreault filed an assignment in bankruptcy in July of 1985.

III. THE IMPUGNED TRANSACTIONS

Mr. Perreault was closely examined about the transactions referred to in the Agreed Statement of Facts and by which he obtained clients' money. Mr. Perreault was often unable to provide a satisfactory explanation in testimony. He told the Committee that he simply did not remember some of the transactions, although through counsel, Mr. Perreault agreed with the description of the transactions as set out in the Agreed Statement of Facts. With respect to the transactions, Mr. Perreault testified that he simply "felt entitled" to take the clients' money. He testified that he felt he was following some ultimate design or ordained plan, and that taking the money was the right thing to do at the material time.

Mr. Perreault also testified that he felt that the law and the rules and regulations of the Law Society did not apply to him. He felt certain that his clients would get their money back eventually.

In his testimony, Mr. Perreault was only able to recall material aspects of two of the instances relied upon by the Law Society in support of the complaint: those dealing with Mr. Zemdegs and Thomas McLaughlin.

Mr. Perreault has no material recollection in relation to the allegations involving the clients Legett, Gallo, Campone, Gill, Recine or Byers.

One of the medical witnesses who testified was Dr. Peter Rowsell, who is a psychiatrist of great learning and experience. Dr. Rowsell attended the entire hearing. His evidence will be referred to in detail hereinafter. Dr. Rowsell testified that an absence of recollection by Mr. Perreault of these matters need not be seen as a sinister sign. According to his evidence, the thought processes of a person suffering from Mr. Perreault's ailment may go so fast that the registration of the event is defective.

* * *

We propose to deal separately with the evidence relating to each of the various incidents of alleged wrong doing, culling the material facts from the testimony of the witnesses. For ease of reference, we have annexed as Appendix "B" to these reasons a document that was in evidence before us as part of Tab 25 of Exhibit 4. It is a summary showing the names of the clients whose money was taken, the amounts taken and the dates of the occurrences.

Radis Zemdegs

Mr. Zemdegs retained Alan Poole's firm in 1980 regarding a divorce and custody matter. Mr. Perreault was given sole carriage of the file and successfully negotiated custody of Mr. Zemdeg's son. Mr. Zemdegs describes Mr. Perreault as being a "very professional lawyer...he had, I would almost call it, a flair of brilliance in terms of setting out an objective and going after it in terms of the custody situation."

Mr. Zemdegs never felt that Mr. Perreault was incapable of grasping the consequences of the legal actions he was taking or the practical advice he was giving. Mr. Zemdegs did, however, notice that the solicitor's mood could swing from his being a "tremendously optimistic fellow" to someone who was "more subdued".

In 1982, Mr. Perreault negotiated a financial agreement with Mrs. Zemdegs' solicitor whereby Mr. Zemdegs was required to pay his wife $3,000.00 for each of four years followed by a final payment in the fifth year of $4,500.00. Curiously, the minutes of settlement contained an express provision requiring Mr. Perreault personally to guarantee the payments.

Mr. Perreault advised Mr. Zemdegs that Mr. Zemdegs had to borrow $15,000.00 and deliver it to Mr. Perreault to be held in trust. He told Mr. Zemdegs to write post-dated cheques to his wife for the five payments and that he (Mr. Perreault) would advance enough from the funds in trust for Mr. Zemdegs to deposit into his bank account to cover those cheques as they became due. Mr. Perreault said that he would give Mr. Zemdegs $3,000.00 each year from 1982 to 1986 and that those funds, plus a further $1,500.00 to be advanced by Mr. Zemdegs in 1986, would discharge the liability to Mrs. Zemdegs.

Mr. Perreault was not truthful with Mr. Zemdegs. While there was a financial agreement with the wife's solicitor, there was no requirement that Mr. Zemdegs borrow the moneys nor that Mr. Perreault hold them in trust until payment.

Acting on the solicitor's advice, Mr. Zemdegs borrowed $15,000.00 and gave it to Mr. Perreault in or about September, 1982. Mr. Perreault took the moneys and used it for his own purposes. He advanced Mr. Zemdegs $3,000.00 in order to fund the payment due in 1982.

Mr. Zemdegs did not receive the second $3,000.00 sum from Mr. Perreault in 1983 and, in January or February of 1984, Mr. Zemdegs called Alan Poole to make inquiries. He was told that no money remained in Mr. Poole's trust account. Mr. Zemdegs then spoke to Mr. Perreault who gave him $3,000.00 for the 1983 payment and subsequently gave him another $3,000.00 for the 1984 payment. Mr. Perreault also told Mr. Zemdegs that the moneys had never been held in trust on Mr. Zemdegs' behalf. Mr. Zemdegs chose not to make any complaint to anyone at that time.

Mr. Zemdegs felt that Mr. Perreault had trouble at times understanding his responsibilities, and that Mr. Perreault "couldn't appreciate the true value or his responsibility in what he owed his client." Mr. Zemdegs did say that even though Mr. Perreault was late with payments, he was still dependable. Mr. Zemdegs said that, professionally, if Mr. Perreault promised something, he delivered it. Finally, Mr. Zemdegs found Mr. Perreault "more in control of his professional conduct than he was in terms of his personal conduct". Mr. Zemdegs' impression was that Mr. Perreault knew the law.

Mr. Zemdegs testified that he regarded Mr. Perreault as a great lawyer with a flair for brilliance. However, he was able to remember episodes of very unusual behaviour on Mr. Perreault's part:

1. at one point, Mr. Perreault wanted to start an airline and have Mr. Zemdegs leave his job at Hydro to work for the airline;

2. in 1980, Mr. Perreault took Mr. Zemdegs to Boston where he hired a Cadillac, put flags on it, and pretended that he was the Canadian Ambassador;

3. Mr. Zemdegs observed Mr. Perreault to have a delusion that his son would be kidnapped;

4. Mr. Zemdegs noticed that on one occasion, Mr. Perreault was afraid that he was under surveillance by the mob;

5. Mr. Zemdegs noticed Mr. Perreault's many mood swings; and

6. Mr. Zemdegs observed that even Mr. Perreault's abstinence from alcohol did not end his grandiose ideas.

For his part, and in relation to the Zemdegs allegations, Mr. Perreault testified that he did not recall getting the $15,000.00 from his client, nor having to guarantee the payments. He provided the Committee with his perspective as follows:

> ".....to me in my life there was nothing wrong with that [i.e., taking his money]. Some days, I believed, that all of this would be made into part of what was to be and to me these people would be part of whatever was going on in my mind and that what I was doing was helping them ... I believed there was some design for me and that this was the right thing for me to do at that particular time ... I felt I was entitled to the money".

Mr. Perreault testified with respect to the same feeling of "entitlement" in relation to the allegations concerning Mr. McLaughlin (post).

When Mr. Perreault filed for bankruptcy, Mr. Zemdegs became aware that he would not receive money from him to make the final payments. Mr. Zemdegs then complained to the Law Society and sought compensation.

The Compensation Fund Committee considered Mr. Zemdegs' claim and made a grant to him of $6,000.00. The grant was equal to the amount of money that should have remained in Mr. Perreault's trust account.

Thomas McLaughlin

Mr. McLaughlin retained Alan Poole's firm to act on his behalf in a matrimonial matter. Mr. Perreault was given carriage of the matter and thereafter Mr. McLaughlin dealt exclusively with Mr. Perreault.

In or about September of 1982, Mr. Perreault acted on the sale of the McLaughlin matrimonial home pursuant to the minutes of settlement signed in the divorce matter. As a result of the sale, Mr. Perreault received the sum of $20,576.74 in trust for Mr. McLaughlin. He paid certain amounts to third parties at the direction of Mr. McLaughlin with the balance of $12,461.67 remaining in trust.

Mr. Perreault then prepared a letter dated October 12th, 1982 in which he purported to account for the total sum of $20,576.74 and further purported to forward a trust cheque payable to Mr. McLaughlin with that letter in the amount of $12,461.67.

A cheque in the amount of $12,461.67 payable to Thomas McLaughlin was prepared by the office of Alan Poole and issued at the request of Mr. Perreault. The cheque was signed by Alan Poole because he was the only member of the firm who had signing authority on the trust account. When Mr. Poole signed the cheque, he believed Mr. Perreault would forward the funds to the client. The cheque was never given to Mr. McLaughlin. Instead, it was deposited to Mr. Perreault's bank account at the Royal York Hotel branch of the Bank of Montreal. The evidence concerning the circumstances under which this occurred was not clear, but the Committee believes it to be a fair inference -- and we so find -- that Mr. Perreault forged his client's signature on the cheque.

When asked in testimony about the impression he had formed of Mr. Perreault as a lawyer, Mr. McLaughlin said that he felt that Mr. Perreault "was an extremely good lawyer," and that he knew what he was talking about as a lawyer and "was very brilliant". "The man I know as representing me, he was also ..... he had his composure, could handle himself well at all times and conducted himself well". Mr. McLaughlin said he never developed any fears that Mr. Perreault might not know what he was doing with regard to his case. "I had the greatest confidence in him. He gave you that when you went into a courtroom".

In December of 1982, Mr. McLaughlin was told that a loan was outstanding at the Canadian Imperial Bank of Commerce and had not been repaid. It was Mr. McLaughlin's understanding that Mr. Perreault was to have repaid that loan out of the proceeds from the sale of the matrimonial home which Mr. Perreault received in trust.

Mr. McLaughlin called Mr. Perreault, and they met at a hotel in Toronto. Mr. Perreault agreed to repay the $12,461.67 to Mr. McLaughlin and, in particular, agreed to retire the outstanding C.I.B.C. loan as part of that repayment. He subsequently did so.

On or about February 20th, 1983, Mr. Perreault paid Mr. McLaughlin a further $2,000.00. The total amount owing to Mr. McLaughlin at this point was $6,858.39 after adjusting for other small amounts repaid.

Mr. Perreault subsequently advised Mr. McLaughlin that he had left the firm of Alan Poole, and Mr. McLaughlin consented to his continuing to handle the divorce matter. In or about December, 1984, Mr. Perreault repaid a further $1,000.00 of his own funds to a third party at the direction of Mr. McLaughlin. This was the last repayment by Mr. Perreault, leaving a final balance owing to Mr. McLaughlin of $5,858.39.

During one of their conversations regarding the funds, Mr. Perreault told Mr. McLaughlin that he would get into difficulty with the

Law Society if it was discovered that he had taken the moneys. He also told Mr. McLaughlin that he (Mr. Perreault) might lose his wife and family if the theft was discovered. Mr. McLaughlin agreed to Mr. Perreault's request not to contact the Law Society as long as Mr. Perreault paid him back.

In his testimony, Mr. Perreault did not recall having asked Mr. McLaughlin not to report the matter to the Law Society. However, he conceded that since his recollection is poor, it would be better to accept Mr. McLaughlin's version of those events.

Mr. McLaughlin ultimately retained another solicitor, and the divorce matter was completed in or about August, 1985.

Mr. McLaughlin was advised on or about July 8th, 1985 that Mr. Perreault had made an assignment in bankruptcy, and he made a complaint to the Law Society in writing on July 31st, 1985. A payment by the Compensation Fund Committee in the amount of $3,000.00 was subsequently made to Mr. McLaughlin.

Ralph Leggett

Mr. Leggett was a client of Mr. Perreault regarding a matrimonial matter while the latter was an employee of Alan Poole. Mr. Perreault negotiated on minutes of settlement on behalf of Mr. Leggett. By the terms of the settlement, Mr. Leggett was to pay Mr. Perreault $10,000.00 to be held in trust until a Decree Absolute was pronounced, after which the funds were to be paid by Mr. Perreault to the solicitor for Mrs. Leggett.

Mr. Leggett gave the money to Mr. Perreault in January of 1984. Mr. Perreault did not deposit the money into the trust account but appropriated it for himself. When the Decree Absolute was pronounced in the summer of 1985, Mr. Perreault was not able to pay the $10,000.00 to the wife's solicitor. As a result, Mr. Leggett was compelled to borrow $10,000.00 from a family member to make that payment.

Mr. Perreault testified that he has no recollection of having received the money, nor any idea how it got into his personal bank account instead of the trust account.

Mr. Leggett subsequently made a claim to the Compensation Fund regarding the $10,000.00 as well as an additional $500.00 which had been advanced to Mr. Perreault over a period of time by way of a retainer but for which a fee billing had never been issued. He was awarded a grant of $10,000.00 from the Fund.

Maria Gallo

Mr. Perreault was originally retained by Mrs. Gallo in a matrimonial proceeding while he was an employee of Alan Poole. Subsequently he continued to have carriage of the file while he was a sole practitioner.

In September of 1984, Mr. Perreault met at his office with Mrs. Gallo, Mr. Gallo and his solicitor. Minutes of settlement were signed whereby two payments were to be made to Mrs. Gallo, each in the amount of $15,000.00 on October 1st, 1984 and on December 1st, 1984. Mr. Perreault took this money and used it for his own purposes.

Cheques in those amounts payable to Mrs. Gallo were delivered to Mr. Perreault on September 27, 1984. Mr. Perreault subsequently put the December 1 cheque before Mrs. Gallo and asked her to endorse it and return it to him, which she did. Mr. Perreault told her that her husband's solicitor had only delivered one cheque and that the October 1, 1984 cheque would have to be delivered later. Mr. Perreault also said that Mr. Gallo might not have the money in his bank account right away, and that Mr. Perreault would cash the December 1 cheque when the money was put in the account.

Mr. Perreault telephoned Mrs. Gallo during the first week of October and said that Mr. Gallo had not put the money in his account. This statement was false.

Mr. Perreault called Mrs. Gallo a week or so later and made a statement to the same effect which again was false. Mrs. Gallo suggested that she should give her former husband a telephone call to ask why he had not honored the cheque. Mr. Perreault told her it was not necessary and that he would do it for her.

Mr. Perreault made another telephone call to Mrs. Gallo in December, 1984, again falsely advising that Mr. Gallo had not put the money in the account. Mrs. Gallo made several attempts to contact Mr. Perreault during and after January, 1985 but was unsuccessful. Her next telephone contact with Mr. Perreault was in May, 1985, when he told her that he was going to be filing for bankruptcy and that she would receive a notice regarding the matter.

Mrs. Gallo made a claim to the Compensation Fund in the amount of $30,000.00, which was fully paid by the Fund.

Doug and Brenda Campone

Mr. Perreault initially represented Mr. Campone in a matter pertaining to Mr. Campone's first marriage. After Mr. Campone remarried, Mr. Perreault acted for the second Mrs. Campone in relation to a child support matter arising from her first marriage. Speaking of Mr. Perreault's professional conduct, Mrs. Campone found him very competent. "...He was always ready and always prepared." "I was confident in his ability".

In early February of 1985, Mr. Perreault telephoned Mr. and Mrs. Campone from the Toronto General Hospital and asked them to visit him. When they did so, Mr. Perreault told them he was trying to raise funds to obtain a controlling interest in a company which was marketing mineral water. He told them the company was located in Nova Scotia and had been approved by the Minister of Consumer and Corporate Affairs. Mr. Perreault advised them that he would not be able to pursue the investment unless he could raise the necessary moneys. He told them that if they contributed money, they would have an equity participation in the company. He also assured them that if the total funds could not be assembled for the project, the Campone cash advance would be treated as a loan and would be repaid to them with interest.

Mrs. Campone borrowed the moneys from a chartered bank and advanced them to Mr. Perreault who provided her with a receipt for the funds. A copy of the receipt was before the Committee.

Mrs. Campone telephoned Mr. Perreault on March 28, 1985 and asked him about the progress of the investment. He seemed somewhat evasive but she did not become concerned because she thought he was suffering from mental fatigue. She did not pursue the matter with him at the time. On May 22, she telephoned Mr. Perreault at his office to enquire as to the funds. Mr. Perreault was extremely evasive and made some remarks about the situation being "complicated". Mr. Perreault then told Mrs. Campone that he could not recall having received the funds and that he had no idea where the moneys might be.

Mrs. Campone subsequently complained to the Law Society when she became aware of Mr. Perreault's assignment in bankruptcy. Her claim to the compensation Fund of $3,000.00 resulted in a grant of $1,200.00 being paid to her.

Kurt Huebner

Mr. Huebner retained Alan Poole's firm in 1978 regarding a contested matrimonial matter. Mr. Perreault was given carriage at that time and conducted a five-day trial on Mr. Huebner's behalf in April,

1981. The Decree Absolute was pronounced in 1982. In the result, Mr. Huebner received $125,000.00 and was well satisfied with the manner in which the matter had been handled.

After the termination of the case, Mr. Huebner kept in touch with Mr. Perreault by mail. At times he would ask Mr. Perreault's advice on business matters.

In March or April of 1985, Mr. Perreault telephoned Mr. Huebner and said that he knew someone who needed a second mortgage. He told Mr. Huebner that the amount required was $15,000.00 and that the interest rate would be 1 percent over prime, 14 percent in total, and would be for a two-year term.

In fact, there was no second mortgage investment, and Mr. Perreault intended to take the money for himself.

