

23rd April, 1992

MINUTES OF SPECIAL CONVOCATION

Thursday, 23rd April, 1992
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence), Arnup, Brennan, Campbell, Carter, Cullity, Elliott, Finkelstein, Graham, Hickey, Lax, Lerner, Manes, Mohideen, Murray, Palmer, Rock, Scott, Thom and Weaver.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Re: DAVID ARTHUR STEVENS, Dundas

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Graham withdrew and did not participate.

Mr. Gavin MacKenzie appeared for the Society and Mr. David Smye appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 5th March, 1992, together with an Affidavit of Service sworn 20th March, 1992, by Frances Galati that she had effected service on the solicitor by registered mail on 9th March, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Denise E. Bellamy, Chair
Laura L. Legge, Q.C.
Mrs. Netty Graham

In the matter of
The Law Society Act

Neil Perrier
for the Society

and in the matter of
DAVID ARTHUR STEVENS
of the Town
of Dundas
a barrister and solicitor

David Smye
for the solicitor

Heard: January 28, 1992

23rd April, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 16, 1991, Complaint D129/91 was issued against David Arthur Stevens alleging that he was guilty of professional misconduct.

The matter was heard in public on January 28, 1992 before this Committee composed of Denise Bellamy, Chair, Laura L. Legge, Q.C. and Netty Graham.

Mr. Stevens attended the hearing and was represented by David Smye. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D129/91

2(a) He engaged in conduct unbecoming a barrister and solicitor by the following conduct:

i) he replaced a vehicle's Florida registration plates GER75R with Ontario registration plates 72TRSX belonging to another vehicle owned by the Solicitor in order to smuggle the vehicle from the United States of America to Canada;

ii) he knowingly swore a false Affidavit dated March 7, 1990, and submitted a false receipt in the amount of \$300.00 for the vehicle to the Motor Vehicle Branch; and

iii) he knowingly defrauded the Government of Canada of the approximate sum of \$1,200.00 in duties and taxes and the Government of Ontario in the amount of \$600.00 in provincial sales taxes and was convicted of defrauding the Government of Canada of a value in excess of \$1,000.00 contrary to Section 380(1)(a) of the Criminal Code of Canada.

Evidence

The evidence before the Committee contained an Agreed Statement of Facts.

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D129/91 and is prepared to proceed with a hearing of this matter on January 28, 1992.

II. IN PUBLIC/IN CAMERA

2. The Law Society will take the position that the matter should be heard in public pursuant to Section 9 of the Statutory Powers Procedure Act.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D129/91 and admits the particulars contained therein.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1980 and practices as a sole practitioner.

5. On or about January 30, 1990, the Solicitor travelled to St. Petersburg, Florida and purchased a 1975 Triumph TR-6 (the "Vehicle") from Dr. Lawrence Free.

6. The actual purchase price of the "Vehicle" was \$6,800.00 in U.S. funds, paid by cash from funds which were borrowed from the Bank of Nova Scotia in Dundas, Ontario.

7. The Solicitor requested and received a receipt from Dr. Free, at the time of sale, which demonstrated a sale price of \$3,500.00 U.S.

8. The "Vehicle", at the time of purchase, was in good running order. After the sale was completed, the Solicitor drove the "Vehicle" away, which still bore current Florida Registration Plates GER75R.

9. The Solicitor crossed the Canadian/U.S. border at Windsor, Ontario, driving the "Vehicle", sometime on or about January 31, 1990 and February 1, 1990. At that time, the Solicitor had replaced the license plate on the "Vehicle" and it bore current Ontario Plates 72TRSX which were registered to a 1972 Triumph TR-6 in the Solicitor's name.

10. The Solicitor failed to make any declaration of the "Vehicle" to Canada Customs upon entering Canada.

11. The Solicitor was not in possession of the required documentation to legally register the "Vehicle" within the Province of Ontario.

12. On March 7, 1990, the Solicitor swore an Affidavit, attached hereto this Agreed Statement of Facts and marked as Exhibit "A", before a Commissioner of Oaths which stated the following:

- (a) I am the legal and rightful owner of a motor vehicle, being a 1975 Triumph TR6 which bears vehicle identification number CF373390.
- (b) This motor vehicle has been rebuilt by myself using component parts of various motor vehicles including two (scrapped) TR6 vehicles.
- (c) The ownership is not available for the vehicle as it was lost or misplaced when the motor vehicle was abandoned as scrap.
- (d) Various other components were purchased at auctions, scrap dealers, etc. and many of the new parts were obtained from Brits and Pieces, Sports Car Supply Limited, Campbellville, Ontario. Some of the receipts are attached hereto.
- (e) I paid the sum of \$300.00 for the scrap upper body which bares the vehicle identification number.

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(f) I make this affidavit for no improper purpose.

13. The Solicitor's Affidavit is false in that (the letters correspond to the above paragraphs):

- (b) The vehicle was the same vehicle the Solicitor had purchased from Dr. Free.
- (c) The "vehicle" purchased by the Solicitor from Dr. Free was not abandoned as scrap. The ownership was available.
- (d) The purchases from Brits and Pieces Limited were made in July, 1989, approximately seven months prior to the Solicitor's purchase of the vehicle.
- (e) The Solicitor purchased the vehicle from Dr. Free, in Florida, for the sum of \$6,800.00 U.S.
- (f) The affidavit was required by the Motor Vehicle Branch in order to register the vehicle due to the lack of proper documentation and/or ownership registration, and was therefore, self serving.

14. On March 8, 1990, the Solicitor attended at the Motor Vehicle Branch in Dundas, Ontario and completed a Motor Vehicle Branch application for registration pertaining to a passenger Vehicle. The application was accompanied by:

- the false affidavit;

- an undated false receipt in the amount of \$300.00 for a 1975 TR-6. The serial number bearing on this receipt had been altered to represent VIN #CF373390. The signature of the receipt was unidentifiable.

15. Upon acceptance by the Motor Vehicle Branch, the Solicitor also completed a Declaration Receipt Motor Vehicle Transfer Receipt bearing registration number MV420925 which indicated a value of \$300.00 for the "Vehicle" resulting in his paying the sum of \$24.00 Provincial Sales Tax.

16. The Solicitor was issued a valid Ontario License Plate bearing number 825KCD.

17. The Solicitor represented to the R.C.M.P. that the "Vehicle", had been sold at the end of April, 1990. The Solicitor had, in fact, not sold the "Vehicle".

18. On May 10, 1990, the Canadian Customs Investigation Branch requested the Solicitor return the "Vehicle" in order that a proper assessment for duty could be performed. The Solicitor advised that the "Vehicle" had been sold and he did not know where it could be located.

19. On or about May 23, 1990, the Solicitor, through his Counsel, advised the R.C.M.P. of the whereabouts of the "Vehicle".

20. On January 18, 1991, the Solicitor was convicted of defrauding the Government of Canada of money of a value in excess of \$1,000.00 contrary to Section 380(1)(a) of the Criminal Code of Canada. The amount of tax avoided by the Solicitor was the sum of \$1,200.00 plus provincial sales tax.

21. On May 16, 1991, passing of sentence was suspended and the Solicitor was placed on probation for a period of two years. The taxes have been fully paid.

V. DISCIPLINE HISTORY

22. The Solicitor has no previous discipline record.

DATED at Toronto this 28th day of January, 1992.

RECOMMENDATION AS TO PENALTY

The Committee recommends that David Arthur Stevens be Reprimanded in Convocation, with a condition that the Solicitor pay the costs of the Law Society's investigation in the amount of \$378.16.

REASONS FOR RECOMMENDATION

Counsel for the Law Society and counsel for the Solicitor came to the Committee with a joint submission for a reprimand in Convocation, with a condition that the Solicitor pay the costs of the Society's investigation in the amount of \$378.16.

Law Society Counsel quite properly indicated that this recommendation for a joint penalty was made only after much consideration and consultation. He urged upon the Committee to take special note of the serious impact of the criminal sanctions on the Solicitor's personal and professional life.

After very serious and careful consideration, the Committee agreed to accept this joint submission. While there is no doubt that this was a pre-meditated occurrence which happened over a period of time, it appears that the Solicitor may not have understood, at the start, the subsequent acts he would be required to take in order to finalize the matter.

The Committee had the advantage of reading the Solicitor's pre-sentence report which had been prepared for the fraud trial. As well, the Committee had before it a psychological report of Dr. Ronald Kaplan, a letter from Crown Attorney Ray Houlahan, a number of press clippings indicating the notoriety that this case received in the Hamilton area, and some letters of reference. These demonstrated that the Solicitor has suffered tremendously as a result of the fraud conviction and the publicity resulting therefrom. The Solicitor practices in the Dundas area, where he had achieved a very high measure of success in the community, and his entire community is now aware of his transgressions. As a direct result of that publicity, many clients withdrew their files from his care. His income from his practice dropped from a solid six-figure amount to \$50,000. He is currently working very diligently to restore that practice.

The Crown Attorney indicated that he believed the "offence was an isolated act and out of character". As well, he stated that "the entering of a conviction and the adverse publicity directed towards him in the media have served as a strong deterrent".

The Solicitor is a forty-year old first offender. He has been very actively involved with the Salvation Army all his life. After the conviction, the Salvation Army disciplined him. He was prohibited from wearing his uniform and lost many of the responsibilities he had earned. Since then, he has been reinstated in the Church, but there is no doubt that he was quite shocked and surprised by the defrocking at the time.

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Around the time the offence was committed, a number of events had a significant impact on the Solicitor. These include:

1. an accident in which a number of his family members were involved;
2. the death of his law partner, and the subsequent need for the Solicitor to take over more responsibilities of the law practice;
3. the diagnosis of a major illness of his brother;
4. the death of his father;
5. the financial difficulties associated with the construction of his home (which he subsequently lost as a result of the financial repercussions of this offence on him); and
6. the marital conflict associated with all of these.

The Law Society is satisfied that there are no irregularities whatsoever in his practice, and that this was indeed an isolated act which did not translate into his practice. He is not the subject of an ongoing investigation, nor does he have a discipline record. The media attention generated by this case was quite extensive. For example, in one press clipping, his case received greater prominence on the very same page than did the trial of former Cabinet Minister, John Munro.

The Committee felt that a greater penalty could have been imposed. However, for the above reasons, the Committee believes that the repercussions for the Solicitor have been far more serious than anything he would likely have encountered living in a larger city. His suffering and loss are mitigating factors which should be given serious consideration at this particular time.

David Arthur Stevens was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1980.

ALL OF WHICH is respectfully submitted

DATED this 5th day of March, 1992

"D. Bellamy"
Denise E. Bellamy, Chair

There were no submissions on the Report.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be reprimanded with a condition that the solicitor pay costs of \$378.16, be adopted.

Brief submissions were made by counsel in support of the recommended penalty. A Brief was submitted by Mr. Smye in support of Mr. Stevens.

The Recommendation as to Penalty was adopted.

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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23rd April, 1992

Re: ERNEST ARTHUR DYCK, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Messrs. Scott and Carter withdrew and did not participate.

Mr. Gavin MacKenzie appeared for the Society and Mr. E. Berlin appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 22nd March, 1992, together with an Affidavit of Service sworn 20th March, 1992, by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 9th March, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert J. Carter, Q.C., Chair
David W. Scott, Q.C.
Ms. L. Nora Richardson

In the matter of
The Law Society Act

Neil Perrier
for the Society

and in the matter of
ERNEST ARTHUR DYCK
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 5, 1991
December 6, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 1, 1991, Complaint D95/91 was issued against Ernest Arthur Dyck alleging that he was guilty of professional misconduct.

The hearing was heard in public on November 5, 1991 and December 6, 1991, before this Committee comprised of Robert J. Carter, Q.C., Chair, David W. Scott, Q.C. and Ms. L. Nora Richardson. The Solicitor attended the hearing and was not represented. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D95/91

- 2(a) He failed to provide a reply to the Society regarding a request for further information regarding a complaint by Wayne L. Magee despite letters dated October 19, 1990, January 3, 1991, March 4, 1991 and July 2, 1991 and telephone conversations on February 11, 1991 and June 25, 1991.
- (b) He failed to provide a reply to the Society regarding a complaint by Peter Chamberlain despite letters dated April 25, 1991 and June 14, 1991, and telephone calls placed on May 27, 1991 and May 31, 1991.
- (c) He failed to provide a reply to the Society regarding a complaint by Gloria Morris despite letters to the Solicitor dated January 18, 1991, March 14, 1991, May 15, 1991 and June 20, 1991 and telephone calls on April 24, 1991 and June 13, 1991.
- (d) He failed to honour an undertaking to the Law Society and Gloria Morris, included in his letter dated December 21, 1990, to forward certain material to the Official Guardian's office no later than January 31, 1991.

Evidence

The evidence before the Committee contained an Agreed Statement of Facts.

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

- 1. The Solicitor admits service of Complaint D95/91 and is prepared to proceed with a hearing of this matter on November 5, 1991.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

- 3. The Solicitor has reviewed the Complaint D95/91 and admits the particulars of professional misconduct contained therein.

IV. FACTS

- 4. The Solicitor was called to the bar on April 19, 1985 and is a sole practitioner.

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Particular 2a) - Wayne L. Magee, Complainant

5. The Complainant, Wayne L. Magee, a client of the Solicitor, advised the Law Society by correspondence dated November 10, 1989 that the Solicitor let certain dates pass on which steps were to be taken to further his claim, without follow-up information or explanation.
6. By letter dated December 31, 1989, the Complaints Department wrote to the Solicitor. A copy of the Complainant's letter was forwarded and the Solicitor's comments were requested within two weeks. No reply was received.
7. A Law Society staff employee left messages at the Solicitor's office on January 25, 1990 and February 2, 1990. The Solicitor did not return the calls.
8. The Complaints Department sent the Solicitor a second letter, by registered mail, dated February 20, 1990. That letter indicated that the matter would be referred to the Chair of the Discipline Committee if a reply was not received within seven days of the date of the letter.
9. A representative from the Solicitor's office advised by telephone on February 23, 1990, that the response had been sent by facsimile transmission on February 22, 1990.
10. By facsimile transmission, on February 26, 1990, the Solicitor provided a copy of his letter of response, dated February 19, 1990.
11. By letter dated March 22, 1990, the Complaints Department forwarded a copy of the Solicitor's response to the Complainant and requested the Complainant's further comments.
12. By letter dated October 19, 1990 the Complaints Department requested the Solicitor's comments to the Complainant's concerns as stated in his correspondence received June 28, 1990, being that the Solicitor indicated this matter would proceed at a quicker pace. The Solicitor's comments were requested within three weeks of the date of the Society's letter.
13. No response having been received, the Complaints Department, by letter dated January 3, 1991, requested a reply to the letter of October 19, 1990.
14. No reply having been received, a Law Society staff employee telephoned the Solicitor on February 11, 1991. The Solicitor advised that a response would be mailed by the end of the week.
15. No reply having been received, the Complaints Department by letter dated March 4, 1991, requested the Solicitor's advice as to the status of the matter within two weeks of the date of the letter.
16. No reply having been received, a Law Society staff employee left a message for the Solicitor at his office on June 21, 1991. The Solicitor did not respond to the message.
17. A Law Society staff employee called the Solicitor on June 25, 1991 and was advised, by the Solicitor, that he would respond by the end of the week.
18. The Complaints Department sent the Solicitor a registered letter dated July 2, 1991. It indicated that the matter would be referred to the Chair of the Discipline Committee if a reply was not received within seven days of the date of the letter. The Solicitor did not reply to the letter. The Solicitor has not asked for an extension in time to reply or provided any explanation for his failure to reply.

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Particular 2b) - Peter Chamberlain, Complainant

19. The Complainant, Peter Chamberlain, President of P & P Projects Inc., a client of the Solicitor, wrote to the Law Society by letter dated March 19, 1991 advising that throughout 1990 the Complainant was either given excuses by the Solicitor for the delay in resolving the action against the Better Business Bureau or their calls were not being returned.

20. The Complaints Department wrote to the Solicitor by letter dated April 25, 1991 enclosing a copy of the Complainant's letter and requesting his comments within fourteen days. The Solicitor did not respond.

21. A Law Society staff employee unsuccessfully attempted to contact the Solicitor by telephone on May 27, 1991 and May 30, 1991.

22. The Complaints Department sent the Solicitor a second letter, by registered mail, dated June 14, 1991. It indicated that the matter would be referred to the Chair of the Discipline Committee if a reply was not received within seven days of the date of the letter. The Solicitor did not reply to the letter. The Solicitor has not asked for an extension in time to reply or provided any explanation for his failure to reply.

Particular 2c) - Gloria Morris, Complainant

23. By letter dated August 23, 1990, the Complainant, Gloria Morris, on behalf of her employer the Co-operators Group Limited, advised the Law Society that on July 4, 1989 settlement funds regarding an infant claim were forwarded to the Solicitor. On September 29, 1989 the Solicitor advised the Complainant that the papers for the Official Guardian were being prepared and sent to the Complainant for her approval. Despite numerous telephone calls and letters, the Complainant has neither heard or received anything from the Solicitor.

24. The Complaints Department wrote to the Solicitor by letter dated September 20, 1990, enclosing a copy of the Complainant's letter and requesting his comments within two weeks. The Solicitor did not respond.

25. On October 18, 1990 the Complaints Department was advised by the Solicitor that he had changed law firms. A copy of the Law Society's correspondence dated September 20, 1990 was forwarded to the Solicitor at his new address that same day.

26. No reply having been received, a Law Society staff employee left a message at the Solicitor's office on November 2, 1990.

27. A Law Society staff employee spoke with the Solicitor by telephone on November 7, 1990. The Solicitor promised to respond on or before November 9, 1990.

28. No reply having been received, the Complaints Department sent the solicitor a registered letter dated November 21, 1990. It indicated that the matter would be referred to the Chair of the Discipline Committee if a reply was not received within seven days of the date of the letter. The Solicitor did not reply to the letter. The Solicitor has not asked for an extension in time to reply or provided any explanation for his failure to reply.

Particular 2d) - Undertaking

29. By letter dated December 21, 1990, the Solicitor responded to the Law Society by facsimile transmission. In this letter the Solicitor undertook that the infant settlement material referred to in the "Gloria Morris complaint" would be delivered to the Official Guardian no later than January 31, 1991.

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30. The Complaints Department, by letter dated January 18, 1991, requested that the Solicitor provide an update to the matter within thirty days of the date of this letter.

31. No response having been received, the Complaints Department sent a follow-up letter dated March 14, 1991 to the Solicitor requesting a response to their letter dated January 18, 1991, within two weeks.

32. No reply having been received, a Law Society staff employee left a message with the Solicitor's office on April 24, 1991. The call was not returned.

33. The Complaints Department sent the Solicitor a registered letter dated May 15, 1991. It indicated that the matter would be referred to the Chair of the Discipline Committee if a reply was not received within seven days of the date of the letter. The Solicitor did not reply to the letter.

34. A Law Society staff employee left a message for the Solicitor at his office on June 13, 1991 and June 14, 1991.

35. The Solicitor returned the calls on June 17, 1991, however the Complaints Officer investigating the matter was unavailable. The Solicitor left a message advising that he would call the next day.

36. The Solicitor called on June 18, 1991. The Complaints Officer was in a meeting and unavailable to take the call. The solicitor was requested to call again after 5 p.m. The Solicitor did not call again.

37. The Complaints Department sent the Solicitor a registered letter dated June 20, 1991. It indicated that the matter would be referred to the Chair of the Discipline Committee if a reply was not received within seven days of the date of the letter. The Solicitor did not reply to the letter.

38. The Complaints Department sent a follow-up letter by registered mail, dated June 29, 1991 to the Solicitor. A written response was requested forthwith. The Solicitor did not reply to the letter.

V. DISCIPLINE HISTORY

39. The Solicitor has no previous discipline history.

DATED at Toronto this 5th day of November, 1991."

RECOMMENDATION AS TO PENALTY

The Committee recommends that provided satisfactory replies to the complaints have been received by the Law Society from the Solicitor by January 15th, 1992, and the Law Society has the opportunity to confirm their replies with the complainants, the Solicitor be reprimanded by Convocation. If those replies have not been supplied we recommend that the Solicitor be suspended until he has done so.

The Solicitor is also directed to contact the Professional Standards Programme and the LINK Programme and co-operate with them.

If the Solicitor has not contacted the Professional Standards Programme by January 15, 1992, we recommend that the Solicitor be suspended until he has done so.

REASONS FOR RECOMMENDATION

The hearing was held on November 5th, 1991, at which time the complaint was found to have been established. However, no replies to the complaint particulars had been supplied so the hearing was adjourned to December 6th, 1991, to give the Solicitor an opportunity to provide replies. On December 6th, 1991, the Committee was advised that on the evening of December 5th, 1991, the Solicitor had personally typed replies which were delivered to counsel for the Solicitor on December 6th, 1991. The replies were inadequate and no opportunity was available for counsel for the Law Society to examine them.

We felt the above recommendation would encourage proper timely replies and accordingly made the above recommendation.

Ernest Arthur Dyck was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 19th day of April, 1985.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1992

"R. Carter"
Robert J. Carter, Chair

There were no submissions on the Report.

The Report was adopted.

Mr. Rock advised Convocation that the Report omitted an additional condition under the recommended penalty and should be amended to include the following paragraph:

"If the Solicitor has not contacted the Professional Standards Programme by January 15, 1992, we recommend that the Solicitor be suspended until he has done so."

Counsel accepted the amendment.

It was moved by Mr. Rock, seconded by Mr. Murray that the Recommendation as to Penalty as amended, that is that the solicitor be reprimanded with conditions, be adopted.

Submissions were made by counsel for the Society and the solicitor indicating matters had been dealt with. A joint submission was presented asking that the solicitor be reprimanded in Convocation and to pay costs in the amount of \$2,500.

Mr. Rock withdrew his Motion.

Convocation adopted the joint recommendation that the solicitor be reprimanded, pay costs of \$2,500 and undertake to Convocation to continue to co-operate with the Professional Standards program and complete any remedial program or other requirements that are prescribed for him after the assessment by the Professional Standards Committee.

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Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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Re: NATALIE BRONSTEIN, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Messrs. Cullity and Campbell, Ms. Graham and Ms. Weaver withdrew and did not participate.

Ms. Christina Budweth appeared for the Society and Mr. Frank Marrocco appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 9th April, 1992, together with an Affidavit of Service sworn 21st April, 1992 by Dawna D. Robertson that she had effected service on the solicitor by courier on 15th April, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

J. James Wardlaw, Q.C., Chair
Mary P. Weaver, Q.C.
Mrs. Netty Graham

In the matter of
The Law Society Act

Christina Budweth
for the Society

and in the matter of
NATALIE BRONSTEIN
of the City
of Toronto
a barrister and solicitor

Frank Marrocco
for the solicitor

Heard: November 13, 1991
February 13, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 17, 1991, Complaint D46/91 was issued against Natalie Bronstein, on October 2, 1991, Complaint D149/91 was issued, on December 10, 1991, Complaint D194/91 was issued and on January 24, 1992, Complaint D15/92 was issued. All alleged that she was guilty of professional misconduct.