Mr. Huebner arranged for the $15,000.00 by recalling a loan from a friend. Mr. Huebner received a certified cheque in the amount which he endorsed over to Mr. Perreault who provided him with a receipt for $20,000.00. A copy of the receipt was before the Committee.

(Mr. Huebner testified before the Referee appointed by the Compensation Fund Committee that he advanced Mr. Perreault an additional $5,000.00 in cash which accounted for the receipt being $20,000.00. The Referee was not satisfied on the balance of probabilities that Mr. Huebner had advanced the additional $5,000.00. The reasons given by the Referee were before the Committee).

Proper documents recording the second mortgage were to follow. However, they were never provided by Mr. Perreault. Mr. Huebner complained to the Law Society after Mr. Perreault's assignment in bankruptcy. Ultimately, a grant of $15,000.00 was made to him from the Compensation Fund.

Gary Gill

Mr. Gill met Mr. Perreault prior to 1981 at a time when Mr. Gill was interested in investing in Toronto real estate. He and Mr. Perreault discussed investing in real estate on several occasions.

On January 20, 1981, Mr. Gill advanced Mr. Perreault $7,000.00. The advance was secured by a promissory note coming due February 20, 1981 at an interest rate of 20 percent.

Mr. Gill advanced a further $67,000.00 on February 13, 1981 which was secured by a fourth mortgage on Mr. Perreault's home at 90 Gothic Avenue. Mr. Gill was represented by an independent solicitor in the transaction.

Both of those amounts were to be invested by Mr. Perreault on Mr. Gill's behalf in real estate. However, Mr. Perreault did not at any time use those funds towards real estate investments but appropriated them for his own purposes.

In his testimony before the Committee, Mr. Gill asserted that after February of 1981, he asked Mr. Perreault for a status report concerning his investment each time they spoke, which was about every month. He testified that Mr. Perreault always told him the funds had been invested, that he was not to worry, and that everything was in good hands. Mr. Gill testified that Mr. Perreault never gave specific answers as to the kind of investment it was and whether documentation was available. At one point, Mr. Perreault took Mr. Gill with him to New York City in July of 1984, telling Mr. Gill that a meeting was to take place there concerning the investment. Mr. Perreault left Mr. Gill sitting outside a boardroom while Mr. Perreault pretended to be in a meeting concerning the investment. The entire matter was an elaborate ruse, since the meeting was about something else entirely different.

The funds were never repaid and, on October 17, 1983, Mr. Perreault's home was sold under Power of Sale for $155,000.00. There were not sufficient funds from the proceeds to make payment towards either the existing third mortgage or Mr. Gill's fourth mortgage.

Mr. Gill made a claim to the Compensation Fund for the principal amount of $74,000.00. That claim was denied by the referee on the basis that the funds may have been advanced as a loan and because Mr. Gill had never had a solicitor-client relationship with Mr. Perreault. However, because Mr. Gill's troubles were "undoubtedly caused or largely contributed to by a dishonest practising lawyer in whom he placed trust", a nominal ex gratia payment was recommended.

Peter Recine

Mr. Recine retained Mr. Perreault in November of 1984, and gave him a retainer of $2,500.00 to act in a matrimonial matter. A Separation Agreement was eventually entered into. It provided, among other things, that certain moneys from the sale of the matrimonial home would be paid to Mr. Recine's parents.

At the time, Mr. Recine was living in Nassau. Mr. Perreault received a $15,000.00 certified cheque payable to Mr. Recine's parents from the wife's solicitors following the sale of the Recine home. Subsequently, Mr. Perreault spoke to Mr. Recine about an investment he planned to make, and he asked Mr. Recine whether he wished to invest. Mr. Recine agreed to do so and instructed his parents to endorse the $15,000.00 cheque to Mr. Perreault. His parents complied with the request and forwarded the cheque to Mr. Perreault. In return, Mr. Perreault gave a promissory demand note dated March 25, 1985 for $18,000.00 in favour of Mr. and Mrs. Recine Sr.

Mr. Perreault applied the funds to his own use. Mr. Recine Jr. complained to the Law Society after Mr. Perreault's assignment in bankruptcy. His claim to the Compensation Fund was denied on the basis that Mr. Perreault was not acting in his capacity as a Solicitor when he obtained funds from Mr. Recine.

Joy Byers

Mrs. Byers retained Mr. Perreault in or about February of 1984 to act in a matrimonial matter which had previously been commenced on her behalf by another solicitor.

On or about July 14, 1984, Mr. Perreault borrowed $2,400.00 from Mrs. Byers.

On or about July 25, 1984, a separation agreement was executed between Mr. and Mrs. Byers. Further to that Agreement, the solicitor for Mr. Byers forwarded a cheque for $75,000.00 to Mr. Perreault on or about August 1, 1984.

Mr. Perreault attended at Mrs. Byers' home with the cheque and asked her to lend him the money to assist him with his practice. Mrs. Byers agreed to lend Mr. Perreault $10,000.00. Mr. Perreault expressed concern regarding the propriety of borrowing from a client and asked Mrs. Byers to "structure" the loan through her daughter. Mrs. Byers did so and Mr. Perreault executed a receipt to Catherine Byers (the daughter) for $10,000.00 dated August 1, 1984.

Mr. Perreault subsequently developed a close relationship with Mrs. Byers. On or about October 31, 1984, Mr. Perreault approached Mrs. Byers again and asked to borrow an additional $7,000.00 to be invested in his practice. Mrs. Byers loaned him $5,000.00 and Mr. Perreault provided a receipt to her dated November 1, 1984. On November 7, 1984, Mr. Perreault executed a repayment schedule acknowledging his debts as at that time to Mrs. Byers.

In or about July, 1985, Mr. Perreault asked Mrs. Byers to lend him the further sum of $10,500.00. Mrs. Byers loaned the sum to Mr. Perreault who provided her with a receipt for $10,500.00 dated July 31, 1985.

During the period August, 1984 to August, 1985, Mrs. Byers advanced further sums to Mr. Perreault for personal expenses. The nature and the amount of those advances are currently unknown.

Mrs. Byers complained to the Law Society in September, 1985, and subsequently made a claim to the Compensation Fund. Her claim in the total amount of $66,400.00 is pending.

The Medical Evidence

The Committee heard the testimony of two psychiatrists testifying with respect to the nature and effects of bipolar affective disorder, or "manic-depressive illness".

The first of these physicians was Dr. Russell Joffe, who has been treating Mr. Perreault since August of 1985. In the course of his psychiatric training, Dr. Joffe worked for two years at the National Institute of Mental Health in Washington, D.C. and particularly under a physician who is a pioneer in the use of carbamazepine, which is also known by the trade name "Tegretol". Dr. Joffe has co-authored about 20 articles on the use of Tegretol in the management of patients with mental illness. He is now on the staff of St. Michael's Hospital in Toronto where he is involved in a Mood Disorders Clinic. He has also engaged in research work on Tegretol at St. Michael's.

After having met Mr. Perreault in August of 1985, Dr. Joffe and his colleagues at St. Michael's Hospital took a very detailed history from him, including particulars of the age of onset and the nature and course of the manic depressive illness over the years up to 1985. It appears that Mr. Perreault was not diagnosed as a manic-depressive until his hospitalization at the Toronto General Hospital in February of 1985. At that time, Lithium was prescribed to him, but was unsuccessful in regulating his moods.

Dr. Joffe spent a considerable amount of time with Mr. Perreault, systematically going over his past behaviour and trying to plot the changes in mood that had occurred over time. He used a scientific method which is well described in the literature and which provides very detailed information. It involved both Dr. Joffe and his extensively trained assistants in determining Mr. Perreault's clinical history.

Dr. Joffe came to several conclusions as a result of his work with Mr. Perreault. Firstly, he concluded that Mr. Perreault was clinically depressed when they first met in August of 1985. He saw Mr. Perreault frequently thereafter and actually requested that Mr. Perreault call him whenever he had a change of mood, and to come in so that Dr. Joffe could examine him. Dr. Joffe therefore saw Mr. Perreault during a "high phase" and during a depression.

He found that Mr. Perreault had difficulty recalling many of the events of his past, so that it was necessary to spend a fair amount of time obtaining a systematic history from him. Mr. Perreault's failure to remember did not indicate to Dr. Joffe any intentional withholding of information, but rather was seen to be a very common occurrence in patients with this sort of disorder. Dr. Joffe testified that patients with this disorder often find it very difficult to recall events that happened during the episodes. Furthermore, Dr. Joffe saw Mr. Perreault at a time when his memory would have been affected by Lithium.

Over a period of weeks, Dr. Joffe concluded that Mr. Perreault suffers from a particular variant of manic-depressive illness that involves rapid cycling between mania and depression. He described manic-depressive illness a genetic disorder that runs in families and

that affects approximately 1 percent of the population. It is skewed toward the upper social classes and the professions and it has psychological, social and biochemical components.

Dr. Joffe found clear evidence that at least three other members of Mr. Perreault's family who would be classed as first degree relatives have the same disorder. He also found a family history of alcoholism. He testified that there is a genetic link between alcoholism and bipolar affective disorder. Dr. Joffe testified that alcoholism and manic-depressive illness appear to run together in families and that people with mood disorders drink excessively.

The sub-type of manic-depressive illness that Mr. Perreault suffers from is known as "rapid cycling bipolar affective disorder". It was recognized in the late 1970's and is defined by convention as a person who has more than four episodes in any one calendar year. The most frequent cycling reported is 24 to 48 hours.

Rapid cyclers comprise about 10-15% of manic-depressive patients. They are much more difficult to diagnose because they are cycling so rapidly that it is often hard to discern their mood state. Dr. Joffe testified that recent research suggests that a manic-depressive may become a rapid cycler in his or her late 30's or early 40's and that there are certain precipitants to that change which include alcohol. He testified that there is clear evidence that a patient who starts to take excessive amounts of alcohol may convert from conventional slow cycles to very rapid and frequent mood cycles.

When asked to express an opinion about the onset of manic-depressive illness in Mr. Perreault, Dr. Joffe told the Committee that he could not fairly discern its onset but that he was certain that the illness goes back to Mr. Perreault's early college days. Dr. Joffe testified that the appearance of rapid cycling occurred around 1979 or 1980, although he could not give an exact date, and that Mr. Perreault was rapid cycling right up until 1985 when he suffered a major psychotic break and entered hospital. Dr. Joffe said that Mr. Perreault continued to cycle rapidly - as much as once every 24 to 48 hours - until March of 1986 when his condition was finally brought under control by the administration of Tegretol under Dr. Joffe's supervision.

Dr. Joffe began to administer Tegretol in September of 1985. He found Mr. Perreault a willing and enthusiastic patient who took the treatment precisely as prescribed. The drug is such that Dr. Joffe was required to take a blood test every week to monitor the levels of the drug in Mr. Perreault's system. Those tests established that Mr. Perreault was taking the drug as prescribed and was complying completely and willingly with every aspect of the treatment prescribed.

Dr. Joffe emphasized that more than simply Tegretol was required in order to overcome Mr. Perreault's problems. He made it clear to Mr. Perreault when treating him that it would be necessary for him to make modifications in his daily life to facilitate the management of the illness. He would have to lead a regular lifestyle, including normal sleep/wake habits, eat properly and avoid detrimental personal relationships. At Dr. Joffe's recommendation, Mr. Perreault brought to an immediate end an extended relationship he had had with Joy Byers, who is one of the clients referred to in this Decision. Dr. Joffe had met with and interviewed Joy Byers and had come to the conclusion that her relationship with Mr. Perreault was not a positive one for him.

Dr. Joffe emphasized that Mr. Perreault has been a perfectly compliant patient who has never cancelled an appointment, who has always called in when required to do so and who has never resisted the blood tests that are used to determine whether a patient may not be taking the drug as prescribed.

Mr. Perreault continues to see Dr. Joffe weekly, and blood tests are performed at that interval to monitor the Tegretol in his system. These weekly meetings also consist of a mental status review by Dr. Joffe in which a systematic assessment of Mr. Perreault's mental state is undertaken, including his mood, his habits, the presence or absence of psychotic symptoms and a general review of the activities of the week to make sure that there is no sign of a relapse.

Dr. Joffe found that after three or four months of Tegretol therapy, Mr. Perreault's mood stabilized and since early 1986, he has lived "pretty much a normal life as best I can tell". Dr. Joffe has found virtually no evidence of mood disorder since that time. In his words "It's been remarkably stable".

Dr. Joffe expressed the opinion that the prognosis for Mr. Perreault is excellent. He feels that if he can continue with the drug therapy and a regular lifestyle, Mr. Perreault will be essentially free of mood disorder in the future.

When asked to describe the depression that he observed in August of 1985, Dr. Joffe referred to it as "quite severe". Mr. Perreault was hopeless, felt worthless and was at times even suicidal although there was no evidence of suicide attempts. Dr. Joffe on one or two occasions was close to readmitting Mr. Perreault to hospital.

In speaking of the quickness with which Mr. Perreault's mood could change during the period that he was untreated by Tegretol, Dr. Joffe explained that Mr. Perreault was capable of going from one phase to another instantaneously. In a matter of a few minutes, he could become manic or even psychotic.

When asked about whether Mr. Perreault would be able to withstand the stress of practice, Dr. Joffe expressed the opinion that it would have no effect on his illness. While asserting that Mr. Perreault would have to make some accommodations, as anyone with a chronic illness would, he felt that Mr. Perreault would be able to keep regular appointments and carry on. He would require a good night's sleep and to eat properly. In the course of his testimony, Dr. Joffe was asked and answered the following questions from the Committee:

> "In this particular case, in Mr. Perreault's case, do you have any opinion to pass as to whether the conduct which brought us here is a manifestation of his disorder...or whether it is an indication of dishonesty?"

Dr. Joffe:

> "In my best opinion it was a manifestation of his disorder for two reasons: 1. It's classically found in the disorder and secondly in my best estimate he spent so much time sick in the last years that it would be hard to find time when he was well enough to be bad, distinct from his disorder. ....I have had occasion with Mr. Mark and with Mr. Perreault to hear about some of (the particulars), I am not sure I know all of them, but the use of funds and some other behaviour certainly I am aware of and would - they are fairly consistent with the financial impropriety and the recklessness which is characteristic of a manic episode."

When asked by the Committee whether Mr. Perreault's misconduct could have been motivated by factors quite apart from his illness, Dr. Joffe said the following:

> "It is possible but highly unlikely in my opinion. Once again, because he was ill so much of the time."

Next, Dr. Joffe was asked whether someone in Mr. Perreault's state could be motivated by the illness to act dishonestly, yet still conduct

his business and professional affairs in a sane manner:

> "Yes. The disorder and the disability which is associated with it is not a global one, unfortunately, and the patient can have periods of time where they function extraordinarily well and then for one reason or another will become quite bizarre, lose judgement and do something which is strange or, for example, go out and buy a building or go out and buy 10 cars and then go back to work and do whatever they were doing quite logically."

Dr. Joffe emphasized that he considered it a classic sign of manic-depressive disease that such a person would take other people's money while in an overly optimistic state of mind that would blur the lines that judgement would normally draw. When asked whether such misconduct would tend to arise on isolated occasions as opposed to systematic dishonesty over a prolonged period, Dr. Joffe said the following:

> "Prolonged systematic dishonesty, the behaviour would have to be understood in the context of the other aspects of the patient's functioning. In the absence of mood disorder I would say that the person is just a bad person or bad egg. If the patient had a chronic disorder, a psychiatric disorder, then once again you are still left with the questions that I was previously asked whether the two are related. In the presence of clear mood disorder with highs and lows, with highs - one of the first questions we always ask a manic patient is have you spent a lot of money and if so whose money have you spent. Those are always the first two questions we always ask. While it's possible you could be rotten and be a manic depressive, when the two occur together it's - the logical thing is to try and see if they are associated....patients tend to do the same crazy things repetitively. They learn to do the same things. For example, I have a patient who every time he gets high buys a new car and another who books out a hotel at the same time, does the same thing every time and you may well ask why doesn't he learn what he is doing and the answer to that is that when they become high the first thing that is lost is their judgement and close behind that is their insight. Judgement being their ability to tell right from wrong and make reasonable, rational decisions and insight is their ability to understand that they are sick and they are not making the right decisions."

The Committee also heard the testimony of Dr. Peter Rowsell, who is a distinguished psychiatrist with long experience in forensic psychiatry. It is significant to note that Dr. Rowsell was engaged jointly by the Law Society and counsel for Mr. Perreault, and that his evidence was proffered by both sides. At the same time, each side reserved the right to challenge the legitimacy or accuracy of any factual underpinnings that Dr. Rowsell relied upon in support of his opinion.

Dr. Rowsell was present throughout the hearing and in addition has reviewed the documentary evidence. He has conferred with Dr. Joffe, who is Mr. Perreault's treating psychiatrist. He was also made familiar with the Agreed Statement of Facts. Dr. Rowsell also met with Mr. Perreault's mother and with two of the clients referred to in the Agreed Statement of Facts: Joy Byers and Mr. Zemdegs. He wrote two reports which were before the Committee.