The hearing was heard in public on November 13, 1991 and February 13, 1992. Ms. Bronstein attended and was represented by Frank Marracco. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D46/91

- 2(a) She has failed to provide a reply to the Society regarding a complaint by Jeannie D. Kyriakoulis despite letters dated January 18th and February 18th, 1991 and telephone messages and requests on February 5th, February 8th, and February 11, 1991;
- (b) She has breached her undertaking to the Society dated July 16, 1986, to promptly and meaningfully reply, in writing, to all future communications, both oral and written, from the Society;
- (c) She has failed to make payment of her deductible under the Society's Errors and Omissions Insurance Plan, in the amount of \$5,000 together with interest of \$2.05 per day from July 7, 1989, arising out of a claim made by her former client, John Dyer, although properly called upon to do so pursuant to Rule 13, Commentary 6 of the Rules of Professional Conduct.

Complaint D149/91

- 2(a) she has failed to provide a reply to the Society regarding a complaint filed by Jeffrey Klein despite letters dated April 12, May 21, July 4 and August 6, 1991, and telephone messages left on May 1, and May 10, 1991;
- (b) she has failed to provide a reply to the Society regarding a complaint filed by Helen Keeley despite letters dated May 30 and August 6, 1991, and telephone messages left on July 29, and July 31, 1991;
- (c) she has failed to release client's files to successor lawyers on two occasions despite several requests to do so; and
- (d) she breached an undertaking dated July 16, 1986 wherein she agreed to provide prompt and meaningful replies to future communications received from the Law Society.

Complaint D149/91

- 2(a) she has failed to provide a reply to the Society regarding a complaint filed by Jeffrey Klein despite letters dated April 12, May 21, July 4 and August 6, 1991, and telephone messages left on May 1, and May 10, 1991;
- (b) she has failed to provide a reply to the Society regarding a complaint filed by Helen Keeley despite letters dated May 30 and August 6, 1991, and telephone messages left on July 29, and July 31, 1991;
- (c) she has failed to release client's files to successor lawyers on two occasions despite several requests to do so; and

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- (d) she breached an undertaking dated July 16, 1986 wherein she agreed to provide prompt and meaningful replies to future communications received from the Law Society.

Complaint D194/91

- 2(a) she has failed to provide a reply to the Society regarding a complaint by Beverley Biggs, despite letters dated July 16, 1991 and August 21, 1991, and telephone requests on August 8, 1991 and September 3, 1991;
- (b) she has breached her Undertaking to the Society dated July 16, 1986 to promptly and meaningfully reply in writing to communications both oral and written from the Society;
- (c) she has failed to serve her client Beverley Biggs in a conscientious, diligent and efficient manner by her failure to:
 - i) respond to Ms. Biggs' telephone calls,
 - ii) keep Ms. Biggs reasonably informed with respect to the status of her divorce matter and,
 - iii) obtain an uncontested divorce on behalf of Ms. Biggs in a timely manner.

Complaint D15/92

I. she failed to serve her client, Ms. Forcht (Goldberg), in a conscientious, diligent and efficient manner by her failure to:

- a. promptly pursue her client's action for personal injuries suffered in a motor vehicle accident on August 2, 1987.

2. she failed to serve her client, Heather Conkie, in a conscientious, diligent and efficient manner by her failure to:

- a. issue and file letters of administration respecting the estate of Ms. Conkie's late brother despite her client's instructions to do so in August, 1990; and
- b. to respond to Ms. Conkie's telephone inquiries respecting the status of her file.

3. he failed to serve her client, Jeannie Kyriakoulis, in a conscientious, diligent and efficient manner by her failure to:

- a. keep her client informed as to the status of her divorce proceedings;
- b. respond to a written communication from Ms. Kyriakoulis which required a reply;
- c. prepare and issue the documents necessary to commence divorce proceedings in a timely fashion. In particular, it took her a period of approximately nine months from the date of retainer to issue the process;
- d. respond to telephone calls from Ms. Kyriakoulis; and
- e. take the necessary steps to serve Ms. Kyriakoulis' estranged husband with the issued divorce petition.

DECISION

Evidence

The evidence before the Committee contained five Agreed Statements of Facts.

Agreed Statement of Facts D46/91

The Solicitor admitted service upon her of all complaints, agreed that all matters should be heard in public, admitted all of the facts in the statements, and admitted professional misconduct with respect to all of them.

The statements are not reproduced in full. The paragraphs that are omitted are those dealing with matters in the preceding paragraph and those outlining her prior discipline record. The statements have been further edited to delete references to exhibits in the form of letters which prove the Statements of Fact.

Particulars 2(a) and (b) - Failure to Reply and Breach of Undertaking

5. The Solicitor gave an Undertaking dated July 16, 1986 to the Law Society wherein she undertook, among other things, to promptly and meaningfully reply, in writing, to all future communications, both oral and written, from the Law Society....

6. By letter to the Society dated January 8, 1991, the complainant, Jeannie Kyriakoulis, complained about the Solicitor's inaction in her divorce case. The complainant related that she had been unable to ascertain the status of her matter and had experienced difficulties in contacting the Solicitor.

7. The Society wrote to the Solicitor by letter dated January 18, 1991, enclosing the material received from the complainant and requesting a reply in writing within a period of two weeks.

8. No reply was received and a Society staff member telephoned the Solicitor's office and left messages for the Solicitor. On February 11, 1991 the Solicitor's secretary advised a Society staff member that a response would be sent out on February 12th or 13, 1991.

9. No response having been received, a registered letter dated February 18, 1991 was sent to the Solicitor. That letter referred to the Rule of professional Conduct obliging lawyers to respond promptly to communications from the Law Society and directed a written response within seven days. The Solicitor was advised that if no response were received within that time period the matter would be referred to the Chair of Discipline.

10. No response was received by the date of issuance of Complaint D46/91 (April 17, 1991) nor was there a request for an extension of time nor an explanation for the Solicitor's failure to reply.

11. By letter dated July 22, 1991, delivered to the Society on that date, the Solicitor replied to the Society.

12. By failing to reply the Solicitor breached the Undertaking dated July 16, 1986...

Particular 2(c) - Failure to Pay Errors & Omissions Deductible

13. By letter dated June 5, 1989 a Law Society Claims Examiner advised the Solicitor that a claim payment had been made in the amount of \$5,000 in respect of a claimant, John Dyer. The Solicitor was advised that the deductible applied

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and was requested to forward a cheque payable to the Law Society in the amount of \$5,000. The Solicitor was advised that, pursuant to the Courts of Justice Act, interest would be added at the rate of 15% per annum commencing 21 days from the date of that letter....

14. The payment was not made and a second letter dated July 26, 1989 was sent to the Solicitor, setting out the relevant rule of professional conduct....

15. Rule 13, Commentary 6 of the Rules of Professional Conduct provides as follows:

Lawyers have a professional duty generally to meet financial obligations in relation to their practice, including prompt payment of the deductible under the Society's Errors and Omissions Insurance Plan when properly called upon to do so.

16. Payment of the deductible was not made and, by letter dated July 4, 1990, a discipline counsel for the Society wrote to the Solicitor requesting payment....

17. The Solicitor failed to pay the deductible under the Society's Errors & Omissions Insurance Plan, by the date of issuance of Complaint D46/91 (April 17, 1991), despite having been properly called upon to do so.

18. The Solicitor delivered a cheque in the amount of \$3,000 payable to the Society on July 22, 1991. The Solicitor hereby undertakes to pay the balance, including accrued interest, no later than September 16, 1991.

Agreed Statement of Fact D149/91

Particular 2(a) and 2(c) - Failure to Reply Regarding the Complaint of Jeffrey Klein

5. The complainant, Jeffrey Klein, is a solicitor who was retained by Cheryl Goldberg, a former client of the Solicitor, to assume carriage of an action arising out of a motor vehicle accident which occurred in 1987.

6. Mr. Klein wrote to the Solicitor on December 13, 1990 requesting that the Solicitor forward her entire file respecting Ms. Goldberg, including the contents of a matrimonial file, to Mr. Klein.

7. Having received no response to the December 13 letter Mr. Klein wrote to the Solicitor again on January 15, 1991 reiterating his request.

8. On February 6, 1991, a secretary in Mr. Klein's firm spoke with the Solicitor's secretary who advised that the Solicitor was out and would return her call on the following day. On February 7 the same secretary made another call to the Solicitor's office and was advised by the Solicitor's secretary that the Solicitor would only release the file if Mr. Klein's office undertook to protect her account.

9. On February 20, 1991, Mr. Klein's firm once again wrote to the Solicitor requesting Ms. Goldberg's file. Mr. Klein's did not receive a response to any of the aforesaid communications.

10. Mr. Klein wrote to the Society on March 14, 1991, seeking assistance in retrieval of Ms. Goldberg's file....

11. The Society wrote to Ms. Bronstein on April 12, 1991, enclosing a copy of the complainant's letter and requesting a response thereto within fourteen days.

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12. Following the expiry of the two week period, a staff member of the Society called the Solicitor's office twice on May 1 and once on May 10, 1991. On both occasions messages were left. The Solicitor did not return the calls.

13. A second letter was sent to the Solicitor on May 21, 1991, by registered mail. In that letter, the Solicitor was advised that if a reply was not received within seven days from the date thereof the matter would be referred to discipline....

14. On June 19, 1991 a further complaint was received from Mr. Klein. This complaint was in respect of the Solicitor's handling of Ms. Goldberg's matrimonial matter. This letter included a trust statement reflecting that a sum of monies had been improperly retained by the Solicitor in this matter.

15. On July 3, 1991, a staff member of the Society telephoned the Solicitor to enquire if Ms. Goldberg's file had been released to Mr. Klein. The Solicitor indicated that she had billed Ms. Goldberg and that upon receipt of confirmation of the protection of her account she would release the file to Mr. Klein. The staff member requested that the Solicitor confirm same in writing to Mr. Klein and that she respond to the Society's communications. The Solicitor indicated she would do so the next day, being July 4, 1991.

16. A third letter dated July 4, 1991, confirming the aforesaid conversation and enclosing a copy of Mr. Klein's further complaint of June 19, 1991 was sent to the Solicitor by the Society. A response was requested within seven days of the date of the letter. No response was received.

17. On August 6, 1991, the Society sent a letter to the Solicitor advising that if a reply was not received within seven days of the date of the letter the matter would be referred to discipline.

18. To date no reply has been received from the Solicitor. The Solicitor has yet to forward the files requested by Ms. Goldberg to be transferred to her successor solicitor.

Particular 2(b) and 2(c) - Failure to Reply Regarding a Complaint by Helen Keeley

19. The complainant, Helen Keeley, a solicitor, wrote to the Society on May 3, 1991, stating she had been retained by Ms. Heather Conkie, a former client of the Solicitor, in respect of an estate matter. Ms. Conkie stated that she had asked the Solicitor by letters dated March 20, 1991 and April 2, 1991 to forward her file to Ms. Keeley's firm in March of 1991 and the Solicitor had failed to do so....

20. The Society wrote to the Solicitor on May 30, 1991, enclosing a copy of Ms. Keeley's letter. The Solicitor was requested to reply within fourteen days of the date of the Society's letter. No response was received by the Society.

21. A staff member of the Society called the Solicitor's office on July 29 and July 30 inquiring as to the status of the Solicitor's reply. The Solicitor did not respond to these inquiries.

22. A second letter dated August 6, 1991 was sent to the Solicitor by way of registered mail. The letter enclosed a further copy of the complaint and advised if a reply was not received within seven days of the date of the letter the matter would be referred to discipline.

23. To date no reply has been received from the Solicitor.

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Particular 2(d) - Breach of Undertaking dated July 16, 1986

24. The Solicitor gave an undertaking to the Society on July 16, 1986 wherein she undertook, among other things, to promptly and meaningfully reply, in writing, to all future communications from the Law Society, both oral and written. A copy of the undertaking is attached as Exhibit 4.

Agreed Statement of Facts D194/91

Particular 2a and 2c - Failure to serve her client Beverley Biggs and Failure to Reply to the Society

5. By letter dated July 8, 1990, received by the Society July 10, 1991, the Solicitor's client Beverley Biggs, complained to the Law Society about the Solicitor's inattentiveness to matters respecting Ms. Biggs' retainer of the Solicitor to obtain her divorce decree....

6. The Society wrote to Ms. Bronstein on July 16, 1991, enclosing a copy of the complainant's letter and requesting a response thereto within two weeks of the date thereof.... The Society did not receive a response to this correspondence. On August 8, 1991, a staff member of the Society telephoned the Solicitor by way of follow-up to the July 16 correspondence. The Solicitor did not return this telephone call.

7. The Society wrote to the Solicitor again on August 21, 1991 requesting a response from her within seven days. A copy of the Society's August 21, 1991 letter is attached as Exhibit 3 to this agreed statement of facts. The Society did not receive a response to this correspondence.

8. In light of the impending mail strike, a staff Society member called the Solicitor's office again on August 30, 1991 and left a message for the Solicitor to call her. On September 3, 1991, the staff member spoke to the Solicitor and was advised that the Solicitor did not receive the registered letter and did not have access to a fax machine. The Solicitor requested that a copy of the Society's letter be left in the reception for her to pick up that afternoon. Accordance with the Solicitor's request, the letter was left in reception to be picked up that day.

9. The Solicitor, or someone from her office, attended to retrieve the letter.

10. The Society received a response to its communications of July 16, August 8, August 21 and September 3, 1991 on February 6, 1992....

Particular 2b - Breach of Undertaking

11. The Solicitor gave an undertaking to the Society on July 16, 1986, wherein she undertook, among other things, to promptly and meaningfully reply, in writing, to all future communications from the Law Society both oral and written. A copy of the undertaking is attached as Exhibit 5 to this agreed statement of facts.

12. The Society offers the information in paragraphs 6 through 11 in support of the charge that the Solicitor has breached her undertaking of July 16, 1986 to the Society.

Agreed Statement of Facts D15/92

Particular 2(2)(a) and (b) - Failure to serve Heather Conkie

5. Richard Evans Conkie died on July 30, 1990.

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6. Mr. Conkie's sister, Heather Conkie, contacted the Solicitor on July 31, 1990, by way of telephone, to advise her of her brother's decease.

7. A file note from the Solicitor to her secretary, a copy of which is attached as Exhibit 1 to this agreed statement of facts, indicates that the Solicitor received instructions from her client to proceed with letters of administration and that the Solicitor was so instructing her secretary.

8. The Solicitor, or member of her staff, did prepare documents required to complete administration, such as a nomination of an administrator forms. Copies of the documents found in the Solicitor's file, necessary or relevant to the completion of the tasks instructed by the client, are attached collectively as Exhibit 2 to this agreed statement of facts.

9. On the date that the documents were prepared by the Solicitor they were in a form which would have been acceptable to the court. On September 1, 1990, the documents would have to have been amended to reflect the merger of the courts - Ontario Court (General Division). There were a number of errors in the forms; for example, the forms disclosed that the deceased was not the owner of any real property when, in fact, he was a tenant in common of 6 Altha Avenue, Toronto. In addition, the amount for "personalty" was blank. Further, the separate forms of "renunciation of administration" and "nomination of administrator" had ceased to be acceptable to the court in May, 1989. Thereafter, a new form had been created combining both documents. As a final matter, the file does not contain an application for bond; or in the alternative, an affidavit in support of an order dispensing with the requirement for a bond.

10. None of the documents were ever filed in the court.

11. Ms. Conkie attempted to reach the Solicitor on numerous occasions by telephone to discuss the status of the matter with her and left messages for the Solicitor to return her calls. When the Solicitor failed to return the calls, the client retained Ms. Helen Keeley at the firm Stikeman, Graham, Keeley & Morrow (now Stikeman, Graham & Keeley).

12. Ms. Keeley wrote to the Solicitor on two separate occasions in an attempt to obtain Ms. Conkie's file. Ms. Keeley's efforts in that regard are the subject of a separate discipline complaint.

13. When the Solicitor did not comply with Ms. Keeley's requests to transfer the file, Ms. Keeley prepared all documents necessary to secure letters of administration which she had filed with the court on August 27, 1991.

14. At the time of Ms. Keeley's filing of these documents, the court file disclosed that no documentation in respect of the estate of Richard E. Conkie being filed.

15. The Solicitor provided the Law Society with Ms. Conkie's file on November 13, 1991.

Particular 2 (3)(a) and (e) - Failure to serve Jeannie Kyriakoulis

16. Ms. Kyriakoulis contacted the Solicitor in the fall of 1989 and asked her to commence divorce proceedings on her behalf.

17. On November 15, 1989, the Solicitor wrote to Ms. Kyriakoulis and requested that a divorce questionnaire enclosed with the letter, be completed and returned to her office to enable the divorce proceedings to be commenced....

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18. Ms. Kyriakoulis filled out the questionnaire and returned it to the Solicitor's office in December, 1989. At that time, Ms. Kyriakoulis provided the Solicitor with a \$500 retainer and requested that the divorce be commenced. The Solicitor advised Ms. Kyriakoulis that the matter would take approximately six months and cost \$1,000. The proceeding did not involve property or custody issues and was based on the ground that the couple had been living separate and apart since 1982....

19. At the beginning of the summer of 1990, Ms. Kyriakoulis had not heard from the Solicitor regarding the status of her divorce proceeding. As a result, she repeatedly called the Solicitor's office. In August, 1990 the Solicitor called Ms. Kyriakoulis and requested that she attend at her office. During their meeting, the Solicitor explained that her secretary had resigned and unfortunately Ms. Kyriakoulis' petition had not been typed. The Solicitor apologized to Ms. Kyriakoulis. Ms. Kyriakoulis repeated her request that the proceeding be commenced. The proceeding for divorce was in fact issued by the court on September 21, 1990....

20. During the period August, 1990 to December, 1990 Ms. Kyriakoulis telephoned the Solicitor to discuss the status of her file. She left numerous telephone messages with the Solicitor's office which were not returned. Ms. Kyriakoulis then wrote to the Solicitor on December 17, 1990.... The Solicitor did not respond to this letter.

21. Ms. Kyriakoulis complained to the Law Society regarding the Solicitor's handling of her file by letter dated January 8, 1991...

22. The Solicitor did reply to the Society by letter dated July 22, 1991,.... In that correspondence, the Solicitor refers to letters written to the client in the fall of 1990 and the spring of 1991. The Solicitor's file does not contain file copies of either of those letters.

23. The Society forwarded a copy of the Solicitor's response to Ms. Kyriakoulis, who provided her comments in respect thereof by letter dated August 13, 1991,.... In that letter, Ms. Kyriakoulis denies receiving any correspondence from the Solicitor save and except the November 15, 1989 letter...

24. The Law Society's efforts to obtain information about Ms. Kyriakoulis' file is the subject of another discipline proceeding. The Solicitor provided the Law Society with Ms. Kyriakoulis' file on November 13, 1991.

25. At the date of delivery of Ms. Kyriakoulis' file to the Law Society the Solicitor had not yet served the Petition for Divorce nor taken any steps to do so.

26. The Solicitor has never provided Ms. Kyriakoulis with an account for the \$500 paid on retainer nor has she been reimbursed the \$500.

Particular 2 (1)(a) - Failure to serve her Client Ms. Forcht (Goldberg)

27. The client was involved in a motor vehicle accident on August 2, 1987.

28. The Solicitor was retained to act in this matter by Ms. Forcht within several months thereafter.

29. On November 12, 1987, the insurers for the vehicle involved in the accident with Ms. Forcht, Gore Mutual Insurance Company, wrote to the Solicitor to advise of their involvement in the file....

30. Gore Mutual corresponded with the Solicitor again on January 13, 1988....

31. Gore Mutual corresponded with the Solicitor again on March 14, 1988,...

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32. Having heard nothing from the Solicitor, Gore Mutual corresponded directly with Ms. Goldberg on July 14, 1988,...

33. On September 15, 1988, Gore Mutual wrote to the Solicitor again, a copy of that letter is attached as Exhibit 14 to this agreed statement of facts. The Solicitor did not reply.

34. The Solicitor's office ordered an accident report on February 13, 1989.

35. The Solicitor ordered a medical report from Dr. Williams on June 22, 1989.

36. A statement of claim was issued by the Solicitor's office on July 20, 1989 and served on the defendants on behalf of Ms. Forcht...

37. The only steps taken by the Solicitor to further Ms. Forcht's claim during the period from the date of her retainer to the issuance of the statement of claim are those detailed above.

38. On August 3, 1989 the Solicitor wrote to Ms. Forcht and reported service of the statement of claim.... This is the only written or oral report provided by the Solicitor to her client during the period of her retainer.

39. Gore Mutual wrote to the Solicitor on August 9, 1989 asking whether it would be necessary for them to enter a defence to the action...

40. There is no issue as to liability in the action.

41. The Solicitor replied to Gore Mutual's August 9 letter by letter dated August 23, 1989 wherein she confirmed that she did not require delivery of a statement of defence on behalf of the insurer...

42. On August 17, 1989, the Solicitor corresponded with Dr. Brock and requested a medical report from his office....

43. On August 17, 1989, the Solicitor corresponded with Dr. Esmail and requested a medical report from his office...

44. On August 18, 1989 the Solicitor received a medical report from Dr. Williams, ...

45. By letter dated August 25, 1989 Gore Mutual corresponded with the Solicitor. The letter expressed an interest on the part of the insurer to settle Ms. Forcht's claim....

46. On September 5, 1989 the Solicitor received a medical report from Dr. Brock, ...

47. On December 5, 1989 Gore Mutual corresponded with the Solicitor further requesting any further medical information, ...

48. The Solicitor received a doctor's confirmation of request for medical report on January 31, 1990.... The report was delivered under separate correspondence of January 31, 1990....

49. By letter dated March 14, 1990 the Solicitor corresponded with Gore Mutual and forwarded various medical reports....

50. On March 28, 1990 the Solicitor sent payment to Dr. Esmail for his medical legal report for Ms. Forcht....

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51. By letter dated March 28, 1990, the Solicitor forwarded a cheque in the amount of \$250 to Dr. Brock in payment for a medical legal report for Ms. Forcht....

52. The Solicitor corresponded with Gore Mutual on April 6, 1990 enclosing a copy of a medical report by Dr. Brock at that time....

53. Ms. Goldberg retained the firm of Spencer, Romberg to assume carriage of her file. In furtherance of that retainer, Jeffrey Klein wrote to the Solicitor on December 13, 1990 and requested that the motor vehicle file be released to his office....