Dr. Rowsell expounded upon the nature of manic-depressive illness. He described the energy, gregariousness, joviality and optimism of the hypomanic stage, during which the subject requires very little sleep and usually feels extraordinarily capable. The next and more serious stage is the manic phase, followed by the most serious stage of the "high" namely the manic stage with psychotic features. He described any person with acute mania as being in a psychotic state.

Dr. Rowsell explained to the Committee that persons experiencing the manic phase of the disorder may suffer delusions either of persecution or of grandeur. In the first, they believe people are out to get them, while in the second, they develop the belief that they are powerful, whether as God or as some important figure.

Accompanying a delusion of grandeur is a very exaggerated belief in one's abilities, and Dr. Rowsell explained that this false belief is fervently held by the person who has it. No amount of arguing will dissuade the person from the belief.

A person with manic-depressive illness can swing between one mood and another. In that regard, the hypomanic and manic states are at different points on the continuum, with manic being the more serious and psychotic state. A manic person would not be able to function reliably, and would exhibit very poor judgement. On the other hand, a person in a hypomanic state does not suffer from delusions and is able to work very efficiently and productively, needing little sleep and having an abundance of energy.

Dr. Rowsell expressed the opinion that a person experiencing hypomania would still have preserved judgement and be able to behave rationally and responsively. On the other hand, he pointed out that even a hypomanic person could have an inappropriate belief falling short of a delusion which would still influence his or her thinking.

Dr. Rowsell added that a manic-depressive will have difficulty recalling events that occurred during the hypomanic or manic stage.

Dr. Rowsell thought it was very significant that Mr. Perreault was both an alcoholic and a manic-depressive at the same time. He described drinking as both a symptom and a complication of the disorder.

Speaking of Mr. Perreault's state of mind between 1978 and November of 1983, Dr. Rowsell testified that Mr. Perreault was probably mildly depressed during that period with occasional swings into hypomania. He was experiencing a profound and unusual sleep disturbance with throbbing headaches. His home life was seriously disrupted. The excessive use of alcohol probably triggered rapid cycling, according to Dr. Rowsell. The alcohol consumption probably caused him to change moods within minutes or hours, while these mood swings probably slowed down once Mr. Perrealt stopped drinking alcohol.

Dr. Rowsell agreed with Dr. Joffe that Mr. Perreault's prognosis for the future is excellent, although Dr. Rowsell was careful to point out that Tegretol is not necessarily certain to control the disorder for the balance of Mr. Perreault's life. Asked how he interpreted the conduct of Mr. Perreault from 1978 to 1983, and particularly whether the acts complained of were those of a man with a rational judgement capable of making an assessment of what he was doing and of knowing it was right, or whether he was a victim of his medical circumstances, Dr. Rowsell replied:

> "I tend to come down on sickness as the criteria, swing (sic) my judgement on that conduct. So that even though I am sure there were times that this person would be able to judge and estimate consequences, know something is wrong, after the event, even so it does not jibe, it does not fit with the person I have met as a patient and who has come to treatment."

Dr. Rowsell was asked whether Mr. Perreault would have behaved as he did between 1978 and 1983 if he had been on Tegretol during that period. He responded as follows:

> "I would add something more to the Tegretol. Had he been (a) diagnosed, (b) stopped drinking (c) been on Tegretol, I don't think he would have done those things and (d) of course, aware, I think the social side is very important, that is, having any

satisfactory impression of life in which you had yourself under control. Yes, and your family life, too, I don't think he would have done it."

Dr. Rowsell identified after 1983 a downward spiral in Mr. Perreault's disorder. He testified that the illness and the misconduct charged in the Complaint were "certainly related, since manic-depressive disorder no matter how mild will influence behaviour, judgement. It becomes worse of course when alcohol is involved..."

Finally, Dr. Rowsell testified as follows:

"It is my view, again on the balance of probabilities, that Mr. Perreault qualifies for a Section 16 [i.e. of the Criminal Code] defence on the basis of his mental illness, namely, manic-depressive reaction, bipolar affective disorder, was of such severity that he was unable to appreciate the quality and severity of his acts or of knowing that they were wrong at the time he was doing them."

IV. DECISION

It was argued on Mr. Perreault's behalf that the nature and extent of his mental illness during the relevant period was such that he was unable to appreciate the nature and quality of his acts with the consequence that he cannot be held accountable for them. In short, that Mr. Perreault was legally insane at the time of the misconduct and cannot be found guilty of such misconduct for that reason.

The Committee has carefully reviewed the transcript of the evidence taken during this lengthy hearing, and we have considered the medical opinions and the legal arguments in detail. Our fundamental purpose has been to determine whether Mr. Perreault may be said to have had the necessary mental element in taking clients' moneys so as to be answerable here, or whether his diseases robbed him of the awareness or capacity needed to attract culpability.

Both counsel made reference to Section 16 of the Criminal Code of Canada, which provides for the defence of insanity in criminal proceedings. That Section reads as follows:

INSANITY

16. (1) No person shall be convicted of an offence in respect of an act or omission on his part while he was insane.

(2) For the purpose of this Section a person is insane when he is in a state of natural imbecility or has a disease of the mind to an extent that renders him incapable of appreciating the nature and quality of an act or omission or of knowing that an act or omission is wrong.

(3) A person who has specific delusions, but is in other respects sane, shall not be acquitted on the ground of insanity unless the delusions caused him to believe in the existence of a state of things that, if it existed, would have justified or excused his act or omission.

(4) Every one shall, until the contrary is proved, be presumed to be and to have been sane. 1953-54, c.51, s.16.

Naturally, that Section has no direct application to these proceedings. Both counsel, however, argued this case by analogy to criminal proceedings and made submissions based upon judicial decisions interpreting and applying Section 16.

We agree that it is instructive and helpful for our purposes to examine the manner in which the courts have dealt with the insanity

defence in the criminal law. We have found the court's reasoning and analysis in considering the insanity defence to be of direct assistance in performing our task. What is more, we have come to the conclusion that a lawyer charged with a disciplinary offence should have available the defence of insanity in the proper case, because it would be unfair and inappropriate to discipline such a person if it can be established that by reason of a disease of the mind, he or she was incapable of appreciating the nature of his or her act or the fact that it was wrong. We arrive at that conclusion not only because of our innate sense that it is the proper approach but also by reason of high judicial authority that requires discipline tribunals dealing with professional persons to accord them a high standard of justice. (See, for example, the decision of the Supreme Court of Canada in Kane v. Board of Governors of U.B.C. (1980), 110 D.L.R. (3d) 311).

In Schwartz v. The Queen (1976), 29 C.C.C. (2d) 1, the Supreme Court of Canada had occasion to consider the insanity defence in a case involving a charge of non-capital murder. The trial judge had directed the jury that the word "wrong" in Section 16 (2) of the Criminal Code means "contrary to Law". An appeal by the accused from his conviction to the British Columbia Court of Appeal on the ground of misdirection on this issue was dismissed, and on further appeal to the Supreme Court of Canada, the appeal was also dismissed.

The majority in the Supreme Court of Canada held that the trial judge had not been in error. It was decided that an accused is to be considered insane for the purposes of Section 16 (2) of the Criminal Code only if he has a disease of the mind to an extent that renders him incapable of:

(a) appreciating the nature and quality of his act; or

(b) knowing that such act was wrong

The former test is directed to the accused's appreciation of the physical character of the act, and if he did not know what he was doing, he should not be convicted because it was really not his act. The latter is directed to protecting a person from conviction where he knew what he was doing but due to the disease of the mind did not know he was committing a crime. The word "wrong" in Section 16 (2) of the Criminal Code is therefore to be interpreted then, in the limited sense of illegal and does not mean wrong "by the everyday standards of reasonable people", assuming there is some difference between the two tests.

Bringing that reasoning home to the case with which we are here concerned, it is clear to the Committee that:

(a) Mr. Perreault appreciated the nature and quality of his acts -- in the sense that he knew that he was taking money or borrowing it on "false pretenses"; and

(b) he knew that what he was doing was wrong.

We base these conclusions on the evidence as a whole, and particularly on a number of passages in the evidence of Mr. Perreault himself. We refer, for example, to his evidence in connection with the Zemdegs transactions, in which he took for his own purposes moneys that he held in trust for the client and that he was to have disbursed for the client for a particular purpose. In the course of his testimony, it emerged that the minutes of settlement, which were executed after Mr. Perreault had misappropriated the money, contained and unusual provision by which Mr. Perreault personally guaranteed his client's obligation to Mrs. Zemdegs. When asked why he would have inserted this highly unusual provision, Mr. Perrault testified as follows:

> "MR. PERREAULT: No sir, I believe what happened there is probably the first time, in looking back over my life, that I at that point, when I realized what I had done, I think at

that point I should have come to the Law Society because in looking back I realized that I had done something wrong. .....What I had done wrong was in the state of mind that I'd been in to take my client's money that should have been in a trust account and it was not in a trust account, when I realized what was going on. .....As I said sir, at that point, I should have come to the Law Society and said what I had done because it was certainly an attempt to cover up what I had done, definitely."

Subsequently, during cross-examination by counsel for the Law Society, the following exchange took place concerning the various borrowings and misappropriations: (at page 172)

"Q. If you took the moneys from Mrs. Campone and you knew that you weren't going to use them to put in the mineral water company, did you know that that was prohibited by law or by the Law Society? Did you know that that was something --

A. I would say I probably did.

Q. So you knew, would it be fair to say that you knew that that could be fraud in the criminal sense?

A. It would be fair to say that I addressed my mind that, yes, it would be fraud.

Q. Did you know at the time that you took some of the other people's moneys that it could be fraud or theft at that time?

A. I would have known that, yes.

Q. When Mr. Leggett came to you after the fact and talked to you about the moneys which you had known that there was a possibility that you could be, or would you have known that what you did was technically against the law when you took his moneys initially?

A. I probably did, yes.

...

Q. And certainly you would know at the time that there was a Law Society rule against borrowing from the clients did you know that?

A. Yes.

...

Q. Did you know at the time that you borrowed the first moneys from Mrs. Byers in 1984?

A. Yes.

Q. Mr. Perreault, with regard to each of the client matters, would it be fair to say that it's possible that you were aware at the time that those takings of the money were prohibited by law?

A. I think that would be fair.

Q. Would it be fair to say that the times when you borrowed money from clients, you could have been aware that such borrowing was prohibited by the Law Society rules?

A. Yes that's true.

Q. Would it be fair to say that at such times when you took moneys from clients without their consent, you would know that such taking was prohibited by the Law Society rules?

A. Yes that's true.

Q. A bit further to that, Mr. Perreault, can you tell me why you took the moneys when it might have been that you knew that such takings were prohibited?

A. It didn't matter that they were prohibited. I was above that.

Q. Why were you above that?

A. Because that's the way I felt."

Subsequently, Mr. Perreault was cross-examined about having sworn a Form 2/3 for the Law Society in which he failed to disclose borrowings from clients:

"Q. So I suggest to you, Mr. Perreault, that at the time you swore these documents that you knew they were false?

A. Yes.

Q. I suggest to you that at the time you swore these documents, Mr. Perreault, you knew that if you told the truth in the documents that it would cause a further investigation by the the Law Society.

A. I suppose that would be the result, yes.

Q. I suggest you were aware of that at the time.

A. I may have been.

Q. I suggest to you, Mr. Perreault, you may have executed these documents falsely in order to avoid such investigation by the Law Society.

A. That may be true."

There was additional evidence that Mr. Perreault not only appreciated the nature and quality of his acts, but also had an awareness that they were illegal. The following exchange occurred during cross-examination:

"A. Well, if I was very high, and I use these words just because I have no other terminology, if I was very elevated or feeling the way I felt most of my life, then I would not think about right or wrong. When the deed was done, I would be depressed and then at that time I could say, I could look and I could say "Now what did I do?". And I suppose in that frame of mind, I think it was right or wrong but when I was like that, I used to pray to be high to get out of that feeling. And it may have been when alcohol came in my life, alcohol brought me back to that particular feeling very quickly.

Q. So when you were in these down phases after the fact and you thought about right or wrong, you would agree with me that you didn't taken any steps to tell anybody about what you had done regarding the taking of the moneys?

A. No and probably out of fear or whatever. No, I never discussed it, I don't think with anyone."

There is also indirect evidence to establish that Mr. Perreault both appreciated the nature and quality of his acts and was aware that they were wrong. For example, the misconduct alleged occurred over a period of years.

Furthermore, many of the acts of misconduct were carefully planned and elaborately carried out, such as the telephone call to Mr. Huebner suggesting that a client needed a second mortgage (which was untrue) and the prolonged deception of Mr. Gill, which included a pretended "business meeting" to discuss Mr. Gill's investment.

Having regard to the cyclic nature of the mental disorder from which Mr. Perreault suffered, the Committee also considers it of great significance (particularly having regard to the last passage quoted from the evidence above) that Mr. Perreault did not alert the authorities or seek help during one of the phases when he was relatively stable.

The Committee was also mindful of Mr. McLaughlin's evidence that at one point Mr. Perreault urged him not to report the matter to the Law Society for fear that Mr. Perreault might lose his wife and family if the theft was discovered.

Time and again in his evidence, Mr. Perreault stressed that he felt throughout as though he was "in a movie". He felt (plainly because of his mental disease) that he was "above the law", and that the rules of the Law Society and the criminal law did not apply to him. He felt that everything would eventually work out for the best, and that he would not face consequences for what he was doing.

In our view, the evidence as a whole -- and particularly the testimony of Mr. Perreault himself -- displaces the conclusion expressed by Drs. Joffe and Rowsell to the effect that Mr. Perreault would probably not have taken the money but for the illness. In the first place, we have Mr. Perreault's evidence that he knew his conduct was prohibited by the Law Society and the criminal law. Secondly, we have his evidence that he felt those prohibitions did not apply to him. As we will develop hereunder, the courts do not regard that delusion as the proper basis for an insanity defense. Furthermore, if (as the doctors say) he would not have taken the money but for the illness, that appears to have been simply because the illness diminished or eliminated (at least temporarily) his awareness or fear of the consequences of the misconduct.

Turning once again to judicial decisions construing and applying Section 16 of the Criminal Code, the Committee considered the decision of the Supreme Court of Canada in R. v. Abbey (1982) 68 C.C.C. (2d) 394. There, the accused was charged with importing cocaine and possession of cocaine for the purpose of trafficking, contrary to sections 5 and 4(2) of the Narcotic Control Act. The accused relied upon the defence of insanity. He had agreed to buy cocaine in Peru for himself and some friends and upon his return to Canada, the drug was located in his baggage. At the time that he went through Customs and in the following period when he was arrested, the accused appeared normal. The accused did not testify and the only defence evidence called was that of a psychiatrist who based his opinion on interviews he had with the accused and members of his family. Both the defence psychiatrist and the Crown psychiatrist who was called in reply, agreed that the accused suffered from a disease of the mind known as hypomania, but they differed as to whether he was incapable of appreciating the nature and quality of his acts. They did agree, however, that he knew what he was doing and that it was wrong. In giving effect to the defence, the trial judge found that the accused had a delusion that he was in receipt of power from a source external to himself and that he was protected from punishment by the mysterious external force. The trial judge found that the accused's ability to appreciate the nature and quality of the act was incapacitated to the degree required by Section 16 of the Criminal Code in that he failed to appreciate the consequences of punishment for his acts. The trial judge also referred to a closely related delusion that the accused was committed to importing the cocaine by reason of a force acting upon him.

An appeal by the Crown from a finding of not guilty by reason of insanity was dismissed by the British Columbia Court of Appeal. However, on further appeal to the Supreme Court of Canada, the appeal was allowed and a new trial was ordered.

The Supreme Court of Canada held that the trial judge had erred in giving effect to the defence of insanity in the circumstances of the case. The delusion under which the accused supposedly labored was that he would not get caught or, if caught, would benefit from some undefined immunity from prosecution. The Supreme Court of Canada held that such a delusion does not bring the accused within either arm of the insanity test in the sense of rendering him incapable of appreciating the nature and quality of the act or of knowing that it was wrong.

The Court held that while the concept of appreciating the nature and quality of an act requires an understanding of the consequences, this refers to the physical consequences of the act. A delusion which renders an accused incapable of appreciating the nature and quality of his act goes to the mens rea of the offence. A delusion which renders an accused incapable of appreciating that the penal sanctions attaching to the commission of the crime are applicable to him does not go to the mens rea of the offence, does not render him incapable of appreciating the nature and quality of the act and does not bring into operation the first branch of the insanity defence. The Court held that the accused in the Abbey case appreciated the actus reus of each of the offences charged against him and also appreciated the nature and quality of his acts. His failure to appreciate the penal sanctions or the consequences of punishment did not bring the accused within the ambit of the insanity defence. The evidence was clear that the accused knew that his act was wrong according to law, and his inability to appreciate the penal consequences was irrelevant to the question of legal insanity.

Applying the Abbey principle to the facts of this case, and having found that Mr. Perreault appreciated the nature and quality of his acts and knew that they were wrong, we have come to the conclusion that so far as the criminal law is concerned, the defence of insanity would not be available to him on the evidence before us.

We are of the view that the same principles should apply in a disciplinary proceeding as in the criminal courts, since we too are concerned with the very question that was before the Court in Abbey: did Mr. Perreault have the necessary mens rea, and was he able to appreciate the actus reus? We are of the view that both of those questions must be answered in the affirmative.

Accordingly, we find Mr. Perreault guilty of professional misconduct as charged.

We shall ask the Clerk of the Discipline Committee to confer with counsel for the purpose of determining a mutually convenient date upon which the Committee can re-convene to hear submissions as to penalty.

October 14, 1988

"Allan Rock"
Allan M. Rock, Q.C., Chair

APPENDIX "A"

D53/85

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Bruce Perreault, of the City of Toronto, a Barrister and Solicitor.

AGREED STATEMENT OF FACTS

I. SERVICE

1. The Solicitor admits service of Complaint D53/87 sworn on August 13, 1987 and is prepared to proceed with a hearing of that Complaint on August 25, 1987.

II. BACKGROUND FACTS

2. The Solicitor was called to the Bar in 1978. He practised with Alan Poole as an employee until February, 1984. Thereafter he engaged in private practice, at times with an employed junior solicitor, until September, 1985. This period of practice was interrupted by the Solicitor's hospitalization from January 31, 1985 to March 12, 1985.

3. At all times, the Solicitor practised only in family law matters. He has not practised since September 3, 1985 pursuant to an undertaking to the Law Society.

III. FACTS

SUMMARY OF ACTIVITY OF THE SOLICITOR

4. During the period September, 1982 to August, 1985, the Solicitor obtained funds from clients. A table illustrating that activity is included in the Document Brief at Tab 25.

Raidis Zemdegs

5. Mr. Zemdegs retained the firm of Alan Poole in 1980 regarding a divorce and custody matter. The Solicitor was given sole carriage of the file. He provided satisfactory legal services to Mr. Zemdegs and obtained custody of his son for him. He also negotiated a financial agreement with his wife's solicitor in 1982 whereby Mr. Zemdegs was required to pay his wife $3,000.00 for each of four years followed by a final payment in the fifth year of $4,500.00.

6. The Solicitor advised Mr. Zemdegs that Mr. Zemdegs had to borrow $15,000.00 and deliver it to the Solicitor to be held in trust. He further advised Mr. Zemdegs that he was to write post-dated cheques to his wife for the five payments and that the Solicitor would advance him the moneys from trust from Mr. Zemdegs to deposit into his bank account to cover those cheques as they became due. The Solicitor advised that he would give Mr. Zemdegs $3,000.00 each year from 1982 to 1986 and that those funds, plus a further $1,500.00 to be advanced by Mr. Zemdegs in 1986, would discharge the liability to Mrs. Zemdegs.

7. The Solicitor's advice to Mr. Zemdegs was not true. While there was a financial agreement with the wife's solicitor, there was no requirement that Mr. Zemdegs borrow such moneys or that the Solicitor held them in trust.

8. Mr. Zemdegs borrowed the sum of $15,000.00 and gave it to the Solicitor in or about September, 1982. The Solicitor took those funds and applied them to his own purposes. He advanced Mr. Zemdegs $3,000.00 in 1982.

9. Mr. Zemdegs did not receive the second $3,000.00 sum from the Solicitor in 1983 and, in January or February of 1984, Mr. Zemdegs called Alan Poole to inquire as to the funds. He was advised that no such funds remained in Mr. Poole's trust account. Mr. Zemdegs then reached Mr. Perreault who provided him with $3,000.00 for the 1983 payment and subsequently provided him with another $3,000.00 for the 1984 payment. The Solicitor also advised Mr. Zemdegs that the moneys had never been held in trust on Mr. Zemdeg's behalf. Mr. Zemdegs chose not to make any complaint at that time.

10. The Solicitor filed for bankruptcy on July, 1985, and at that point Mr. Zemdegs became aware he would not receive moneys from Mr. Perreault for the final two payments. Mr. Zemdegs then complained to the Law Society.

11. The Compensation Fund Committee considered the claim of Mr. Zemdegs and made a grant to him of $6,000.00. The grant was equal to the amount of moneys that should have remained in the Solicitor's trust account.

THOMAS MCLAUGHLIN

12. Mr. McLaughlin retained the firm of Alan Poole to act in a matrimonial matter. The Solicitor was given carriage of the matter and thereafter Mr. McLaughlin dealt exclusively with the Solicitor.

13. In or about September, 1982, the Solicitor acted on the sale of the McLaughlin matrimonial home pursuant to the Minutes of Settlement signed in the divorce matter. As a result of the sale, the Solicitor received the sum of $20,576.74 in trust for Mr. McLaughlin. He paid certain amounts to third parties at the direction of Mr. McLaughlin with a balance remaining in trust of $12,461.67.

14. The Solicitor then prepared a letter dated October 12, 1982 in which he purported to account for the total sum of $20,576.74 and further purported to forward a trust cheque payable to Mr. McLaughlin with that letter in the amount of $12,461.67. A copy of that letter is included in the Document Brief at Tab 4.

15. A cheque in the amount of $12,461.67 payable to Thomas McLaughlin was prepared by the office of Alan Poole and issued at the request of the Solicitor. The cheque was signed by Alan Poole because he was the only member of the firm who had signing authority on the trust account. When Mr. Poole signed the cheque, he believed that the Solicitor would forward the funds to the client. The cheque was never given to Mr. McLaughlin. Instead, it was deposited to the Solicitor's bank account at the Royal York Hotel Branch of the Bank of Montreal.

16. In December, 1982, Mr. McLaughlin was contacted by an individual who advised him a loan was outstanding on the part of Mr. McLaughlin to the Canadian Imperial Bank of Commerce had not been repaid. It was Mr. McLaughlin's understanding that the Solicitor was to have repaid the money.

17. This information caused Mr. McLaughlin to contact the Solicitor and they met at a hotel in Toronto in December, 1982. At that time, the Solicitor agreed in general to repay the $12,461.67 sum to Mr. McLaughlin and, in particular, agreed to pay the amount of the outstanding loan to the C.I.B.C. as part repayment. The Solicitor did pay the $4,065.13 sum to the C.I.B.C. Copies of the handwritten note prepared by the Solicitor indicating the particulars of the payment to the C.I.B.C. and a handwritten statement of account prepared by the Solicitor reflecting the payment are included in the Document Brief at Tab 5.

18. On or about February 20, 1983, the Solicitor paid Mr. McLaughlin a further sum of $2,000.00. He then prepared another statement of account reflecting the balance owing to Mr. McLaughlin, a copy of which is included in the Document Brief at Tab 6. The total owing was re-adjusted to include a further sum of $211.85 which had been paid by Mr. McLaughlin's wife's solicitor as well as a balance of a retainer in the amount of $250.00. The total amount owing to Mr. McLaughlin at this point was $6,858.39.

19. The Solicitor subsequently advised Mr. McLaughlin that he had left the firm of Alan Poole and Mr. McLaughlin consented to his continuing to handle the divorce matter. On or about December 11, 1984, the Solicitor

paid a further $1,000.00 of his own funds to a third party at the direction of Mr. McLaughlin. This was the final repayment made by the Solicitor leaving a final unpaid balance owing to Mr. McLaughlin of $5,858.39.

20. During one of their conversations regarding the funds, the Solicitor advised Mr. McLaughlin that he would get into difficulty with the Law Society if it was discovered that he had taken the moneys. He also told Mr. McLaughlin he might lose his wife and family if the theft were discovered. Mr. McLaughlin agreed to the Solicitor's request not to contact the Society as long as the Solicitor paid him back.

21. Mr. McLaughlin ultimately retained another solicitor, Barbara Cappell, and the divorce matter was finalized in or about August, 1985.

22. Mr. McLaughlin was advised on or about July 8, 1985 that the Solicitor had made an assignment in bankruptcy and he made a complaint to the Society in writing on July 31, 1985. A payment by the Compensation Fund Committee in the amount of $3,000.00 was subsequently made to Mr. McLaughlin.

Ralph Leggett

23. Mr. Leggett was a client of the Solicitor regarding a matrimonial matter while the latter was an employee of Alan Poole. The Solicitor negotiated Minutes of Settlement on behalf of Mr. Leggett. By the terms of the settlement, Mr. Leggett was to pay funds to the Solicitor in the amount of $10,000.00 to be held in trust until the Decree Absolute could be issued after which the funds were to be paid by the Solicitor to the solicitor for Mrs. Leggett.

24. Mr. Leggett paid the funds to the Solicitor in January, 1984. The Solicitor did not deposit these funds into the trust account. At the time of the issuance of the Decree Absolute in the summer of 1985, the Solicitor was not able to pay the $10,000.00 to the wife's solicitor. As a result, Mr. Leggett was compelled to borrow $10,000.00 from a family member to make that payment.

25. Mr. Leggett claimed to the Compensation Fund regarding the $10,000.00 as well as an additional $500.00 which had been advanced to Mr. Perreault over a period of time by way of a retainer but for which a fee billing had never been issued. He was awarded a grant of $10,000.00 from the Fund.

Maria Gallo

26. The Solicitor was originally retained by Mrs. Gallo while he was an employee of Alan Poole. Subsequently, he continued to have carriage of the file while he was a sole practitioner.

27. In September, 1984, a meeting was held at the Solicitor's office with the Solicitor, Mrs. Gallo, Mr. Gallo and his solicitor. Supplementary Minutes of Settlement were signed whereby payments were to be made to Mrs. Gallo in the amount of $15,000.00 on October 1, 1984 and $15,000.00 on December 1, 1984.

28. Cheques in those amounts payable to Mrs. Gallo were delivered to the Solicitor on September 27, 1984. The Solicitor subsequently put the December 1 cheque before Mrs. Gallo and asked her to endorse it which she did. The Solicitor told her that her husband's solicitor had only delivered one cheque and that the October 1, 1984 cheque would have be delivered later. The Solicitor also said that Mr. Gallo might not have the money in his bank account right away and that the Solicitor would cash the December 1 cheque when the money was put in the account.

29. The Solicitor telephoned Mrs. Gallo during the first week of October and said that Mr. Gallo had not put the money in his account. This statement was incorrect.

30. The Solicitor called her a week or so later and made a statement to the same effect which again was incorrect. Mrs. Gallo suggested that she should give her former husband a telephone call to ask why he had not honored the cheque. The Solicitor told her it was not necessary and that he would do it for her.

31. The Solicitor made another telephone call to Mrs. Gallo in December, 1984, again incorrectly advising that Mr. Gallo had not put the money in the account. Mrs. Gallo made several attempts to contact the Solicitor during and after January, 1985 but was unsuccessful. Her next telephone contact with the Solicitor was in May, 1985, when he advised her that he was going to be filing for bankruptcy and that she would receive a notice regarding the matter.

32. Mrs. Gallo made a claim to the Compensation Fund in the amount of $30,000.00 which claim was fully paid by the Committee.

Doug and Brenda Campone

33. The Solicitor initially represented Mr. Campone in a matter pertaining to Mr. Campone's first marriage. After Mr. and Mrs. Campone were married, the Solicitor acted for Mrs. Campone regarding a child support matter in relation to her first marriage.

34. In early February, 1985, the Solicitor telephoned Mr. and Mrs. Campone from the Toronto General Hospital and asked them to visit him. When they did so, the Solicitor told them he was trying to raise funds to obtain a controlling interest in a company which was marketing mineral water. He told them the company was located in Nova Scotia and had been approved by the Minister of Consumer of Corporate Affairs. The Solicitor advised them that he would not be able to pursue the investment unless he could raise the necessary moneys. He told them if the moneys were raised, they would have an equity participation in the company. If the total funds could not be assembled for the project, the Campone cash advance would be treated as a loan and would be repaid to them with interest.

35. Mrs. Campone borrowed the moneys from a Chartered Bank and advanced them to the Solicitor who provided her with a receipt for the funds. A copy of the receipt is included in the Document Brief at Tab 7.

36. Mrs. Campone telephoned the Solicitor on March 28, 1985 in the course of the matrimonial matter. She asked him about the progress of the investment. He seemed somewhat evasive but she did not become concerned because he was apparently suffering from mental fatigue. She did not pursue the matter with him at that time. On May 22, she telephoned the Solicitor at his office to inquire as to the funds. The Solicitor was extremely evasive and made some remarks about the situation being "complicated". He then told her that he could not recall having received the funds and that he had no idea where the moneys might be.

37. Mrs. Campone subsequently complained to the Law Society when she became aware of the Solicitor's assignment in bankruptcy. Her claim to the Compensation Fund of $3,000.00 resulted in a grant of $1,200.00 being paid to her.

Kurt Huebner

38. Mr. Huebner retained the firm of Alan Poole in 1978 regarding a contested matrimonial matter. The Solicitor was given carriage of the matter at that time and conducted a five-day trial in the matter in April, 1981. The Decree Absolute was obtained in 1982. In the result in the matter, Huebner received $125,000.00 and was well satisfied with the manner in which the matter had been handled.

39. After the termination of the case, Mr. Huebner kept in touch with the Solicitor by mail. At times he would ask the Solicitor's advice on business matters.

40. In March or April, 1985, the Solicitor telephoned Mr. Huebner and advised him that he knew someone who needed a second mortgage. He told Mr. Huebner that the interest rate would be 1 percent over prime, 14 percent in total, and would be for a two-year term.

41. Mr. Huebner arranged to repay a $15,000.00 loan he had made to a friend. He received a certified cheque in that amount which he endorsed over to the Solicitor who provided him with an undated receipt for $20,000.00. A copy of the receipt is included in the Document Brief at Tab 13.

42. Mr. Huebner also stated before the Compensation Fund Committee that he advanced the Solicitor an additional $5,000.00 in cash which accounted for the receipt being $20,000.00. The referee at the Compensation Fund hearing was not satisfied on the balance of probabilities that Mr. Huebner had indeed advanced the additional $5,000.00. A copy of the reasons of the referee in the Compensation Fund matters is included in the Document Brief at Tab 14.

43. Proper documents recording the second mortgage were to follow. However, they were never provided by the Solicitor. Mr. Huebner complained to the Law Society after the Solicitor's assignment in bankruptcy. Ultimately, a grant of $15,000.00 was made to him from the Compensation Fund.

44. At the time of the payment of the moneys to the Solicitor, it was Mr. Huebner's observation that the Solicitor did not appear to be himself. At one point, Mr. Huebner recalls that the Solicitor threw cash in the garbage can then could not find it and had to ask Mr. Huebner where it had gone.

Gary Gill

45. Mr. Gill met the Solicitor prior to 1981 at a time when Mr. Gill was interested in investing in Toronto real estate. He and the Solicitor discussed investing in real estate on several occasions.

46. On January 20, 1981, Mr. Gill advanced the Solicitor $7,000.00. The advance was secured by a promissory note coming due February 20, 1981 at an interest rate of 20 percent.

47. Mr. Gill advanced a further $67,000.00 on February 13, 1981 which was secured by a fourth mortgage on the Solicitor's home at 90 Gothic Avenue. Mr. Gill was represented by an independent solicitor, Anthony Maniaci, on the transaction.

48. Mr. Gill and the Solicitor maintained a friendship after that date and continued to discuss investment in real estate. However, the Solicitor did not at any time use those funds toward a real estate investment. The funds were never repaid and, on October 17, 1983, the Solicitor's home was sold under Power of Sale for $155,000.00. There were not sufficient funds from the Power of Sale to make payment towards either the existing third mortgage or Mr. Gill's fourth mortgage.

49. Mr. Gill made a claim to the Compensation Fund of the Society for the principal amount of $74,000.00. That claim was denied by the referee on the basis that the funds may have been advanced as a loan and because Mr. Gill had never had a solicitor-client relationship with the Solicitor. However, because Mr. "Gill's troubles were undoubtedly caused or largely contributed to, by a dishonest practising lawyer in whom he placed trust", a nominal ex gratia payment was recommended. A copy of the reasons of the Compensation Fund referee are included at the Document Brief at Tab 3.

Peter Recine

50. Mr. Recine retained the Solicitor in November, 1984, and gave the Solicitor a retainer of $2,500.00 to act in a matrimonial matter. At that time, a lengthy Separation Agreement had been drawn up by Mrs. Recine's solicitors but had not been signed.

51. The Solicitor began acting on the matter and a Separation Agreement was eventually signed.

52. The Separation Agreement provided, inter alia, that certain moneys from the sale of the matrimonial home would be paid to Mr. Recine's parents.

53. At the time, Mr. Recine was living in Nassau in the Bahamas. The Solicitor received a $15,000.00 certified cheque from the wife's solicitors. Subsequently, he spoke to Mr. Recine about an investment he planned to make. He asked Mr. Recine whether he wished to invest.