54. Having received no response to his December 13 letter Mr. Klein wrote to the Solicitor again on January 15, 1991 repeating his request....

55. By letter dated March 14, 1991, the Solicitor corresponded with Gore Mutual to advise them that the file had been transferred to Mr. Klein of the Spenser, Romberg firm....

56. Mr. Klein wrote to the Society and sought assistance in retrieval of the file in March, 1991. The Society forwarded Mr. Klein's correspondence to the Solicitor under cover of letter dated April 12, 1991 and requested her comments regarding the complaint within two weeks.

57. The Society's efforts to obtain Ms. Goldberg's file is the subject of a separate discipline complaint.

58. The Solicitor's file in this matter was delivered to the Law Society on November 13, 1991.

Supplementary Agreed Statement of Facts D46/92, D149/91, D194/91 & D15/92

SUPPLEMENTARY AGREED STATEMENT OF FACTS

1. The Solicitor has outstanding payments with respect to Errors and Omissions deductibles as follows:

<u>File # & Claimant</u>	<u>Amount</u>
M1390 (Claimant: George Kerasiotis)	\$10,000.00
L1700 (Claimant: Ann Mancel)	6,000.00
P2459 (Claimant: Dan MacDonald)	2,264.82

In addition, the Solicitor had not, at the date of hearing, on November 13, 1991, paid the balance of the Errors and Omissions deductible leading to complaint D46/91. The Solicitor submitted a cheque for the balance, \$393.93, to the Law Society at the end of November. The cheque was returned to the Solicitor as it was not properly endorsed. A proper cheque in the amount of \$393.93 was remitted to the Society on Monday, February 10, 1992.

2. The Solicitor's right to practice law was suspended on November 29, 1991 as a result of her failure to pay her errors and omissions levy.

3. Dr. Andrew Malcolm has offered his professional opinion regarding the Solicitor by way of report dated February 6, 1992.

4. Dr. Malcolm has previously offered opinions regarding Ms. Bronstein in the context of previous discipline proceedings, by way of letters dated June 8, 1987 and June 8, 1988. Those letter are attached, collectively, as Exhibit 2 to this supplementary agreed statement of facts.

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5. In addition, Ms. Susan McCaffrey of the Law Society Professional Standards Department has prepared a preliminary assessment of the Solicitor's practice...

PRIOR DISCIPLINE

On August 20, 1985 the Solicitor was reprimanded in Committee for breaching a condition attached to material delivered to her by a fellow solicitor and for failing to reply promptly to letters from the Law Society regarding deficiencies in her books and records.

On July 15, 1986 the Solicitor appeared before a discipline committee regarding her failure to reply to letters from the Law Society and her failure to follow procedures set out in the Rules of Professional Conduct with respect to the Law Society's Errors & Omissions Department, after becoming aware that an error or omission may have occurred which might have made her liable to her client. The Solicitor was reprimanded in committee and ordered to pay the Society's costs and a fine totalling \$775.

On June 13, 1988 the Solicitor was reprimanded in committee for her failure to reply and co-operate with the Society's Errors & Omissions insurance adjuster, failure to serve various clients, failure to deposit a trust cheque received from a fellow solicitor, failure to reply to letters and telephone calls from a fellow solicitor, breach of her undertaking to the Society, failure to reply to letters and telephone calls from the Society, failure to communicate with clients, failure to forward a file to former clients, failure to serve a client, failure to reply to requests for information from a client, failure to reply to a letter from the Law Society and misleading a client. (This information is a summary of 13 particulars contained in three separate complaints heard on June 13, 1988.)

FINDING

On the basis for the Agreed Statements of Fact and the admissions of the Solicitor, the Committee made a finding of professional misconduct.

The Solicitor was called to the bar on April 19, 1978. She is a sole practitioner in the City of Toronto.

RECOMMENDATION AS TO PENALTY

Counsel for the Law Society and counsel for the Solicitor made a joint submission to the Committee on penalty which is set out in an undertaking dated February 13th, 1992.

UNDERTAKING

WHEREAS counsel for the Law Society has agreed to join in the following submission regarding the disposition of penalty in the four outstanding discipline complaints, D46/91, D149/91, D194/91 and D15/92, against me:

- i. suspension of my right to practise for a period of six months definitely; and

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- ii. suspension of my right to practise thereafter, indefinitely, until I am certified as competent to practise by Dr. A. Malcolm and a psychiatrist acceptable to both the Society and my counsel;
- iii. that I immediately release custody and control over all client files presently under my control;
- iv. that I enter into a payment plan acceptable to myself and the Society for the repayment of the \$18,264.85 presently outstanding by way of Errors & Omissions deductibles and that my failure to abide by its terms be a consideration in the assessment of my fitness for return to practise;
- v. that I co-operate with the Staff Trustee in the winding up of my practice;
- vi. that I co-operate with the Practice Advisory Service and the Professional Standards Department in implementing the recommendations contained in the February 11, 1992 report of Susan McCaffrey at the resumption of my practice and any other suggestions that the Practice Advisory Service and the Professional Standards Department might make; and
- vii. that I advise the Ontario Grievance Settlement Board of my undertaking not to practise and any suspension of my right to practise that may ultimately be imposed by Convocation.

I HEREBY UNDERTAKE to cease the practice of law effective Friday, February 14, 1992, until such time discipline complaints D46/91, D149/91, D194/91 and D15/92 matters are heard before Convocation. I agree that if Convocation imposes a period of suspension on my right to practise that the period of suspension will commence and be computed from the date of the Order of Convocation.

I FURTHER ACKNOWLEDGE that I have taken the advice of my counsel, Frank Marrocco, before signing this undertaking.

I FURTHER ACKNOWLEDGE that any breach of this undertaking may lead to further discipline proceedings, and I hereby consent to this document being introduced in evidence in those proceedings. I have retained an executed copy of this undertaking.

REASONS FOR ACCEPTING THE RECOMMENDATION

The Committee has accepted the joint submission as to penalty. There is no question of dishonesty on the part of the Solicitor. It is obvious, from the facts, however, that the Solicitor should not be involved in the private practice of law, at least at this time. The joint recommendation coupled with the Undertaking satisfies the related requirements of safety of the public in employing lawyers and ensuring that lawyers engaged in private practice do so in a competent manner.

23rd April, 1992

Natalie Bronstein was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 19th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED this 9th day of April, 1992

"J. Wardlaw"
J. James Wardlaw, Chair

There were no submissions on the Report.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Murray that the Recommendation as to Penalty that is, that the solicitor be suspended for 6 months and thereafter with conditions, be adopted.

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

An amendment was accepted by Convocation whereby the word "indefinitely" be deleted from paragraph ii. of the Undertaking. The sentence would now read "suspension of my right to practise thereafter, until I am certified as competent to practise by Dr. A. Malcolm and a psychiatrist acceptable to both the Society and my counsel."

The Recommendation as to Penalty as amended was adopted.

Counsel and the solicitor retired.

.....

Re: MICHAEL FRANK STOYKA, Windsor

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Thom withdrew and did not participate.

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

Convocation had before it the Report of the Discipline Committee dated 15th April, 1992, together with an Affidavit of Service sworn 21st April, 1992 by Dawna D. Robertson that she effected service on the solicitor by courier on 15th April, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

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The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Donald H. Lamont, Q.C., Chair
Stuart Thom, Q.C.
Paul Copeland

In the matter of
The Law Society Act

Gavin MacKenzie and
Christina Budweth
for the Society

and in the matter of
MICHAEL FRANK STOYKA
of the City
of Windsor
a barrister and solicitor

Brian Greenspan
for the solicitor

Heard: December 16, 1991 and
March 6, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 24, 1991, Complaint D90/91 was issued against Michael Frank Stoyka, alleging that he was guilty of professional misconduct.

The hearing was heard in public on December 16, 1991 and March 6, 1992, before this Committee composed of Donald H. Lamont, Q.C., Chair, Stuart Thom, Q.C. and Paul Copeland. On December 16, 1991, Mr. Stoyka did not attend the hearing but was represented by Brian Greenspan. On March 6, 1992, Mr. Stoyka attended the hearing and was represented by Mr. Greenspan. Gavin MacKenzie and Christina Budweth appeared on behalf of the Law Society.

DECISION

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

- 2(a) he failed to serve his client, C.E., in a conscientious, diligent and efficient manner, and he failed to provide C.E. with a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation, in that he failed to carry out C.E.'s instructions to commence and prosecute civil proceedings.

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- (b) he misled his client, C.E. and C.E.'s father, by falsely informing them from time to time during the period from approximately June, 1989 to April, 1991 that the civil proceedings which he had been instructed to commence and prosecute had in fact been commenced and were being prosecuted, when in fact, the proceedings had not even been commenced;
- (c) he attempted to mislead the Law Society during its investigation of his handling of C.E.'s case by:
 - (i) falsely telling the Society's investigators that the Draft Statement of Claim which he produced from his file had been prepared in or about the month of June, 1990 when, in fact, the Draft Statement of Claim had been prepared on May 3, 1991, the first day he was interviewed by the Society's investigators;
 - (ii) falsely telling the Society's investigators that he mistakenly believed that the Draft Statement of Claim had been issued.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

We heard this matter on 16 December, 1991 and on 6 March, 1992.

The Solicitor Michael Frank Stoyka did not attend on the first day. Mr. Stoyka is presently not practising law.

His counsel Brian Greenspan told us that he was instructed to proceed. He did not anticipate contesting the evidence to be given by the Law Society as to allegations 2 (a) and (b) but would be cross-examining as to knowledge of the witnesses for the Law Society about Mr. Stoyka's ongoing psychiatric care. Mr. Greenspan advised that he would be calling Mr. Stoyka's psychiatrist when the hearing resumes on the adjourned date.

As the evidence unfolded, it became a very sad tale for the complainant's family and their son C.E. who died of Aids a few weeks before the hearing at age 28.

Their son had married a few years before his death.

It was proposed to the panel at the outset, by counsel for the Solicitor, that to avoid unnecessary embarrassment to the family and particularly the son's widow the surnames of the family witnesses and the widow would be blacked out of any correspondence, pleadings and the transcript of evidence.

This was agreed to by the Law Society counsel - and by the panel.

Otherwise the hearing was in public.

The background of the son C.E. will be somewhat briefly stated.

Before doing so reference is made to the allegations which put shortly and hopefully sufficiently accurately at this point are that Mr. Stoyka did not carry out C.E.'s instructions to commence legal proceedings based on his having become afflicted with Aids, and that Mr. Stoyka misled the father and the son and the father after the son had died that he had commenced the legal proceedings when in fact no action had been commenced and that the solicitor kept assuring them

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that the legal action was proceeding, discoveries taking place and a trial date would soon be set. None of this was done by the solicitor. Mr. Stoyka misled the Law Society investigator by falsely stating that a draft Statement of Claim had been prepared some time earlier when in fact it was prepared on the 3rd of May, 1991, the day he was interviewed by the Law Society investigator.

Shortly after the son C.E. was born on 11 October, 1963, he was diagnosed as having congenital heart deficiency. There were various operations from time to time. There were no transfusions.

April/May, 1983, it was recommended that C.E. have a major heart operation at the Sick Children's Hospital, Toronto. The operation lasted 12 hours. There were a number of blood transfusions.

The operation was successful. C.E. for a few years was doing fine. However, in June, 1988, his health started to deteriorate. By October that year he was diagnosed as having Aids.