54. Mr. Recine agreed to do so and instructed his parents to endorse the $15,000.00 cheque to Mr. Perreault. His parents complied with the request and forwarded the cheque to the Solicitor. In return, the Solicitor gave a promissory demand note dated March 25, 1985 for $18,000.00 in favour of Mr. and Mrs. Recine. A copy of the promissory note to Mr. and Mrs. Recine is included in the Document Brief at Tab 15.

55. The Solicitor applied the funds to his own use and did not apply them towards any investment. Mr. Recine complained to the Law Society after the Solicitor's assignment in bankruptcy. His claim to the Compensation Fund was denied on the basis that the Solicitor was not acting in his capacity as a solicitor when he obtained the funds from Mr. Recine.

Joy Byers

56. Mrs. Byers retained the Solicitor in or about February, 1984, to act in a matrimonial matter which had previously been commenced on her behalf by another solicitor.

57. On or about July 14, 1984, the Solicitor borrowed $2,400.00 from Mrs. Byers.

58. On or about July 25, 1984, a Separation Agreement was executed between Mr. and Mrs. Byers. Further to that Agreement, the Solicitor for Mr. Byers forwarded a cheque for $75,000.00 to the Solicitor on or about August 1, 1984. The Solicitor attended at the home of Mrs. Byers with the cheque and asked her to lend him the money to assist him with his practice. Mrs. Byers agreed to lend the Solicitor $10,000.00 of the moneys.

59. The solicitor expressed concern regarding the propriety of borrowing from a client and asked Mrs. Byers to structure the loan through her daughter. Mrs. Byers did so and the Solicitor executed a receipt to Catherine Byers for $10,000.00 dated August 1, 1984, a copy of which is included in the Document Brief at Tab 8.

60. After this point, the Solicitor developed a social friendship with Mrs. Byers. On or about October 31, 1984, the Solicitor approached Mrs. Byers again and asked to borrow an additional $7,000.00 to be invested in his practice. Mrs. Byers loaned him $5,000.00 and the Solicitor provided a receipt to her dated November 1, 1984, a copy of which is included in the Document Brief at Tab 9. On November 7, 1984, the Solicitor executed a repayment schedule acknowledging his debts at the time to Mrs. Byers. A copy of the document is included in the Document Brief at Tab 10.

61. In or about July, 1985, the Solicitor asked Mrs. Byers to loan him a further sum of $10,500.00. Mrs. Byers loaned the sum to the Solicitor who provided her with a receipt for $10,500.00 dated July 31, 1985, a copy of which is included in the Document Brief at Tab 11.

62. During the period August, 1984 to August, 1985, Mrs. Byers advanced further sums to the Solicitor for personal expenses. The nature and the amount of these advances is currently unknown.

63. Mrs. Byers complained to the Law Society in September, 1985, and subsequently made a claim to the Compensation Fund. Her claim in the total amount of $66,400.00 is pending.

IV. RETAINER AGREEMENTS

64. The Solicitor commenced practice as a sole practitioner at the Atrium on Bay in or about March, 1984. He hired a junior solicitor, Barbara Byers-Armstrong, in June, 1984. The solicitor remained in sole practice until 1985. Ms. Byers-Armstrong left in February, 1985.

65. At the time he commenced sole practice, the Solicitor implemented a general procedure regarding the receipt of retainers from clients. The Solicitor drafted a standard-form document for use in all cases where clients provided monetary retainers in advance. That document purported to make the retainer a "general retainer" in law. The agreement stipulated that the retainer was not a charge against future fees that might be rendered by Perreault and Associates, that the lump sum was paid solely for the purpose of having Perreault and Associates represent the client and for no other reason and that the retainer would not form part of or be deducted from any accounts rendered by the Solicitor. The document went on to provide the rate at which further services would be billed by the firm as well as dealing with other matters involving accounts. A copy of one such document is included in the Document Brief at Tab 16.

66. The Solicitor began to use the document in most or all of his new cases. The Solicitor took the position that the document, once executed by the client, entitled him to apply such retainers directly to his general account and that the provisions of the Law Society regulations requiring ordinary retainers to be held in trust did not apply.

67. The Solicitor's practice in this regard was discovered by the Law Society in September, 1984. The Society initially did not ask the Solicitor to desist from his use of the Retainer Agreement.

68. In February, 1985, the Solicitor's practice in this regard was reviewed by the Society and the Solicitor was advised that the practice was not appropriate unless the agreement was reviewed by an assessment officer prior to the deposit of funds.

69. After the Solicitor's assignment of bankruptcy, five clients complained to the Law Society about the Solicitor's practice in this regard. In each of the cases, the clients advised that, although they had signed the document, the Solicitor had advised orally that the retainer would be applied toward future fees. In effect, each client complained that the Solicitor had acknowledged beyond the agreement that the retainer was not a "general retainer". A summary of the treatment of those complaints by the Compensation Fund Committee is as follows:

Name	Amount of Retainer	Amount Paid
Gartley, Lynn	$2,500.00	$1,900.00
Stevenson, John	$7,500.00	$5,000.00
Hamilton, John	$4,500.00	$
Okey, William	$11,000.00	$8,000.00
Ritchie, William	$2,500.00	

DATED at Toronto this 25th day of August, 1987

"Bruce Perreault"
Bruce Perreault

"Shaun Devlin
Shaun Devlin
Discipline Counsel

"Charles Mark"
Charles Mark
Counsel for Bruce Perreault

APPENDIX "B"

BRUCE PERREAULT - SUMMARY OF ACTIVITIES WITH CLIENTS

Name	Type of Activity	Date of Activity	Compensation Fund Claim
Raidis Zemdegs	Misappropriation-$15,000.00	Sept 24, 1982	$6,000.00 claimed-$6,000.00 paid
Thomas McLaughlin	In issue?-$12,461.67	Oct 12, 1982	$5,858.39 claimed-$3,000.00 paid
Ralph Leggett	Misappropriation-$10,000.00	Jan, 1984	$10,500.00 claimed-$10,000 paid
Maria Gallo	Misappropriation-$30,000.00	Sept 27, 1984	$30,000.00 claimed-$30,000.00 paid
Joy Byers	Borrowing $28,300.00	July, 1984 to July, 1985	$66,0000.00 pending
Brenda Campone	Borrowing $3,000.00	Feb, 1985	$3,000.00 claimed-$1,200.00 paid
Kurt Huebner	Borrowing $15,000.00	Spring, 1985	$20,000.00 claimed-$15,000.00 paid
Peter Recine	Borrowing $15,000.00		$18,000.00 claimed-claim denied
NON-CLIENT			
Gary Gill	Borrowing $74,000.00	January and February, 1981	$74,000.00 claimed-claim denied, under appeal

RECOMMENDATION AND REASONS FOR RECOMMENDATION AS TO PENALTY

The Committee heard evidence with respect to penalty on January 9 and April 13, 1989. We also received and considered written submissions that were most helpful.

The Evidence

The evidence as to penalty included the testimony of Dr. Joffe, who had earlier appeared as the solicitor's witness in the liability phase of the hearing. Dr. Joffe's evidence served to remind us of Mr. Perreault's conscientious observance of the regimen prescribed for the treatment of his mood disorder. He has been completely compliant with the requirements that he take Tegretol as prescribed, attend regularly for assessment and undergo blood tests periodically. Dr. Joffe pronounced Mr. Perreault "completely free of any evidence of mood disorder,...showing no sign of stress or of difficulty in coping". He

described Mr. Perreault's prognosis as "excellent", noting that his present stability of mood is now of almost three years' duration.

While Dr. Joffe conceded that he cannot guarantee the indefinite control of Mr. Perreault's illness with the drug therapy, he put the prospect at "better than 85 to 90% certain" that in two years' time, Mr. Perreault will still be free of symptoms, with the outlook beyond that point in time better yet because he will by then have been symptom-free for five years.

The Committee heard that periods of high stress can increase a person's vulnerability to a relapse, with the risk that rapid-cycling bipolar affect might recur. Dr. Joffe felt that this risk is limited in Mr. Perreault's case, not only because he has managed significant stress without incident during the period of treatment, but also because he returns for assessment--including a mental status report--at weekly intervals. Should symptoms reappear, they will therefore be caught at an early stage.

The solicitor also called as a witness one David Day, who is a solicitor and with whom he has been a close friend since 1985. The two met in Alcoholics Anonymous, and they have worked together in organizing conferences of International Lawyers in A.A. They are both also members of the St. Vincent de Paul Society (hereinafter "St. Vincent", which Mr. Day described as a non-denominal organization and the oldest charitable corporation in Canada. Mr. Day informed the Committee that since May of 1988, Mr. Perreault has been the President of the Toronto chapter of St. Vincent which is the largest in the country. Mr. Perreault presides over an organization with 100 employees having an annual budget in the $3,000,000 to $4,000,000 range.

The Committee learned that St. Vincent operates a number of rehabilitation facilities, including halfway houses for alcoholics and for psychiatric patients. It also organizes a summer camp for young girls.

St. Vincent operates eight retail stores with annual sales of between $500,000 and $600,000.

Mr. Day described Mr. Perreault's achievements in St. Vincent. Until he became President, the retail stores were losing money. Apparently as a result of his efforts, they have now become profitable, with effective management and cost controls in place. What is more, Mr. Perreault secured funding for St. Frances' House, which is a 25-bed community halfway house for psychiatric patients that will soon open its doors.

Mr. Day described Mr. Perreault as dynamic and responsible. He was chosen for the position of President by the 17 member board of directors of St. Vincent after having served successfully in the position of Vice-President. Mr. Day told the Committee that Mr. Perreault devotes Monday mornings as well as several evenings each month and some of his time on weekends to St. Vincent's affairs.

Finally, Mr. Day informed the Committee that Mr. Perreault is authorized to sign cheques drawn on the St. Vincent's bank account, although they are also countersigned by a financial officer.

The Committee also heard the evidence of John Campbell, a senior member of the Bar who has distinguished himself by his long and devoted service in the Ontario Bar Alcoholism Programme. Mr. Campbell has seen Mr. Perreault on the average of more than once each week during the last five years. He described Mr. Perreault as a responsible person who demonstrates leadership and organizational skills. He told the Committee that Mr. Perreault has often helped new members in Alcoholics Anonymous, and referred to one case in particular in which Mr. Perreault had, through his efforts, helped a young lawyer to overcome his difficulties with alcohol.

Finally, the Committee heard from Mr. Perreault. He described to us the way in which he has spent his time during the last three years. Apart from his work in Alcoholics Anonymous and with St. Vincent, Mr. Perreault has also been involved in business, having become a shareholder and officer in a company called Living Colour Art. He told the Committee that control of that company has been purchased by an English investor, and that it will soon change its name and broaden its business. Mr. Perreault is to become Chair of the Board and receive an income of $3,000 per month for attending board meetings. He expects that his one-third interest in the company will appreciate significantly in value.

Mr. Perreault told the Committee that he wants very much to remain a member of the Law Society. He accepts that he ought not to be permitted to practice as a sole practitioner. His ambition is to be employed by his company as its in-house counsel, and he told the Committee that the job will be offered to him if he is permitted to remain a lawyer. He also told us that his business associates know about his illness and his past misconduct, and that they support him.

Mr. Perreault told us that he proposes to continue seeing Dr. Joffe each week, notwithstanding that the doctor has told him that he need not attend that frequently. Mr. Perreault also promised to return to the compensation fund the sum of approximately $82,000 that has been paid out to date to his former clients on their claims. He told us that he will remain an active member of Alcoholics Anonymous and that he will abide by any additional conditions that the Law Society might see fit to impose upon him.

Submissions

Mr. Devlin told us that in his view, this is a case in which the solicitor must be required to leave the profession. He submitted that in all the circumstances, we ought to permit Mr. Perreault to resign and that if he does not do so, he should be disbarred.

Mr. Devlin found ample precedent for his submission that disbarment or permission to resign is the almost invariable penalty in cases of misappropriation. Indeed, he filed with the Committee a chart showing the disposition by Convocation of some 87 cases of misappropriation since 1980. Only four of those solicitors were permitted to remain in the profession: in three of those cases, the amounts involved were less than $6,000 and in the fourth, there had been a finding that the solicitor had had no fraudulent intention. Although the Committee did not examine the facts and circumstances of the cases in detail, we are prepared to accept that as a general rule, misappropriation will result in a solicitor leaving the profession.

For his part, Mr. Mark relied upon the unusual circumstances of this case, and particularly the solicitor's mental illness. He emphasized both the general and the specific purposes that a penalty can serve, and argued that no valid objective is to be achieved by either disbarring Mr. Perreault or permitting him to resign.

Recommendation

The Committee has found Mr. Perreault guilty of professional misconduct of a most serious nature. The offences took place over an extended period. Large amounts were involved. Mr. Perreault knew that what he was doing was wrong. In some cases, he tried to cover up his misconduct. The Compensation Fund has paid out over $80,000 to his former clients, while others suffered losses that the Fund has refused to pay. Mr. Perreault has not paid any amounts towards restitution, although there was some evidence that he intends to do so, and that he may be in funds to do so soon.

The Committee has concluded that Mr. Perreault should leave the profession. On its face, his misconduct merits disbarment. We have been persuaded, however, that in all circumstances, Mr. Perreault should be granted permission to resign.

In recommending permission to resign rather than disbarment, the Committee has taken into account the following extenuating circumstances:

(1) Throughout the whole of the relevant period, Mr. Perreault suffered from a serious mental illness.

(2) Through much of the period, Mr. Perreault was also an alcoholic.

(3) Mr. Perreault's mental illness was not diagnosed until after the offences had been committed, and when he was treated appropriately, the symptoms disappeared entirely.

(4) While his mental illness did not prevent him for appreciating the nature and quality of his acts or from knowing they were wrong, the illness influenced Mr. Perreault's behaviour significantly.

We have found (see supra, at pages 43 and 46) that at the relevant time, Mr. Perreault was under a delusion that rendered him incapable of appreciating that the sanctions attaching to his misconduct applied to him. That delusion is not a defence on the question of liability. In our view, however, it is a factor properly taken into account in determining penalty. In this case, we are of the view that it is of sufficient significance to justify a recommendation for permission to resign rather than disbarment.

We have also been influenced in coming to our conclusions by the decisions of Convocation in the case of Herbert Sterling Stewart. That matter was before Convocation in June of 1988. In that case, a solicitor had misappropriated moneys from estates of which he was a co-executor and solicitor. While admitting the misappropriations, the solicitor argued that he was not guilty by reason of insanity. He tendered evidence before the Committee that he suffered from alcoholism and a major affected disorder resulting in deeply depressive episodes. At a certain point, he was prescribed a medication that caused "a switch" from a severe depressive episode to a manic period during which he was distracted and tended to be grandiose. The psychiatrist who testified on behalf of the solicitor expressed the opinion that after he ingested the medication (Clomipramine) he lost contact with reality and was delusional, being unable to appreciate the consequences of his actions.

In the Stewart case, the Committee also heard the evidence of Dr. Andrew Malcolm, who was retained by the Law Society to examine Mr. Stewart and assess his condition. The Committee's summary of Dr. Malcolm's evidence was as follows:

> "Dr. Malcolm concluded that Mr. Stewart suffered from a major unipolar depression that was not interrupted by any manic episodes. In Dr. Malcolm's view, although Mr. Stewart was severely depressed, he was not psychotic and he was at no time insane to an extent that rendered him incapable of appreciating the nature and quality of his actions or knowing that his actions were wrong."

The Committee concluded that Mr. Stewart was guilty of professional misconduct. They held that he had not satisfied the onus upon him to prove on a balance of probabilities that he suffered from a disease of the mind to an extent that rendered him incapable of appreciating the nature and quality of his actions or of knowing that it was wrong to misappropriate the money. They preferred the evidence of

Dr. Malcolm to that of the solicitor's psychiatrist. They found Dr. Malcolm's interpretation of the facts in evidence to be "preferable".

The Committee did find that Mr. Stewart was suffering from a serious illness and that it had a significant impact upon his conduct. However, they noted that even the psychiatrist called on behalf of the solicitor testified that the onset of legal insanity occurred only with the ingestion of the Clomipramine, and that that occurred in May of 1985, whereas the thefts from one of the estates began in September of 1984.

In the result, the Committee recommended that Mr. Stewart be subject to an inquiry under section 35 of the Law Society Act. The Committee was not prepared to recommend disbarment, permission to resign or suspension, since they felt that it was an appropriate case for a section 35 inquiry. They were prepared to afford him the opportunity to show that his misconduct arose from mental illness short of insanity and to demonstrate that he is now or may at some time be capable of practising law.

Convocation refused to accept the recommendation of the Committee as to penalty. It substituted a decision granting Mr. Stewart permission to resign and, in the alternative, disbarment.

While the Stewart decision, on its facts, is distinguishable in some respects, it is nonetheless an influential precedent for granting permission to resign in a case involving a solicitor whose mental illness had a significant impact upon his conduct.

Accordingly, we recommend to Convocation that Mr. Perrault be given permission to resign his membership in the Law Society of Upper Canada. Should he decline to take advantage of that opportunity, then he should be disbarred.

We cannot leave the matter without observing that there are many positive factors that will no doubt stand to Mr. Perreault's credit should he ever apply for re-admission to membership in the Society. These include his stable medical condition (should it continue), his diligent observance of his treatment regimen, his continued abstinence from alcohol, the relative stability in his family life and his service to the community through Alcoholics Anonymous and the St. Vincent de Paul Society. We have no doubt that these factors will all be taken into careful account should an application for re-admission be made at some time in the future. Equally, the Society may also be interested to know at that time whether Mr. Perreault has made restitution, and in what amount.

Bruce Perreault was called to the bar and made a solicitor of the Supreme Court of Ontario on 14th day of April, 1978.

DATED this 19th day of April, 1989

"Allan Rock"
Allan M. Rock, (Chair)

Neither counsel made submissions.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Report of the Discipline Committee dated 14th October, 1988 be adopted.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

Both Mr. Devlin and Mr. Mark made submissions regarding the penalty. The penalty recommended by the Committee was that the solicitor be permitted to resign. Mr. Devlin spoke in favour of the recommendation while Mr. Mark urged that the solicitor not be forced to resign but that he be allowed to practise under certain conditions.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Recommendation as to Penalty, that the solicitor be permitted to resign be adopted.

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

Mr. Devlin made submissions in support of permission to resign.

Mr. Mark made submissions with respect to rehabilitation of the solicitor and not force him to resign but allow him to practise under certain conditions.

There were questions of counsel by the Benchers.

The solicitor, counsel, public and the reporter withdrew.

Mr. Strosberg withdrew and did not participate in the decision.

It was moved, seconded and carried that the solicitor be permitted to resign.

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

Mr. Mark tendered the solicitor's resignation.

The solicitor, counsel and the reporter retired.

.....

CONVOCATION ADJOURNED AT 12:45 P.M.

.....

CONVOCATION RECONVENED AT 1:45 P.M.

.....

PRESENT:

The Treasurer (Mr. Lee K. Ferrier) and Messrs. Bragagnolo, Cullity, Farquharson, Mrs. Graham, Messrs. Ground, Lamek, Levy, Mrs. MacLeod, Messrs. Manes, McKinnon, Ms. Poulin, Shaffer, Spence, Strosberg, Thom, Topp, Wardlaw, Mrs. Weaver and Mr. Yachetti.

.....

"PUBLIC"

.....

Re: IRVING S. LEIPCIGER, Toronto

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor was present with his counsel, Mr. Charles Mark. Mr. Shaun Devlin appeared for the Society.

The following Benchers did not participate in the discussion: Mesdames Graham, Weaver, MacLeod, and Ms. Poulin.

There was a request by the solicitor for an adjournment. Mr. Mark made submissions with respect to the matter being referred back to the Committee for further evidence.

Mr. Watson replied.

The solicitor, counsel, public and the reporter withdrew.

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

Not put

It was moved by Mr. McKinnon, seconded by Mr. Yachetti that the matter be referred back to the Committee.

Not put

It was moved by Mr. McKinnon, seconded by Mr. Manes, that the matter be adjourned to the next Discipline Convocation with Mr. Mark having the right to apply to the Committee in the meantime to reopen to hear fresh evidence.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

JAMES WILLIAM ORME, Hamilton

Mr. Lamek placed the matter before Convocation.

The solicitor attended on his own behalf. Mr. Shaun Devlin appeared for the Society.

Mrs. Graham and Mr. Yachetti withdrew and did not participate.

Convocation had before it the Report of the Discipline Committee, dated 31st January, 1989, together with an Affidavit of Service sworn 14th April, 1989, by Louis Kotholos that he had effected service on the solicitor by registered mail on 11th April, 1989 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed 27th April, 1989 by the solicitor (marked Exhibit 2). Copies of the Report having been sent 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

Hugh Guthrie, Q.C. (Chair)
D. Jane Harvey
Netty Graham

In the matter of
The Law Society Act

and in the matter of
JAMES WILLIAM ORME
of the Town
of Dundas
a barrister and solicitor

Shaun Devlin
for the Society

Michael L. Lamont
for the solicitor
Heard: January 10, 1989

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

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 28, 1988, Complaint D78/88 was issued against James William Orme alleging that he was guilty of professional misconduct.

The matter was heard in public on January 10, 1989 before a committee composed of Hugh Guthrie, Q.C. as Chair, Jane Harvey and Netty Graham. Mr. Orme appeared and was represented by his counsel Michael L. Lamont. Shaun Devlin appeared as counsel for the Law Society.

DECISION

The Complaint

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

(Para. 2, Complaint D78/88)

"(a) He caused his elderly client Mrs. Rose Agner to make an improvident investment without security and without her having full knowledge of the facts, in favour of his other client who is a judgment proof real estate speculator named Rod Dowling.

(b) He breached his undertaking given to the Law Society's Audit Department on or about May 27, 1988, concerning his conduct respecting the financial affairs of his client Rose Agner which undertaking provided, inter alia, that he would:

i) clarify the circumstances surrounding moneys advanced by him to or on behalf of Rod Dowling in late July, 1987 by no later than June 10, 1988."

Evidence

The Committee received in evidence the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D78/88 and agrees to proceed with a hearing of this matter before the Discipline Committee on November 29, 1988.

II. IN PUBLIC/IN CAMERA

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

IV. BACKGROUND

3. The Solicitor is a sole practitioner in Hamilton. He was called to the Ontario Bar in 1977. He has previously been before the Discipline Committee in 1983. A copy of his discipline record is attached.

V. FACTS

4. In or about 1978, the Solicitor commenced acting for Rose Agner, a widow, who is now over 90 years of age. In December, 1986, he acted as her solicitor on a sale of her home. Mrs. Agner received approximately $72,474.50 on the closing of that transaction. The Solicitor thereafter commenced to manage Mrs. Agner's affairs under a power of attorney properly executed. Mrs. Agner had additional assets of approximately $48,000 making her total capital approximately $120,000. She receives income by way of an old age pension and interest earned on her investment capital. Mrs. Agner resided in a senior citizens' home at the relevant times and now resides in a nursing home.

5. Mr. Orme agreed on her behalf to loan another of his clients, Rod Dowling Sr., the sum of $12,000 to discharge a debt that Mr. Dowling owed. Mr. Dowling had been a client of the Solicitor's since February, 1987. Mr. Dowling is a real estate speculator. Primarily, he finds properties which he can purchase with the intent of selling at a profit prior to the closing of his purchase. In the course of such matters, he signs an offer to purchase and makes a minimum cash deposit, the intent being that if Mr. Dowling could find another person to re-purchase the property prior to closing. To facilitate such an arrangement, the purchaser in all of these transactions is either Mr. Dowling in trust or a corporation controlled by Mr. Dowling. Mr. Dowling is personally judgment proof. The moneys used to fund the deposits are generally borrowed.

6. The $12,000.00 loan on July 28th, 1987, was made to enable Mr. Dowling to repay two creditors, who were owed $16,000.00 by Mr. Dowling. The Solicitor advanced the Agner $12,000.00 directly to these creditors on behalf of Mr. Dowling. At the time, there was $1,400.00 in back interest owing by Mr. Dowling on those loans. Both of these creditors were the Solicitor's accountants and one was a client of the Solicitor. The Solicitor received a fee of $800.00 for his services in making the Agner loan. At the time, the Solicitor did not obtain any security for Mrs. Agner on the loan.

7. Mr. Dowling had promised to provide an assignment of a portion of a first mortgage to the Solicitor to the benefit of Mrs. Agner as security for the $12,000.00 loan. The mortgage was one that Mr. Dowling's corporation, 560224 Ontario Limited, had taken back on the

sale of property at 165 Herkimer Street in Hamilton. The nominal face value of the mortgage was $35,000 and interest payments were $1,400 in default at the time. However, the property was only worth $20 - $25,000 in the estimation of the Solicitor. The sale on which the $35,000 mortgage was taken back was a "flip" by Dowling in which the purchase price had been artificially inflated by Dowling. The purchaser, Team Soccer '86 Corp., had completed the transaction at a nominal purchase price of $45,000. No second mortgage financing had been obtained and no actual fraud had resulted from the flip.

8. Mr. Dowling had agreed to assign a $16,800.00 portion of the mortgage to Mrs. Agner as well as to pay 8 percent interest from March 2, 1988 to March 2, 1989 as consideration for the $12,000.00 paid on behalf of Mrs. Agner on July 28, 1987. The security was never assigned.

9. On July 29, 1987, the Solicitor advanced an additional $5,000 to Mr. Dowling from Mrs. Agner's funds. The security for the $5,000 was to be a promissory note payable September 1, 1987 from Mr. Dowling personally. The amount of the note was to be $6,000 which included a bonus of $1,000 for making the loan. Prior to the making of this second loan, Mr. Dowling and the Solicitor agreed to restructure their original agreement as to security. The new agreement was that 560224 Ontario Limited would discharge its first mortgage and a new first mortgage to Mrs. Agner in the amount of $19,600 would be provided. 560224 would take the balance of the value of the original mortgage, if any, as a second mortgage and would forfeit that second mortgage to Mrs. Agner if repayment of the $5,000 was not made by September 1, 1987. This mortgage restructuring did not take place.

10. After the advance of the moneys by the Solicitor which totalled $17,000.00, Mr.Dowling refused to provide any of the promised security. This refusal occurred in August, 1987. No repayment of principal or interest has been made by Mr. Dowling or his corporation and none will be forthcoming from those sources.

11. The Solicitor ceased acting for Mr. Dowling in August, 1987. He did not arrange for separate representation for Mrs. Agner. Charles Piper, a Society auditor, attended at the Solicitor's office on a matter involving another solicitor in February and April, 1988 and, at one point, discussed the Agner problem with the Solicitor. There had been no complaint on behalf of Mrs. Agner at the time. During the course of discussions between Mr. Piper and Mr. Orme on the other matter, Mr. Orme began to tell Mr. Piper about the Agner transaction. The Solicitor initiated a meeting with Mrs. Agner's son in April, 1988, in an attempt to remedy the situation.

12. In May, 1988, Charles Piper attended again at the Solicitor's office to conduct a general audit investigation. Mr. Piper asked the Solicitor to arrange for new counsel for Mrs. Agner.

13. On May 27, 1988, the Solicitor gave an undertaking to Mr. Piper to cease to act on behalf of Mrs. Agner and to turn all moneys and securities held by him in trust for her to Mr. Thompson. He further undertook to co-operate with Mr. Thompson in an expeditious fashion to fully account for Mrs. Agner's affairs since November 1986. He also undertook to attempt to clarify the circumstances surrounding the transfer of the $17,000.00 to her on behalf of Mr. Dowling. He undertook to complete these matters by June 10, 1988. The undertaking was given in writing.

14. The Solicitor did not write to Terry Thompson until June 27, 1988. A copy of the letter is provided to the Committee.

15. On September 21, 1988, the Solicitor wrote another letter to Mr. Thompson setting out most of the circumstances involving the transfer. He has since spoken and written to Mr. Thompson directly with a view to settling the matter.

16. The Solicitor has settled the matter on his own and has paid $21,000.00 to Mr. Thompson and has promised to pay an additional $3,000. The Solicitor voluntarily declined to seek indemnity from the Errors and Omissions Department of the Society.

DATED at Toronto this 10th day of January, 1989."

The Committee accepted the Agreed Statement of Facts and made a finding of professional misconduct as particularized in paragraph 2 of Complaint D78/88.

RECOMMENDATION AS TO PENALTY

This Committee recommends that James William Orme be suspended from the practice of law for three months.

REASONS FOR RECOMMENDATION

The Committee views the fiduciary responsibility of a solicitor who holds the assets of an elderly client under a power of attorney to be of the highest degree. The preference of one client over another without the provision of adequate security and independent representations is a serious matter even though the Solicitor had no personal financial interest in the transactions. The Committee has taken into account, however, the fact that the Solicitor has completely indemnified the client for the loss sustained and that the recommended penalty is appropriate.

James William Orme 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 31st day of January, 1989

"Hugh Guthrie"
Chair

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Report of the Discipline Committee dated 31st January, 1989 be adopted.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Recommendation as to Penalty, that the solicitor be suspended for three months be adopted.

Lost

The solicitor, counsel, public and the reporter returned.

Both counsel made submissions in regard to the Recommendation as to Penalty. Mr. Orme sought a shorter period of suspension or in the alternative a reprimand in Convocation. Ms. Linda Carey, and associate of Mr. Orme, spoke on the solicitor's behalf. Mr. Devlin replied.

There were questions from the Bench to Mr. Orme.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. McKinnon, seconded by Mr. Shaffer, that the solicitor be suspended for one month.

Carried

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

Not put

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

The suspension, at the solicitor's request, was made effective 1st July, 1989, to enable the solicitor to make necessary arrangements for the continuation of his practice during the period of suspension.

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: ROBERT A. HORWOOD, Mississauga

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor appeared on his own behalf. Mr. Reg Watson appeared for the Society.

The matter had been stood down from the morning.

Mr. Strosberg did not participate.

It was reported to Convocation that the letter sent by Mr. Horwood in reply to the audit letter had been found and satisfied the concerns set out in the audit department letter.

Mr. Horwood now sought a further adjournment to allow him to have his accountant complete the form 2/3's. Mr. Watson sought a suspension of Mr. Horwood from practise until the forms were completed.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mrs. Graham, seconded by Mr. Bragagnolo, that an adjournment be granted to the September Discipline Convocation.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: MICHAEL A. SPENSIERI, Downsview

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor appeared with his counsel, Mr. Markin. Mr. Shaun Devlin appeared for the Society.

Mr. Markin requested that the matter be adjourned to the September Discipline Convocation and this was consented to by Mr. Devlin.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the matter be adjourned until the September Discipline Convocation.

Carried

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: KALMEN N. GOLDSTEIN, Toronto

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor appeared on his own behalf. Mr. Shaun Devlin appeared for the Society.

Both parties consented to an adjournment to the September Discipline Convocation.

It was moved by Mr. Topp, seconded by Mrs. MacLeod, that the matter be adjourned to the September Discipline Convocation.

Carried

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: DOUGLAS HUGH FORSYTHE, Nepean,

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The matter had been put over from the morning.

The solicitor was not present. He was represented by his counsel, Mr. Pinkofsky. Mr. Reg Watson appeared on behalf of the Society.

Mr. Manes did not participate in the vote.

Since the solicitor was not present and therefore could not consent to the participation of the Committee in the deliberations of Convocation, Messrs. Yachetti, Levy and Farquharson withdrew and did not participate in the matter.

It was explained to Mr. Pinkofsky that Convocation had decided that morning not to grant an adjournment to the September Convocation and that the matter would proceed.

Convocation had before it the Report of the Discipline Committee, dated 5th June, 1989, together with an Affidavit of Service sworn 8th June, 1989, by Louis Kotholos that he had effected service on the solicitor by registered mail on 7th June, 1989 (marked Exhibit 1). Copies of the Report having been sent 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

Gordon H.T. Farquharson, Q.C. (Chair)
Earl J. Levy, Q.C.
Roger D. Yachetti, Q.C.

In the matter of
The Law Society Act

and in the matter of
DOUGLAS HUGH FORSYTHE
of the City
of Ottawa

H. Reginald Watson
for the Society

Jack Pinkofsky
for the solicitor
Heard: October 12, 1988
November 24, 1988
January 26, 1989
April 16, 1989

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

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 12, 1988, Complaint D41/88 was issued against Douglas Hugh Forsythe alleging that he was guilty of professional misconduct.

The matter was heard in public on October 12 and November 24, 1988, January 26, 1989 and April 16, 1989 before a Committee composed of Gordon H.T. Farquharson, Q.C. as Chair, Earl J. Levy, Q.C. and Roger D. Yachetti, Q.C. Mr. Forsythe appeared and was represented by his counsel Jack Pinkofsky. H. Reginald Watson appeared as counsel for the Law Society.

DECISION

The Complaint

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

(Para. 2: Complaint D41/88)

"(a) He breached his written undertaking to the Law Society dated July 8th, 1987, in which he undertook not to engage in the private practice of law by acting on the following transactions:

1. Serrao purchase
2. Martineau purchase
3. Porter purchase and sale
4. Hakka purchase

(b) While his rights and privileges as a member of the Law Society were suspended as of November 28th, 1986 for non-payment of his Errors and Omissions Levy, he continued to practise law and hold himself out as a barrister and solicitor as detailed in particular 2(a).

(c) He failed to serve his clients, Mr. and Mrs. Lee Bartley, in a conscientious, diligent and efficient fashion respecting their real estate transactions.

(d) He failed to maintain sufficient funds in his trust account to satisfy his trust obligations to the financial detriment of his clients.

(e) He failed to co-operate with the Society's audit by not producing all of the books, records and accounts required to fully audit his practice of law.

(f) He failed to maintain the books, records and accounts for his practice of law as required by the Regulation made pursuant to the Law Society Act.

(g) He failed to file with the Society within six (6) months of the termination of his fiscal years ending April 30th, 1986 and April 30th, 1987, 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 entirety of the evidence before the Committee on the issue of misconduct was in the form of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D41/88 and is prepared to proceed with a hearing of this matter on November 24th, 1988.