It was considered that this was caused by the blood transfusions during the major heart operation.

Before the operation C.E.'s mother who is a nurse had heard about "contaminated blood". She suggested to the surgeon that C.E.'s brothers and sisters would give blood. The surgeon said this was not necessary.

C.E. and his father decided that there should be legal action against the doctors and the hospital.

Various lawyers were considered but it was decided to engage Mr. Stoyka whom they knew as a friend.

The family and the Stoyka family were very good friends. Mr. Stoyka was aware that C.E.'s health was deteriorating. There was concern about stress and publicity.

Mr. Stoyka was considered to be a competent, conservative lawyer, and would handle the legal proceedings without too much publicity - for the family's sake and for C.E.'s wife whom he had recently married.

A meeting with Mr. Stoyka took place in the father's home in June, 1989.

Mr. Stoyka indicated confidence for the legal action, need for experts and that this would be a precedent setting case.

A number of meetings followed. Hospital records from Sick Children's Hospital were obtained in November, 1989.

Mr. Stoyka advised the hospital by letter of November 29, 1989 of the claim, to which the hospital replied suggesting government assistance for those infected by HIV's.

However notwithstanding the fairly regular meetings with Mr. Stoyka nothing much seemed to be happening about the legal action.

By September, 1990 C.E. and his father were becoming frustrated.

Meetings continued. Mr. Stoyka told them he had meetings set up in Toronto to interview people who were involved. After that he told them that the meetings "went slow".

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Then he told them of a meeting in Toronto on 15 January, 1991 with the Sick Children's Hospital representatives and for discoveries. As we later learned in evidence it was on that date that Mr. Stoyka was before the Discipline Committee of the Law Society on another matter.

No discoveries had ever been arranged.

On 7 February, 1991 Mr. Stoyka again referred to dates for discoveries later on that month, and told them that he would issue a certificate of readiness and be ready for trial.

On 7 March, 1991 Mr. Stoyka told them that the trial date would be in June, 1991. That he was going to Toronto the next week and would get the case settled for some millions.

Next the father received from Mr. Stoyka a copy of Mr. Stoyka's letter of March 18, 1991 to the Sick Children's Hospital.

This letter concerned the father. He thought it was poorly written, the amounts claimed did not make any sense and had never been discussed.

They went to see Harvey Strosberg, Q.C. who could not take the case because of a conflict. He told them to check with Mr. Stoyka's office. They did so and found out that there was no trial date and no statement of claim.

The father and C.E. could not believe this.

The cross-examination of the father by Mr. Greenspan indicated that Mr. Stoyka was under psychiatric care at the time, but the father was unaware of this.

The Law Society investigation started in May of 1991, because Mr. Stoyka was not in his office full time due to hospitalization for burns, and of more importance the complaint to the Law Society by C.E. and his family.

Mr. Stoyka told the Law Society investigators on May 3, 1991 he had reviewed his file and discovered a draft statement of claim. He stated that it was drafted in June, 1990 and thought it had been served. Also that he was considering a change of venue for the trial to Windsor or Chatham.

The investigators then interviewed a secretary in Mr. Stoyka's office, and were told by her that the statement of claim was typed the morning of 3 May, 1991. Mr. Stoyka denied this and repeated that it was done in June, 1990 and that he had made revisions to it on 3 May, 1991.

Mr. Stoyka's secretary said that she typed the statement of claim on the morning of 3 May, 1991. She said that he told her not to date it. She said there was no earlier statement of claim which was revised as Mr. Stoyka had said to the Law Society investigators.

Mr. Stoyka then told the Law Society investigators that the receptionist secretary had typed the statement of claim. Her evidence was that she had never seen the file and had not typed the statement of claim.

The Law Society investigation continued on 13 May, 1991 when more misleading statements about the proceedings were made to the Law Society staff by Mr. Stoyka.

The solicitor's counsel conceded that the allegations of particulars of professional misconduct, namely (a) and (b) were proved.

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However as to allegations

- (c)(i) falsely telling the Society's investigators that the Draft Statement of Claim which he produced from his file had been prepared in or about the month of June, 1990 when, in fact, the Draft Statement of Claim had been prepared on May 3, 1991, the first day he was interviewed by the Society's investigators;
- (ii) falsely telling the Society's investigators that he mistakenly believed that the Draft Statement of Claim had been issued.

the solicitor's counsel submitted that the Law Society investigation and the interview on 3 May, 1991 with Mr. Stoyka followed soon after the very serious burn injury for which the solicitor had been hospitalized. He had been discharged from the hospital only a few days before.

We then heard the detailed viva voce evidence of Dr. Walter Yaworsky, a specialist in psychiatry. There were also filed Dr. Yaworsky's reports of 12 June, 1989 and 14 August, 1989 concerning another discipline matter.

Dr. Yaworsky's diagnosis referring particularly to the allegations (c)(i) and (ii) was that Mr. Stoyka was at the time of the Law Society interview suffering from a condition of post traumatic stress disorder. This manifested itself in procrastination and denial and as Dr. Yaworsky expressed it as lying to oneself and to others, further accentuated by the effect on the solicitor of the serious burns, hospitalization, and inability to attend to his practice.

During Dr. Yaworsky's testimony it became evident that he was unaware until then that the solicitor had been found guilty of professional misconduct on 1 November, 1979 for failing during the years 1975 to 1978 to carry out instructions of a client to institute proceedings in the Supreme Court and misrepresenting that he had.

Dr. Yaworsky agreed that there was a consistent pattern and that misleading the Law Society was another example.

Mr. Stoyka continues under his care.

Dr. Yaworsky's prognosis was not as optimistic as he had been when writing his reports of 12 June, 1989 and 14 August, 1989.

We had no hesitation in finding that Mr. Stoyka had misled the Law Society's investigators.

After deliberation we found all allegations (a), (b) and (c) and the particulars therein proven.

Accordingly our decision is that the solicitor is guilty of professional misconduct.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Michael Frank Stoyka be granted permission to resign and failing his resignation that he be disbarred.

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REASONS FOR RECOMMENDATION

The solicitor's counsel submitted that the penalty should be suspension for an indefinite period and at some point there should be a S. 35 hearing to determine if the solicitor would then be permitted to return to practice.

The Law Society's counsel recommended that the solicitor be permitted to resign and failing that that he should be disbarred.

We had before us the previous three reports of hearings before Discipline Committees and Convocation.

They were as follows:

1 November, 1979 - professional misconduct for failing to follow instructions of client from 1978 through 1979 to commence legal action, and misleading client.

Disposition -
reprimanded in Committee with undertaking to indemnify client.

22 August, 1989 - professional misconduct for failure to serve 14 clients in a conscientious, diligent and efficient manner and failed to reply to letters and telephone calls from Law Society.

Disposition -
Reprimanded in Committee with undertaking to reply promptly, monthly trust reconciliations, to continue psychiatric therapy, to employ another solicitor to assist, reduce files, co-operate with Practice Advisory Service, to comply with Rule 5.

2 April, 1991 - professional misconduct for failing to reply, breach of undertaking, misleading solicitor, failing to answer letters and telephone calls from solicitor, for facilitating an unconscionable loan transaction, inserting the principal amount into a mortgage without the consent of the parties.

Disposition -
reprimanded in Convocation and a fine of \$10,000.00.

We received a number of favourable letters from organizations and clients in Windsor.

The solicitor had contributed significantly in the community and in Church activities.

However there was the history of the pattern of failing to act promptly for clients then misleading them with serious results for clients.

In this case it was tragic for the family whose son died of Aids that his instructions before he died and that of his family for legal action were not followed through by the solicitor and during a period of about two years he misled them as to commencing the action, examinations for discovery, setting down for trial, none of which happened.

Mr. Stoyka continues under treatment by Dr. Yaworsky, and will for some time to come. Mr. Stoyka is separated from his wife.

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We do not agree to a suspension and a S. 35 hearing as submitted by Mr. Stoyka's counsel.

We are unanimous in our recommendation in view of the solicitor's psychiatric condition and pessimistic prognosis and the very serious proven allegations in previous discipline proceedings and in this case that the solicitor be permitted to resign. We would be remiss in our duty to the public if we permitted Mr. Stoyka to practice law. However in the circumstances we do not believe that the solicitor be disbarred. If our recommendation for permission to resign is not accepted by the solicitor he should be disbarred.

We do not wish to leave the matter without commenting favourably on the solicitor's contributions to the community and his apparent academic ability.

Michael Frank Stoyka was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 21st day of March, 1969.

DATED this 15th day of April, 1991

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

There were no submissions on the Report.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Murray that the Recommendation as to Penalty that is, that the solicitor be permitted to resign and that failing his resignation, he be disbarred, be adopted.

Submissions were made by both counsel. Society's counsel recommended that the solicitor's membership be terminated either by way of permission to resign or by disbarment. Mr. Greenspan urged support of the recommended penalty.

The solicitor was granted permission to resign.

Counsel retired.

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CONVOCATION ADJOURNED FOR A SHORT RECESS

.....

CONVOCATION RESUMED IN PUBLIC

.....

RE: KARLA KATHLEEN GOWER, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Messrs. Carter, Scott and Campbell withdrew and did not participate.

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

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This matter was adjourned from March 26th, 1992 at which time the Report was presented by Mr. Rock and adopted by Convocation

The Report was adopted by Convocation on March 26th and was adjourned to today to deal with the issue of penalty. Both counsel waived the requirements of a quorum of Convocation.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert J. Carter, Q.C., Chair
David W. Scott, Q.C.
L. Nora Angeles Richardson

In the matter of
The Law Society Act

Gavin MacKenzie
for the Society

and in the matter of
KARLA KATHLEEN GOWER
of the City
of Toronto
a barrister and solicitor

Brian Bellmore
for the solicitor

Heard: November 5, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 5, 1991, Complaint D207/90 was issued, On May 16, 1991, Complaint D63/91 was issued and on October 16, 1991, Complaint D161/91 were issued against Karla Kathleen Gower, alleging that she was guilty of professional misconduct.

The hearing was heard in public on November 5, 1991 before this Committee comprised of Robert J. Carter, Q.C., Chair, David W. Scott, Q.C. and Ms. L. Nora Angeles Richardson. The Solicitor attended the hearing and was represented by Brian Bellmore. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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

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Complaint D207/90

- 2(a) She acted for both the vendor and the purchaser in a transaction in which she knew there was likely to be a conflict of interest in that:
- (i) the vendor was an elderly man of doubtful mental competence;
 - (ii) the purchaser was a friend of the Solicitor; and
 - (iii) the purchase price was less than one-third of the fair market value of the property.
- (b) She facilitated a transaction whereby her friend and client, Robert Krueger, took unfair advantage of her client, Sam Katz, a man of doubtful mental competence, by inducing him to sell real estate property to him for an amount which was less than one-third of its value.

Complaint D63/91

- 2(a) She served as a commissioner for the taking of affidavits in respect of a solemn declaration purportedly sworn by her client Sam Katz on June 19, 1989, in circumstances in which;
- i. she was not present when the deponent signed the solemn declaration;
 - ii. she had failed to satisfy herself of the genuineness of the deponent's signature;
 - iii. she had failed to administer an oath or declaration to the deponent before he signed the solemn declaration; and
 - iv. the signature of the deponent was not in fact genuine.
- (b) Between August, 1989, and April, 1990, she assisted her friend Robert Krueger in an attempt to make it appear that property he purchases in the Township of King (part of lot 16, concession 3) was purchased for \$750,000 when it was in fact purchase for \$600,000 , for the purpose of assisting Robert Krueger to obtain mortgage financing that would not otherwise be available to him.
- (c) On or about October 7, 1988, she swore a Land Transfer Tax affidavit which was false in that it showed the consideration for the purchase of a property at 18 Byng Avenue in Scarborough to be \$290,000 when the consideration for the purchase was in fact only \$215,000.
- (d) On or about October 7, 1988, she breached her duty to her client Home Savings & Loan Corporation by allowing it to advance \$205,000 to Tom Reid on a first mortgage loan on property at 18 Byng Avenue in Scarborough on the basis of its belief that the consideration for the purchase was \$290,000 as stated in an agreement of purchase and sale dated September 13, 1988, when she knew that the consideration was in fact only \$215,000.

Complaint D161/91

- 2(a) From January, 1990, to September, 1991, she deceived her client, Giselle Diener, by:

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- (i) falsely informing her that she had issued a statement of claim in which she had claimed damages for personal injuries on Ms. Diener's behalf;
 - (ii) falsely informing her that the defendant had waived examinations for discovery;
 - (iii) falsely informing her that a pre-trial conference had been held as a result of which the pre-trial judge had recommended that the defendant settle her claim on the basis of a substantial payment;
 - (iv) falsely informing her on two occasions that dates had been set by the court for the trial of the action; and
 - (v) falsely informing her that the defendant had offered to settle the claim for a substantial amount of money upon receipt of a satisfactory report from Ms. Diener's therapist.
- (b) In support of the falsehoods referred to in particular (a), she created and provided to Ms. Diener two false documents, namely a statement of claim purportedly issued in the District Court of January 10, 1990, and a letter dated August 30, 1991, from one Ron Hammond of the law firm Madigan & Associates to the Solicitor; and
- (c) During the month of October, 1990, she falsely informed her fellow solicitor and former employer, Angela Costigan, that the reason that there was no statement of claim in the file which she opened on Ms. Diener's behalf was that the statement of claim had been issued by a previous solicitor for Ms. Diener.

Evidence

The evidence before the Committee contained an Agreed Statement of Facts.

AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D207/90, D63/91, D85/91 and D161/91 and is prepared to proceed with a hearing of these matters on November 5, 1991.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D207/90, D63/91 and D161/91 and the agreed statement of facts with her counsel Brian Bellmore, and admits the particulars of the allegations of professional misconduct contained therein. The Solicitor also admits that the particulars in the complaint together with the facts as set out herein constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the bar on April 10, 1984. Following her call to the Bar she practised as an employee of Angela Costigan in Toronto until August 1990 when she became a sole practitioner. On September 30, 1991, the Solicitor completed the process of winding down her practice.

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5. On August 20, 1991, as a term of an adjournment of the hearing of three of the complaints, the Solicitor gave an undertaking to the Society to complete the winding down of her practice by September 30, 1991, under the supervision of one of the Society's staff trustees. The Solicitor has completed all matters attendant to the closing of her practice to the satisfaction of the Society.

6. Robert Krueger was, at times material to the complaints herein, a 29 year old real estate agent. The Solicitor first met Krueger in 1987 and a relationship developed between them. In December, 1987, Krueger moved into the Solicitor's apartment. She paid for all of his living and business expenses. In March, 1988, Krueger moved out of the apartment although he continued to socialize with the Solicitor who hoped to restore their former relationship.

Complaint D63/91 - Particulars 2c and d - Reid Purchase of 18 Byng Avenue, Scarborough

7. On September 12, 1988 Tom Reid, a business partner of Krueger, through Michelle Development Group signed an agreement to purchase 18 Byng Avenue, Scarborough from Michael Hennigar for \$215,000. A copy of the agreement is attached as Exhibit 1 to this agreed statement of facts.

8. On September 13, 1988, Tom Reid signed an agreement to purchase in trust 18 Byng from Michelle Development Group, for \$290,000. A copy of the agreement of purchase and sale is attached as Exhibit 2 to this agreed statement of facts.

9. Michelle McDonough signed the agreements described in paragraphs 31 and 32 on behalf of Michelle Development Group. Robert Krueger witnessed Michelle McDonough's signature. McDonough was a former girlfriend prior to his relationship with the Solicitor. He had resumed his relationship with McDonough in the spring of 1988, following his departure from the Solicitor's apartment.

10. Reid first retained the Solicitor in late September 1988, and delivered the above agreements to her already executed. Reid had already arranged mortgage financing with Home Savings & Loan Corporation. In furtherance of obtaining a mortgage commitment, Reid had provided Home Savings with a copy of Exhibit 2.

11. On September 26, 1988 a letter of instruction and a copy of the mortgage commitment from Home Savings to Reid were sent to the Solicitor by Home Savings. Home Savings agreed to provide a first mortgage of \$205,000 on 18 Byng to finance Tom Reid's purchase. One of the clauses in the letter of instruction read as follows:

"If the proceeds of the mortgage loan are to be used by the Chargor to purchase the mortgaged premises, you have made enquiries of the Chargor and have no reason to believe that the true purchase price to be paid for the premises and the amount actually paid on closing (subject to the usual adjustments) is not as stated in the Agreement of Purchase and Sale relating to the purchase."

A copy of the letter of instruction and enclosed mortgage loan commitment are attached as Exhibit 3 to this agreed statement of facts. The Home commitment was conditional on Home obtaining an appraisal by A.R.L. showing a minimum value of \$275,000.

12. The transactions closed on October 7, 1988. Title to 18 Byng was taken in the name of Tom Reid "In Trust". The Solicitor's file and accounting records reveal that the only consideration passing on closing was \$215,000. The deed that was registered showed consideration of \$290,000 and the land transfer affidavit, signed by the Solicitor on October 7, 1988, also shows consideration of \$290,000. The deed and land transfer affidavit are attached as Exhibit 4 to this agreed statement of facts. The Solicitor says that Mr. Reid informed her

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that the balance of the \$290,000 consideration had been satisfied by the prior delivery of a \$75,000 promissory note to Michelle Development. There is no evidence of this in the Solicitor's file, and the Society therefore cannot confirm it.

13. The Solicitor's reporting letter to Tom Reid dated May 25, 1989 stated the purchase price of 18 Byng to be \$215,000. A copy of the reporting letter is attached as Exhibit 5 to this agreed statement of facts.

14. By letter dated March 16, 1989 the Solicitor prepared a final reporting letter to Home Savings. The Solicitor failed to reveal that the actual purchase price of 18 Byng was \$215,000. A copy of the reporting letter to Home Savings is attached as Exhibit 6 to this agreed statement of facts.

15. Reid sold the property in late 1989. The Home Savings mortgage was fully repaid.

Complaint D207/90 - Particular 2a and b and Complaint D63/91 - Particular 2a - Sam Katz sale of 639 Queen Street East to Robert Krueger

16. The Society's investigation regarding these particulars was initiated by a complaint from the Public Trustee in September, 1989.

17. At all material times to this complaint Sam Katz was an 85 year old unmarried man who lived at 160 First Avenue, Toronto.

18. Krueger befriended Katz and in May, 1989, persuaded Katz to sell to him, Krueger, a commercial building owned by Katz at 639 Queen Street East for \$110,000 which was about 1/3 of its then market value. The Solicitor agreed to act for both Krueger and Katz on the transaction, which was scheduled to close on June 23, 1989. A copy of the agreement of purchase and sale between Venture Capitalists, a sole proprietorship operated by Krueger and Katz's company, Cash-Deed Property Investments Limited, is attached as Exhibit 7 to this agreed statement of facts. The building had been vacant for over a year and there were approximately twenty outstanding work orders against the property. Katz was worried about the risk of vandalism as the building was adjacent to a bus stop. To be rentable the building would have to have been gutted and Mr. Katz did not wish to put any more money into the property.

19. The Solicitor met with Krueger and Katz in her office on May 19, 1989. The Solicitor says that she interviewed Katz alone at length on that occasion and that she was satisfied that Mr. Katz fully understood the transaction he was intending to enter. The Society can neither confirm or contradict this statement of the Solicitor. She was asked to draft an offer to purchase for 639 Queen Street East but was not, at that time, retained to act on the transaction.

20. Katz and Krueger met with the Solicitor again on May 26, 1989. The Solicitor presented to them a draft agreement of purchase and sale for review. The Solicitor says that she advised Katz to obtain independent legal advice. The Society can neither confirm nor contradict her statement that she did so. The Solicitor also says that she provided Mr. Katz with four copies of the agreement for this purpose.

21. On June 2, 1989, Katz and Krueger visited the Solicitor's office again. The Solicitor says that Katz told her he had discussed the matter with another lawyer, but she took no note of his or her name. The Solicitor's file contained documents whereby Krueger and Katz acknowledge the Solicitor's conflict of interest in acting for both of them. Copies of these documents are attached as Exhibit 8 to this agreed statement of facts. The agreement of purchase and sale between Krueger and Katz was executed on June 2, 1989.

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22. On June 5, 1989, an agreement of purchase and sale for 639 Queen Street East between Robert Krueger and Venture Capitalists, an unincorporated name under which Krueger operated, was signed. The purchase price was \$400,000. The Solicitor acted for Krueger on this transaction. The June 5, 1989 agreement of purchase and sale is attached as Exhibit 9 to this agreed statement of facts.

23. Krueger financed the purchase of 639 Queen Street by obtaining a new first mortgage from National Trust Company which was represented by Peter Silverberg for \$255,000 on the basis that the property was worth \$400,000.

24. On June 19, 1989 Krueger and Katz both attended at the Solicitor's office to sign the closing documents.

25. The transactions closed June 21, 1989. Attached as Exhibit 10 to this agreed statement of facts are copies of the deed and land transfer tax affidavit; the signature of Katz on the deed is forged.

26. The Solicitor reported to both Katz and Krueger by reporting letters dated June 26, 1989, copies of which are attached as Exhibit 11 to this agreed statement of facts.

27. The Solicitor received \$239,578.50 in trust as proceeds of the first mortgage. These funds were not deposited into the trust account of her employer, Angela Costigan, but were deposited into a separate trust account in the Solicitor's name in trust. The Solicitor's explanation for this was that Angela Costigan was not available on the afternoon of the closing to sign trust cheques.

28. Sam Katz was certified incapable of managing his own affairs on July 7, 1989 after medical examinations by a physician on June 28 and July 4, 1989, revealed that he suffered from cognitive impairment, difficulty in attention, concentration and memory and was unable to write spontaneously other than to sign his name. The Public Trustee was appointed as a statutory committee of the plaintiff by virtue of a certificate of incompetency issued under the Mental Health Act, R.S.O. 1980, c.262. Trudy Spinks, a solicitor in the office of the Public Trustee, advised the Solicitor of the aforesaid by letter dated July 26, 1989 a copy of which is attached as Exhibit 12 to this agreed statement of facts. Certificates of incompetency dated July 7, 1989 and August 15, 1989 are attached as Exhibits 13 and 14, respectively, to this agreed statement of facts. Letters of opinion offered by Dr. Michel Silberfeld, the physician issuing certificate Exhibit 13 being letters dated July 18, 1989 and December 9, 1989 are attached as Exhibits 15 and 16, respectively, to this agreed statement of facts.

29. On August 2, 1989, the Public Trustee corresponded further with the Solicitor by way of letter attached as Exhibit 17 to this agreed statement of facts.

30. On August 10, 1989, a statement of claim was issued by the Public Trustee against Robert Krueger, Venture Capitalists, the Solicitor, Angela Costigan, and National Trust Company. The litigation has now been settled, subject to court approval of the minutes of settlement.