II. IN PUBLIC/IN CAMERA

2. The Solicitor and Counsel for the Law Society agree that this hearing should take place in public.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D41/88 and admits all the particulars contained therein.

IV. FACTS

Particulars 2(a) and (b)

4. The Solicitor's rights and privileges were suspended on November 28th, 1986 for non-payment of his Errors and Omissions levy.

5. During 1986 and early in 1987, the Society received several complaints respecting the Solicitor. In the usual course, the Society contacted the Solicitor who did not reply to the Society's correspondence. Eventually, the Society was able to contact the Solicitor and it was determined that the complaints were related to his unsuitability to the private practice of law. As a result of this, the Solicitor agreed that he would not engage in private practice and agreed to co-operate with the Society and transfer his files to another solicitor. This agreement was reduced to the form of a written undertaking which the Solicitor executed on July 8th, 1987.

6. Subsequent to the Solicitor executing the undertaking he continued to practice law (while he was suspended and in breach of his undertaking) by acting in the following real estate matters:

(i) Serrao purchase - The Solicitor acted for the Serrao's on the purchase of their residential property. He fulfilled only the minimum requirements on the purchase in order to transfer funds and close the transaction. The file contained only a subsearch. There were no letters to municipalities nor was there a reporting letter to the client.

(ii) Martineau purchase - The Solicitor conducted a subsearch prior to closing. There were no letters to municipalities nor did the Solicitor write reporting letters.

(iii) Porter purchase and sale - The Solicitor did not report to the client or the mortgage company. The Solicitor did not have duplicate registered copies of the transfer or the mortgage. The Society's audit examination disclosed a mortgage to be discharged in the sale file.

(iv) Hakka purchase - Again, the Solicitor closed the transaction but did only the minimum amount of work required. He did not send letters to the various municipalities, obtain a tax certificate, report to his client and the mortgage company or follow-up on outstanding undertakings. In addition, the file did not contain duplicate registered copies of the transfer or the mortgage.

Particular 2(c) and (d) - Bartley Complaint

7. The Solicitor represented Mr. and Mrs. Bartley on a real estate transaction which closed on June 30th, 1986. While this transaction was closing, Mr. and Mrs. Bartley requested that the Solicitor act for them respecting another real estate transaction. They provided him with a cheque for $5,000 which was to be used as a deposit and was paid to the Solicitor in trust. The Solicitor deposited the cheque to a separate interest-bearing trust account.

8. After the first transaction closed on June 30th 1986, the Solicitor failed to report or account to the Bartley's. On many occasions they attempted to contact him personally and through third parties in order to obtain their documentation and accounting. The Solicitor did not respond to any of the Bartley's requests. Finally, on February 13th, 1987, the Bartley's received a letter from the mortgagee

informing them that if the documentation respecting the real estate purchase was not received in two weeks time, all the documents would be reworked at their expense. Only at this stage did the Solicitor provide the Bartley's with their documentation. However, he did not report or account to them. At this time the Solicitor also agreed to release the $5,000 which was being held in his trust account. However, the Solicitor failed to release these funds and the Bartley's complained to the Society.

9. The Society conducted an audit investigation on the Solicitor's practice and discovered that the $5,000 had been deposited to a separate interest-bearing trust account. However, at the date of the audit examination on October 20th, 1987, the account balance was $4,699.24. The auditor was able to discover that while interest in the amount of $261.32 had accrued to August 28th, 1987, an amount of $562.08 had been taken from the account. The bank records disclosed that three disbursements totalling $562.08 had been made during December 1986 and January 1987. It was determined that while these funds went to the benefit of the Solicitor, they had been taken by the bank in error from the trust account to satisfy some of the Solicitor's personal liabilities and the withdrawals should have been charged to the Solicitor's personal bank account. The Society then requested that the Solicitor prepare a promissory note to the Bartley's for the $562.08 that he owed. However, he did not comply with this request nor did he take steps to resolve the outstanding trust liability to his client.

10. As a result of the audit examination of this file, the Society suggested that the Solicitor close the separate trust account for the Bartleys, transfer the funds to a mixed trust account and issue a cheque payable to the Bartley's current solicitor. This was done on September 24th, 1987, the Society delivered a cheque in the amount of $4,699.24 to the Bartley's new solicitor, David C. Silverson.

11. To date the Solicitor has not resolved the outstanding trust obligation and still owes the Bartleys $562.08. During the audit the Society's auditor attempted to prepare a trust comparison for September of 1987. The Solicitor's trust liabilities totalled $8,013.72 however, the balance in his trust account was only $6,922.25 which created an apparent trust shortage of $1,091.47. While some of this trust shortage is due to arithmetic and bank errors, part of the shortage is also due to payments to third parties in excess of the funds held in trust. as well as shortages which could not be identified at the time of the audit.

Particulars 2(e), (f) and (g) - Audit Examination

12. One of the reasons that some of the shortages could not be identified was that the Solicitor did not fully co-operate with the Law Society during its Audit investigation. The Society attended at the Solicitor's office on August 20th, 1987. The Solicitor did not produce his books and records at that time but indicated that they were with his accountant. An appointment was made to meet with the Solicitor at the office of his counsel on August 26th, 1987. At that time the Solicitor produced some of his books and records. The Society provided him with a list of the records that were outstanding and which had to be produced. The Solicitor has failed to produce these books and records which are required to properly audit his practice.

13. The books and records which have been produced are sporadic and in arrears. As a result of the Solicitor failing to maintain his books and records on a current basis, the Society imposed co-signing controls on his mixed trust account which remain in effect to this date.

14. The Solicitor's year end is April 30th. He has failed to file with the Society within six months of the termination of his fiscal years ending April 30th, 1986 and April 30th, 1987, a statutory declaration in the form prescribed by the Rules (Form 2) and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules (Form 3).

V. PENALTY

15. The Solicitor submits that his rights and privileges as a member of the Law Society of Upper Canada be suspended for a period of one year and thereafter indefinitely until he honors paragraphs 4 through 7 of his undertaking to the Discipline Committee which reads as follows:

1. For a period of three (3) years after his suspension, he will not practise as a sole practitioner but engage in the practice of law solely as an employed solicitor;

2. For a period of three (3) years after his suspension, he will not have sole signing authority over any trust funds;

3. For a period of three (3) years after his suspension, he will provide the Society with trust comparisons every four (4) months;

4. By no later than November 30th, 1988, the Solicitor will repay the sum of $562.08 owed to Mr. and Mrs. Bartley;

5. By no later than January 16th, 1989, the Solicitor will have his books maintained properly pursuant to the Society's regulations;

6. By January 16th, 1989, the Solicitor will eliminate all trust shortages; and

7. By January 16th, 1989, the Solicitor will file with the Society all of his outstanding Forms 2/3.

16. The Solicitor admits that he is currently not suited to the practice of law as a sole practitioner. The Solicitor has not practised law since September of 1987. In November of 1987, he started working for the Department of External Affairs as of "Foreign Service Officer". His employment as a trade commissioner is based in Ottawa and his duties include the promotion of Canadian trade and export. This position does not require him to engage in the practice of law and he does not anticipate returning to the practice of law in the near future. In fact during the spring of 1988, he may be receiving a posting to a foreign country. The Solicitor is currently on language training in the City of Ottawa.

17. The Solicitor acknowledges the seriousness of his misconduct and regrets his lapses as detailed by the Society's complaint and Agreed Statement. Despite the seriousness of the misconduct, the Solicitor wishes to remain a member of the Society and is prepared to co-operate with the Society to resolve all outstanding matters.

18. The Society supports the Solicitor's submission.

DATED at Toronto this 24th day of November, 1988."

The Committee accepted the Agreed Statement of Facts and made a finding of professional misconduct as particularized in paragraph 2 of Complaint D41/88.

RECOMMENDATION AS TO PENALTY

This Committee recommends that Douglas Hugh Forsythe be suspended for a period of two years, and that, for a period of three years after the expiration of such suspension:

1. he not be permitted to practise as a sole practitioner, but be permitted to engage in the practice of law solely as an employed solicitor;

2. he not be permitted to have sole signing authority over any trust fund;

3. he provide the Law Society with trust comparisons every four months.

REASONS FOR RECOMMENDATION

The Solicitor was suspended on November 28, 1986 for failing to pay his Errors and Omissions insurance levy. The levy remains outstanding.

On July 8, 1987 the Solicitor gave a written undertaking not to practise. The Solicitor did not abide by his undertaking.

There was an untoward delay in the Solicitor's performance of his obligations with regard to paragraphs 5 - 12 in the Agreed Statement of Facts.

Consequently, the Committee has serious misgivings about the Solicitor's governability and is particularly concerned about his failure to appear on April 13, 1989. His counsel was present on that date and unable to provide an explanation for the absence of his client.

The joint submission on the matter of penalty should be accepted, therefore, subject to an increase in the length of the suspension from one year to two years.

Douglas Hugh Forsythe was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1964.

ALL OF WHICH is respectfully submitted

DATED this 5th day of June, 1989

"Gordon Farquharson"
Chair

Neither counsel made representations as to the Report.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Report of the Discipline Committee dated 5th June, 1989 be adopted.

Carried

Both counsel presented submissions in regard to the Recommendation as to Penalty of the Committee that the solicitor be suspended for two years plus the imposition of conditions on his return to practise. Mr. Pinkofsky sought a one-year suspension while Mr. Watson sought to uphold the recommendation of the Committee.

The counsel, public and the reporter withdrew.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Recommendation as to Penalty of the Committee, that the solicitor be suspended for two years plus conditions be adopted.

Lost

It was moved by Mr. Strosberg, seconded by Mr. Ground, that the solicitor be suspended for one year with the imposition of the conditions as set out in the Committee's report on the solicitor's return to practise.

Carried

Mr. Manes did not vote.

Counsel, public and the reporter returned.

Counsel were informed of Convocation's action.

Counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: STANLEY F. DUDZIC, Hamilton

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor appeared with his counsel, Mr. Brian Greenspan. Mr. Reg Watson appeared for the Society.

Mr. Cullity and Ms. Graham withdrew and did not participate.

Mr. Greenspan, on behalf of the solicitor, had filed a lengthy notice of objection and in addition Mr. Thom had questioned the jurisdiction of Convocation to interfere with findings of fact made by Committee. Because of the lengthy nature of the argument to be made by Mr. Greenspan and because of the need to consider the jurisdictional issue it was agreed that the matter would be adjourned to a date to be set by agreement or failing such agreement to a date to be set by the Treasurer.

.....

"PUBLIC"

.....

Re: AMITA MOHINI SUD, Scarborough

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor appeared with his counsel, Mr. Koziebrocki. Mr. Watson appeared for the Society.

Convocation had before it the Report of the Discipline Committee, dated 27th March, 1989, together with an Affidavit of Service sworn 14th April, 1989, by Louis Kotholos that he had effected service on the solicitor by registered mail on 11th April, 1989 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed 22nd June, 1989 by the solicitor (marked Exhibit 2). Copies of the Report having been sent 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)
D. Jane Harvey

In the matter of
The Law Society Act

and in the matter of
AMITA MOHINI SUD
of the City
of Toronto
a barrister and solicitor

H. Reginald Watson
for the Society

Irwin Koziebrocki
for the solicitor
Heard: June 14, 1988
December 12, 1988

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

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 10, 1988, Complaint D50/88 was issued against Amita Mohini Sud alleging that she was guilty of professional misconduct.

The matter was heard in public on June 14, 1988 by this committee composed of Thomas G. Bastedo, Q.C., as Chair, Thomas M. Wood and D. Jane Harvey. When the hearing was concluded on December 12, 1988 Mr. Wood did not participate, having been appointed to the bench in the interim.

Ms. Sud attended the hearing and was represented by Earl J. Levy, Q.C. on June 14, 1988 and by Irwin Koziebrocki on December 12, 1988. H. Reginald Watson appeared as counsel for the Law Society.

DECISION

The Complaint

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

(Para. 2; Complaint D50/88)

(a) She counselled immigration clients to mislead immigration authorities during examinations under oath conducted by Immigration Canada.

Evidence

The following Agreed Statement of Facts was received as evidence by the Committee:

"AGREED STATEMENT OF FACTS

I. SERVICE

1. The Solicitor accepts service of Complaint D50/88 and is prepared to proceed with a hearing of this Complaint on June 14th, 1988.

II. ADMISSIONS

2. The Solicitor has reviewed Complaint D50/88 with her counsel, Mr. Earl Levy, and admits particular 2(a) contained therein.

III. BACKGROUND

3. The Solicitor was called to the Bar in April, 1986. She was unable to secure employment until she joined the firm of Codina and Pukitis during October of 1986. The Solicitor worked at Ms. Codina's Bay Street office and was primarily responsible for immigration matters. Prior to working for Ms. Codina, the Solicitor had no experience in immigration law and had taken no immigration law courses. The Solicitor worked in Ms. Codina's office for slightly less than one year.

4. During that time she was supervised by and took instructions from Ms. Codina. During the course of her employment with Ms. Codina, the Solicitor's salary escalated from $20,000.00 in October of 1986 to $24,000.00 in December of 1986, to $26,000.00 in May of 1987, and then to $38,000.00 in September of 1987. Approximately six months after the Solicitor joined the Codina firm, the Society started investigating the Solicitor as a result of complaints received by former employees of the Codina firm. During October of 1987, the Solicitor resigned from the Codina firm and now is employed by the firm of Goldstein and Grubner.

IV. FACTS

PARTICULAR 2(A)

The Clients

5. On July 5, 1986, Mr. A arrived in Canada from Portugal to visit his brother. Shortly after arriving, Mr. A received a letter from the immigration authorities requiring him to attend an immigration hearing.

6. His family had heard of Ms. Angelina Codina and suggested that he consult her. He met Ms. Codina at her office on St. Clair Avenue for an initial discussion of his immigration matter. Ms. Codina then referred him to Michele Meakes, a solicitor in the office, who attended with Mr. A when he claimed to be a refugee under oath.

7. An examination under oath was scheduled for December 9th, 1986. The file was transferred to the Solicitor because Ms. Meades had left the firm. That same morning, Mr. A attended at Ms. Codina's Bay Street office with his cousin and met with the Solicitor. Ms. Gabriella Parreira acted as an interpreter. His cousin speaks English and Portuguese and confirmed to the Society that Ms. Parreira accurately translated to Mr. A the improper suggestions made by the Solicitor. Both Ms. Parreira and his cousin corroborated the assertions of Mr. A during the Society's investigation.

8. The Solicitor started the meeting by asking Mr. A on what grounds he was claiming to be a refugee. Mr. A replied that he did not know and asked for the Solicitor's assistance. The Solicitor replied that many people were making refugee applications on political and religious grounds as

set out in the Immigration Act. The Solicitor had learned this from Ms. Meakes. The Solicitor asked if Mr. A was aware of the Jehovah's Witness religion. He replied that he was not. The Solicitor then explained the basic tenets of the Jehovah's Witness faith while Ms. Parreira translated. This was the first Examination under oath in which the Solicitor had ever been involved.

9. The Solicitor provided Mr. A with a scenario that he was a member of the Jehovah's Witness and instructed him to say that he had been persecuted in Portugal because of his belief in that religion. The Solicitor also instructed him to say that his family in Canada accepted his as a Jehovah's Witness. Also she told him not to wear a crucifix and to inform the immigration authorities that when he was in Portugal he could not even go to a cafe as he would be spit upon due to his religion. All of this information had come to the Solicitor's attention from Michele Meakes who had previously conducted an Examination under oath of a Portuguese refugee claiming to be a Jehovah's Witness.

10. Later that same day, the Solicitor and Mr. A went to the Immigration Examination under oath. Mr. A gave the Solicitor $1,500.00 of the $3,000.00 required by Ms. Codina to process the file. He had previously paid $1,000.00. During the Examination, the Solicitor asked the same questions they had rehearsed in the Solicitor's office in order to portray to the immigration authorities the scenario propounded by the Solicitor.

11. Mr. A is not and has never been a member of the Jehovah's Witness religion. The scenario proposed by the Solicitor was untrue and her rehearsal of the questions with Mr. A prior to the Examination and her posing the questions during the Examination was designed to falsely portray Mr. A as a refugee suffering from religious persecution. The Solicitor knew that Mr. A was not a member of Jehovah's Witness faith as he informed the Solicitor that he belonged to the Roman Catholic Church. The Solicitor and Mr. A knew that the evidence he was giving was untrue, however, the Solicitor informed him that this was the only way he could remain in Canada.

Mr. B

12. Mr. B. arrived in Canada on July 11th, 1985, as a visitor and stayed with his brother. Some time later, Mr. B decided that he wanted to stay in Canada. He saw an advertisement on television for the law firm of Ms. Angelina Codina. He arranged an appointment and met with Ms. Codina at her office. During that first meeting, they discussed the various applications for refugee status. At the end of the meeting, she stated that she would refer him to another lawyer in her office. He paid her an initial retainer of $1,500.00 towards the $3,000.00 fee quoted by Ms. Codina.

13. Shortly thereafter, Mr. B met with the Solicitor at the Bay Street offices of Ms. Codina. Mr. B is Portuguese and does not speak English. The Solicitor does not speak Portuguese. A secretary, Ms. Isabel Sousa, attended that meeting and acted as an interpreter. The entire interview was conducted in Portuguese with Ms. Sousa translating between Mr. B and the Solicitor. Ms. Sousa is fluent in both English and Portuguese and corroborated the statements of the various clients of the Solicitor during the Society's investigation.

14. The purpose for this meeting was to prepare Mr. B for his Examination under oath in support of his refugee application. However, both Mr. B and the Solicitor knew that he was not a legitimate refugee.

15. The first matter to be decided at the interview was the appropriate refugee option to select for Mr. B. The Solicitor described the various options under the Immigration Act to Mr. B and asked him to select one of the options. He suggested a political refugee and the Solicitor agreed.

16. The next topic was the determination of the political party to which Mr. B would belong. Several political parties in Portugal were suggested by Isabel Sousa and Mr. B decided that he should belong to the P.P.D., which is a left wing party in Portugal. After obtaining this background information volunteered by Ms. Sousa, the Solicitor gave Mr. B the following scenario:

> He was a member of the P.P.D. and had been canvassing for that party during elections before he left Portugal. While canvassing he had been abused by his countrymen and had been beaten and insulted. Also he had been thrown out of the family home by his parents.

17. After the Solicitor and Mr. B had agreed upon this scenario, the Solicitor then discussed with him some of the questions which she would pose to him during the Examination under oath which were designed to bring out the facts which would support the scenario. The appointment lasted from one to one and a half hours. The Solicitor told Mr. B to go

home and think about the scenario and the questions she would pose during the Examination under oath and return for another appointment.

18. Approximately two weeks later, Mr. B returned to the Solicitor's office with his brother. During this interview Ms. Gabriella Parreira who is another secretary fluent in English and Portuguese acted as the translator. As in the case of Ms. Sousa, Ms. Parreira corroborated the evidence of the clients who were improperly counselled by the Solicitor. The meeting lasted from approximately 30 minutes to 1 hour. As in the first meeting, the Solicitor reviewed with Mr. B the scenario she had proposed during the first meeting.

19. Mr. B left the meeting and spoke with his brother who was waiting outside the office. They reviewed the substance of the interviews with the Solicitor and both were well aware that the scenario was fabrication. However, Mr. B wanted to remain in Canada and simply did what he Solicitor instructed him to do.

20. Shortly thereafter, Mr. B attended at the Immigration Examination under oath respecting his refugee status. During the Examination, the Solicitor asked him the same questions they had rehearsed in the Solicitor's office which supported the refugee scenario. He gave the answers that had been given to him by the Solicitor even though he knew they were false. He did this because the Solicitor had instructed him in this course of conduct and he wanted to stay in Canada. Mr. B paid the Solicitor the second $1,500.00 instalment of the $3,000.00 fee just prior to the Examination.

21. The Solicitor did not contact Mr. B after the Examination. After some time, he contacted Ms. Codina and saw her during December of 1987. Ms. Codina told him that she would have to prepare more documentation to be sent to Ottawa and would require an additional $500.00. Mr. B replied that he already paid her firm $3,000.00, that he had no more money and that he simply wanted to end the case.

22. In reality, Mr. B was never a member of the P.P.D. He had never canvassed for any political party nor was he abused or persecuted for away reason let alone political beliefs. He was never thrown out of the family home. Mr. B gave his evidence under oath knowing it was untrue because the Solicitor had told him he had to claim and substantiate his refugee status if he wanted to remain in Canada.

Ms. C

23. Ms. C arrived in Canada on April 29th, 1986 to visit her aunt. Ms. C was caught working illegally in Canada and was advised to consult a lawyer as she wanted to remain in Canada. Ms. C and her aunt attended at the Dundas Street office of Codina and Pukitis where they were initially interviewed by Ms. Codina. They paid a retainer of $1,500.00 and were referred to Ms. Sud at the Bay Street office.

24. During December of 1986, they met the Solicitor in her office. Ms. Gabriella Parreira acted as the interpreter. They explained to the Solicitor that Ms. C wanted to stay in Canada. The Solicitor replied that there were five ways to accomplish this and explained the various refugee options. Ms. C advised that her father was involved in politics in Portugal. As a result, the Solicitor suggested that Ms. C make her claim on political grounds. The Solicitor then wrote down a set of questions in English for Ms. C. They did not review these questions during the first meeting.

25. After the first appointment, Ms. C had the questions translated by a friend of the family. The questions were designed to elicit information from Ms. C respecting the political refugee scenario. She did not understand the questions and she and Ms. C later returned to meet with the Solicitor and Ms. Parreira.

26. During this second meeting, it was decided that Ms. C would testify at the Immigration Examination that she belonged to a left wing

political party called the A.P.U. The Solicitor told Ms. C to say that she had campaigned during a recent election for her father and that people had abused her by spitting at her. The Solicitor advised her to carefully study the written questions that had been prepared in the first interview. The Solicitor informed her that many people use this method to stay in Canada and that this was the only way in which she would be allowed to remain in this country.

27. The Solicitor provided Ms. C with the scenario and the details supporting this scenario to which she would testify during her Examination under oath. Throughout both interviews, her aunt felt that Ms. Parreira was accurately translating the comments of the Solicitor.

28. Shortly thereafter, Ms. C attended with the Solicitor at the Immigration Examination under oath. During the hearing, the Solicitor asked her the questions that brought out the false scenario that they had rehearsed in the Solicitor's office. The Solicitor and Ms. C both knew that the scenario in her evidence was untrue, however, she wanted to stay in Canada and the Solicitor had informed her that this was the only way. Prior to the start of the Examination, they paid the Solicitor a further $1,500.00.

29. In June of 1987, the Solicitor arranged an appointment with Ms. C at the Bay Street office of Codina and Pukitis. Prior to Ms. C's attendance, the Solicitor had prepared an affidavit which stated that the evidence given by Ms. C at her Examination under oath was true. Ms. C signed the affidavit because the Solicitor requested her to sign the affidavit. Ms. Codina had recommended this course of action to the Solicitor because Ms. Codina was aware that she was being investigated by the Law Society.

Relatives of the Clients

30. Mr. A attended with his cousin during his meetings with the Solicitor. Ms. C attended with her aunt during her meetings with the Solicitor. Both Mr. A's cousin and Ms. C's aunt understand sufficient English to know that the secretaries were accurately translating what the Solicitor was saying. Also they know that the Solicitor was propounding false scenarios and providing the requisite details to support the scenarios. However, at all times, they were assured by the Solicitor that this was the only way in which the clients would be able to remain in Canada.

31. Mr. B's brother accompanied Mr. B to the meeting with the Solicitor at the offices of Codina and Pukitis. However, his brother remained in the reception area during Mr. B's meeting with the Solicitor. While he was not present during the meeting, Mr. B discussed the meeting with his brother immediately after it ended. They discussed the false scenario, but agreed that Mr. B would follow the Solicitor's instructions as she had said this was the only way he could remain in Canada.

The Secretaries

Gabriella Parreira

32. Ms. Parreira would testify that she was employed by Ms. Angelina Codina at her Bay Street office from September, 1986 until March, 1987. During that time, she worked mainly as a secretary to the Solicitor. Ms. Parreira speaks fluent English and Portuguese and was hired by Ms. Codina as a secretary prior to the Solicitor's employment.

33. The office practice was for Ms. Codina to conduct the initial interview with the immigration client at which time Ms. Codina would decide on what type of immigration application would be made. She would then refer the file to the Solicitor. In most of the "refugee" cases, the Solicitor would tell Ms. Parreira the category in which the client was to apply. The standard fee set by Ms. Codina in these refugee cases was $3,000.00; a retainer of $1,500.00 and another $1,500.00 at a later

date. There was an additional charge of $500.00 if submissions to the Immigration Refugee Committee were required.

34. Ms. Parreira acted as a translator during Mr. A's attendances on the Solicitor. During those meetings, the Solicitor decided that Mr. A would apply as a Jehovah's Witness on the basis of religious persecution. She informed Ms. Parreira that Mr. A was to be briefed about being a persecuted Jehovah's Witness. She explained to Mr. A, through Ms. Parreira, the general principals of the Jehovah's Witness religion, such as the belief in "Kingdom Hall". The Solicitor told him by way of coaching that if he was asked by the immigration authorities how many people would die at the end of the world, he was to say 144,000. The Solicitor also told Mr. A to remove his crucifix before he went to the Examination. The Solicitor then provided Mr. A with the facts supporting the scenario that he had been persecuted in Portugal for his religious beliefs. Mr. A knew nothing about the Jehovah's Witnesses or about any persecution of Jehovah's Witnesses in Portugal. Mr. A is a practising member of the Roman Catholic faith. The above information regarding Jehovah's Witnesses was learned by the Solicitor from Michele Meakes.

35. Ms. Parreira was also present when the Solicitor interviewed Ms. C. Again, Ms. Parreira translated for the Solicitor who prepared the false scenario for Ms. C and provided her with the facts she would require to support the scenario during her Examination under oath. The Solicitor told Ms. C to say that she was a member of an unpopular political party in Portugal. The Solicitor said that the party represented the poor and that Ms. C had been persecuted for her beliefs. She told Ms. C to say that she had been threatened and ostracized for her political opinions in Portugal.

36. Ms. Parreira was also involved in the case of Mr. B. Another interpreter, Ms. Isabel Sousa was present during Mr. B's first meeting with the Solicitor and Ms. Parreira was present during the second interview. Again the Solicitor decided on a false scenario for Mr. B which would portray him as a refugee suffering from political persecution. The purpose of the meeting was for the Solicitor to provide Mr. B with the facts required to support this scenario at his Examination.

Isabel Sousa

37. Ms. Sousa was employed by Ms. Angelina Codina at her Bay Street office from October, 1986 to March, 1987. Ms. Sousa is fluent in both English and Portuguese and acted as a receptionist and an occasional translator for immigration clients.

38. Ms. Sousa would testify that the general office procedure was that the initial interview with the client would be conducted by Ms. Codina who would decide what type of immigration application the client would pursue. Ms. Codina would then refer the file to the Solicitor with instructions to proceed with the immigration claim.

39. Ms. Sousa acted as translator during the first meeting between the Solicitor and Mr. B. At that meeting, Mr. B decided that he would be a political refugee from the P.P.D. party who had been persecuted in Portugal for his beliefs. The Solicitor then provided Mr. B with facts necessary to support his scenario of political persecution. She told him that he had been abused by being spit upon, beaten and thrown out of the family home by his parents.

40. Ms. Sousa was concerned about the conduct of the Solicitor and confronted her. She asked how the Solicitor could tell the clients to lie to the immigration authorities. The Solicitor replied by saying that the decision to claim refugee status had already been made by Angie Codina and that the Solicitor wanted to help these clients as they wanted to remain in Canada.

41. Ms. Sousa also spoke of her concerns with Mr. William Fong and Cameron Kilgour. Mr. Fong is a solicitor who had just started working for Ms. Codina the week before. Mr. Kilgour was a student of law who was awaiting his call to the Bar and also had just been hired by Ms. Codina the week before. Mr. Fong and Mr. Kilgour were very concerned about the allegations made by Ms. Sousa and attended at the Law Society, which commenced an investigation. Shortly thereafter, Ms. Codina convened an office meeting at which time she stated that Ms. Sousa should not have said what she did to Messrs. Fong and Kilgour and that there could be serious repercussions. Ms. Sousa and Ms. Parreira left Ms. Codina's employment together on March 28th, 1987.

DATED at Toronto this 14th day of June, 1988."

The Committee accepted the Agreed Statement of Facts and made a finding of misconduct as particularized in paragraph 2 of the Complaint.

RECOMMENDATION AS TO PENALTY

The Committee recommends:

1. that the Solicitor be suspended from the practice of law for a period of six months,

2. that the Solicitor pay the costs of the Society's investigation in the amount of $1,000, payable over a period of six months;

3. that following the period of suspension, her practice of law be supervised by a duly qualified member of the Society for a period of one year.

REASONS FOR RECOMMENDATION

Amita Mohini Sud was called to the Bar in the spring of 1986 and, in the fall of that year, commenced working for the firm of which Ms. Codina was a partner. She had been unable to obtain employment elsewhere until that time. She began working in the area of immigration law, and the facts and circumstances which give rise to her attendance before the Law Society were set out clearly in the Agreed Statement of Facts which was filed as Exhibit #2 in these proceedings.

In essence, Ms. Sud fabricated or assisted in fabricating evidence which was to be used in various immigration hearings and, in addition, in June of 1987, several months after her first contact with the Law Society, prepared an affidavit which stated that the evidence given by one of her clients at an examination under oath was true. The affidavit was known to the Solicitor and to the client to be false.

Mr. Watson, on behalf of the Law Society, urged that there are a number of factors which dictated that the penalty proposed by the Society and the Solicitor's counsel was appropriate. That agreed submission on penalty recommended that the Solicitor be suspended from the practice of law for a period of three months, that the Solicitor pay the costs of the Society's investigation in the amount of one thousand dollars ($1,000) payable over six months and that her practice of immigration law be supervised for a period of one year. During the course of the hearing on penalty, counsel agreed that in the event that this recommendation were to be accepted by this Committee, then the Solicitor would be required to be supervised in any area of law for a period of one year.

It was pointed out to the Committee that the circumstances giving rise to these events were an isolated series of events in a brief period of time, that Ms. Sud has cooperated fully with the Law Society, that

the circumstances in the fall of 1986 and in the spring of 1987 were entirely out of character with Ms. Sud, and that there has been no prior or subsequent history of discipline.

It was also been stressed by the Society's counsel and by the Solicitor's counsel that Ms. Sud is and will be cooperative in testifying in other discipline matters which may, in due course, come before the Society.

The Committee was particularly impressed with the evidence of Mr. Goldstein and the supportive way in which he has offered to assist her in the future, and also for the assistance which he has given to her in the past. His opinion of Ms. Sud is high, and he doubts that there will ever be a recurrence of the type of behaviour of which Ms. Sud is accused. We tend to agree.

Having said all of what has been said, it is simply unacceptable for any solicitor of any maturity or experience to fabricate evidence which can or will come before a court of law. If it were not for all of the factors which have been put forward by Mr. Watson and Mr. Koziebrocki, it would be the view of this Committee that Ms. Sud's membership in the Society be terminated.

In all of the circumstances, this Committee is not able to accept the recommendation of a three month suspension and instead, inserts the time period of six months.

Accordingly, we recommend the following disposition that: Ms. Sud be suspended from the practice of law for a period of six months; the Solicitor shall pay the costs of the Society's investigation in the amount of one thousand dollars ($1,000) payable over a period of six months; that following the period of suspension, her practice of law in whatsoever area of law she chooses to practice will be supervised by a duly qualified member of the Society for a period of one year.

Amita Mohini Sud was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 11th day of April, 1986.

ALL OF WHICH is respectfully submitted

DATED this 27th day of March, 1989

"T. G. Bastedo"
Chair

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Report of the Discipline Committee dated 27th March, 1989 be adopted.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

Both counsel made submissions in regard to the Recommendation as to Penalty, being a six-month suspension plus $1000 in costs plus conditions on return to practise. It was the position of both counsel that the recommended penalty should be adopted.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. Lamek, seconded by Mr. Topp, that the Recommendation as to Penalty set out in the Committee's Report, that the

solicitor be suspended for six months plus pay $1000 in cost plus meet certain conditions on returning to practise be adopted.

It was moved by Mr. Thom, seconded by Mrs. Graham, that the solicitor be disbarred.

In light of the more severe penalty the solicitor, counsel, public and the reporter were recalled.

The solicitor and counsel were informed of the motion for disbarment and asked if they wished to proceed. After a brief adjournment counsel for the solicitor indicated the solicitor wished to proceed.

Counsel made submissions on the issue.

The solicitor, counsel, public and the reporter withdrew.

It was moved by Mr. McKinnon, seconded by Mr. Cullity, that the solicitor be permitted to resign.

Lost

The motion of disbarment was put and lost.

It was moved by Ms. MacLeod, seconded by Mr. Wardlaw, that the solicitor be suspended for one year, pay a $1000 fine plus meet the conditions imposed in the Committee's Report.

Carried

The solicitor, counsel, public and the reporter returned.

The solicitor and counsel were informed of Convocation's action.

The solicitor, counsel and the reporter retired.

.....

"PUBLIC"

.....

Re: WILLIAM L. KENNEDY, Hamilton

Mr. Lamek placed the matter before Convocation.

The reporter was sworn.

The solicitor did not attend, nor was he represented by counsel. Mr. Reg Watson appeared for the Society.

The matter was adjourned to the September Discipline Convocation.

Counsel and the public retired.

.....

CONVOCATION ROSE AT 5:40 P.M.

.....

Confirmed in Convocation this day of , 1990

Treasurer