31. During its investigation the Society found a declaration of possession sworn by Karla Gower on June 19, 1989 and allegedly signed by Sam Katz and a typewritten document entitled "Statement of Adjustments, If Necessary" in the Solicitor's file. Copies of those documents are attached as Exhibits 18 and 19, respectively, to this agreed statement of facts. Katz's signature on Exhibit 19 is forged.

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Complaint D63/91 - Particular 2b and Complaint D85/91 - Particular 2a - Transactions Surrounding Purchase and Sale of Part Lot 16, Concession 3, Township of King

32. In July, 1989, Krueger and his then girlfriend, Michelle McDonough, decided to purchase a five acre farm and residence in the Township of King.

33. On July 29, 1989, Michelle McDonough signed an offer to purchase a property known municipally as Part of Lot 16, Concession 3, Township of King from Harold and Miriam Patey for \$600,000. McDonough and Krueger planned to marry and live at this residence. Attached as Exhibit 20 to this agreed statement of facts is the second page of the agreement of purchase and sale executed by Michelle McDonough.

34. Ms. McDonough understood that the property was being purchased in her name in trust and that she would actually hold title only until it was transferred to Mr. Krueger.

35. In late August, 1989, Krueger attended at the Solicitor's office and presented her with Exhibit 16 as well as a second agreement dated July 29, 1989 between Michelle McDonough in trust as vendor and Krueger as purchaser. The second agreement stated a purchase price of \$750,000. A copy of second July 29, 1989 agreement is attached as Exhibit 21 to this agreed statement of facts. At that meeting the Solicitor was told by Krueger she was being retained to act on behalf of both Krueger and Ms. McDonough.

36. In late August, 1989, the Solicitor phoned Dennis Tobin another solicitor and advised him that she was in the position of acting for both sides on a real estate transaction and asked him to act for Mr. Krueger on the transaction. She stated she would be acting for Michelle McDonough. Contrary to the Solicitor's information from Krueger, Michelle McDonough did not believe that the Solicitor was her lawyer nor did she give the Solicitor instructions or ever attend at her office.

37. On August 30, 1989, the Solicitor faxed to Mr. Tobin's office the agreement of purchase and sale dated July 29, 1989 in which Robert Krueger in trust was purchasing the property referenced in paragraph 19 above from Michelle McDonough in trust. A copy of the facsimile transmission cover sheet and second July 29 agreement of purchase of sale, Exhibit 21, are attached as Exhibit 22 to this agreed statement of facts.

38. The Solicitor prepared a statement of adjustments for the sale of the King Property at \$750,000. The statement of adjustments shows additional consideration being paid towards the purchase by way of a mortgage for \$144,542.46 on 639 Queen Street East. The Solicitor forwarded this statement of adjustments to Mr. Tobin's office. A copy of the statement of adjustments is attached as Exhibit 23 to this agreed statement of facts.

39. On October 27, 1989 Ms. McDonough attended at Dennis Tobin's office with Mr. Krueger to complete the purchase and signed a vendor take back mortgage for \$81,500. Ms. McDonough did not receive any legal advice about the mortgage or her obligations as guarantor thereunder. The purchase closed that day.

40. Mr. Krueger and Ms. McDonough moved into the property. Ms. McDonough resided in the property until May 1990 when Krueger left her.

41. During the investigation by the Law Society, a Law Society investigator discovered a third mortgage for \$100,000 from Bedniski Group Inc. to Robert Krueger on the King property dated April 2, 1990. The document was registered by the Solicitor as Instrument #538853. A copy of that document is attached as Exhibit 24 to this agreed statement of facts.

23rd April, 1992

42. When questioned about the transaction the Solicitor advised that the Bedniski Group Inc. was Michelle McDonough's company and that the mortgage had been prepared to provide security for a loan made by Ms. McDonough's mother to Mr. Krueger. The Solicitor maintains she received this information from Krueger. The Bedniski Group Inc. is in fact not a corporation about which Michelle McDonough has any knowledge or in which she has any involvement. The Bedniski Group Inc.'s address for service was the Solicitor's apartment address. The Solicitor's explanation for this was that Ms. McDonough was on holiday at the time and she, the Solicitor did not know Ms. McDonough's address.

43. The Solicitor's file did not contain a reporting letter, fee billing or accounting to Ms. McDonough.

Complaint D161/91 - Giselle Diener

44. The Solicitor was retained by Giselle Diener in September 1989 to act on her behalf in recovering damages for injuries sustained in an automobile accident which occurred on January 12, 1988. Ms. Diener was previously represented by Murray Miskin another solicitor.

45. The Solicitor failed to issue a statement of claim within the two year limitation period.

46. When Ms. Diener inquired about the status of the action the Solicitor provided her with a copy of a statement of claim ostensibly issued in the District Court as Action 2891/90 on January 10, 1990. A copy of that document is attached as Exhibit 25 to this agreed statement of facts. The Solicitor also provided Ms. Diener with a falsified affidavit of service of the claim which is attached as Exhibit 26 to this agreed statement of facts.

47. When Ms. Diener inquired about the status of the action, the Solicitor advised her that although examinations for discovery had been scheduled the insurance company had waived the right to discovery.

48. Later the Solicitor advised Ms. Diener that a pre-trial conference had been scheduled and ultimately held, and that the pre-trial judge had recommended that the defendant's insurer settle the claim for \$75,000 together with interest and costs.

49. Still later the Solicitor advised Ms. Diener that the trial of the matter was scheduled to be heard in June, 1991. The Solicitor later advised Ms. Diener that Ms. Diener had misunderstood, and that the June date was in fact for an appearance in assignment court to set a date for trial and that the trial would take place in September, 1991.

50. Shortly before the trial was to begin the Solicitor sent to Ms. Diener, by way of facsimile transmission, a letter which purported to be an offer of settlement from the defendant's insurer. Copies of that letter and facsimile transmission sheet are attached as Exhibit 27 to this agreed statement of facts. The supposed author of the letter was a Mr. Ron Hammond of Madigan & Associates at 100 Richmond Street West, Toronto.

51. When Ms. Diener had difficulty obtaining the settlement funds from the Solicitor, a friend of Ms. Diener's attempted to communicate with Mr. Hammond, the purported author of the offer of settlement, by telephone. He learned that no lawyer or law firm with the names Ron Hammond or Madigan & Associates had listed telephone numbers. He then attended at 100 Richmond Street West and learned that no lawyer or law firm with the names Ron Hammond or Madigan & Associates had premises at that address.

23rd April, 1992

52. Ms. Diener's friend then arranged to meet with a representative of the defendant's insurance company who informed him that the insurance company's file had been closed because no action had been commenced.

53. No statement of claim had in fact been issued.

54. The Solicitor was employed by Angela Costigan from her date of call to the bar in 1984 until October 1990. When Ms. Costigan reviewed the files which the Solicitor was taking with her to set up her own practice in October 1990, Ms. Costigan noticed that there was no statement of claim in the Diener file. When Ms. Costigan asked the Solicitor for an explanation, the Solicitor told her, falsely, that the statement of claim had been issued by a previous solicitor for Ms. Diener.

DATED at Toronto this 5th day of November, 1991."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Karla Kathleen Gower be granted permission to resign from the Law Society.

REASONS FOR RECOMMENDATION

In addition to the Agreed Statement of Facts, the Solicitor gave evidence. She is 34 years old, single and was born, raised and educated in Meaford, Ontario. She is an only child and it was clear from the evidence that she led a sheltered family oriented life prior to her University and Law School education. Up until she met Robert Krueger in 1987, she had never had a serious relationship with a male person. They met at a health club. Krueger clearly was "street smart" and had been a professional boxer. Krueger moved into her apartment in December, 1987 and left in March of 1988 supposedly to live with his brother. The Solicitor did not want him to go and did not want him to leave her. Their sexual relationship continued even though she discovered in August 1988 that he had returned to his former girlfriend Michelle McDonough.

Krueger was having a continuing relationship with the Solicitor daily on a day time basis and living with McDonough at night.

The Committee concluded that the Solicitor's judgement was so clouded that she would and did virtually anything Krueger asked her to do in the misguided belief that he may return to her. This was supported by the psychiatric reports and the Solicitor's evidence and demeanour while being questioned.

It was clear that Krueger had convinced her to do as he requested and her emotional and psychological condition were such that she could not resist and could not see that her actions were wrong.

The Solicitor now realizes that her conduct was wrong and that she is incapable of the practice of law. She has not practiced since September of 1991.

The only issue was to either disbar the Solicitor or permit her to resign. She acknowledged that she could no longer practice law and requested that she be permitted to resign. She received no financial benefit from any of their transactions. The Committee is satisfied that her conduct was as a result of the influence of Krueger and as a result of her mental and emotional condition, the Committee felt the end of justice would be met by permitting her to resign.

23rd April, 1992

Karla Kathleen Gower was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1984.

ALL OF WHICH is respectfully submitted

DATED this 14th day of February, 1992

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

At the Special Convocation on March 26th a motion was put to disbar the solicitor.

A preliminary motion was made by Mr. Bellmore pursuant to section 9(1)(b) of the Statutory Powers of Procedure Act that certain psychiatric evidence be received in camera.

Mr. MacKenzie opposed the application on the basis that Mr. Bellmore had not demonstrated that the interests of his client on privacy outweighed the public interest. No one else's interest other than the solicitor's was involved and the psychiatric evidence was before the Committee in a public hearing.

Convocation adjourned to review the reports to determine the nature of psychiatric evidence to be tendered.

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

Counsel made further submissions.

Counsel withdrew to consider the issue of whether Mr. Bryce, solicitor for Ms. Diener should be permitted to address Convocation.

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

It was moved by Mr. Brennan, seconded by Mr. Finkelstein that Mr. Bryce be allowed to make submissions on the issue of whether psychiatric evidence should be reviewed in camera.

Carried

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

Mr. Bryce made submissions to the effect that the public should not be excluded and even if the public were banned, Mr. Bentley (Ms. Diener's representative) and himself as Ms. Diener's counsel should be permitted to stay.

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

It was moved by Ms. Graham, seconded by Mr. Rock that the evidence be received in public.

Carried

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

Dr. Boracchia was sworn as a witness and examined in-chief by Mr. Bellmore.

23rd April, 1992

Mr. MacKenzie cross-examined Dr. Boracchia and Mr. Bellmore re-examined the witness.

The witness retired.

Mr. Rock raised an issue which had just come to his attention that is that a member of his firm had a prior involvement with this matter and asked counsel to consider the question of his continuing participation in this matter.

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CONVOCATION ADJOURNED FOR LUNCHEON AT 1:15 P.M.

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CONVOCATION RECONVENED AT 2:15 P.M.

.....

PRESENT:

Treasurer, Arnup, Brennan, Cullity, Elliott, Finkelstein, Graham, Hickey, Lax, Lerner, Manes, Mohideen, Murray, Palmer, Rock and Weaver.

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Counsel were asked whether or not they objected to Mr. Rock continuing.

Counsel indicated they had no objection and Convocation concurred. Mr. Rock entered Convocation.

The Brief of Medical and Character Evidence was filed as Exhibit 2.

Mr. Bellmore made further representations and submitted a Brief of Authorities to Convocation.

There were submissions by Mr. MacKenzie and a reply by Mr. Bellmore.

Counsel took questions from the Bench.

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

Motions - March 26th, 1992

It was moved by Mr. Somerville, seconded by Mr. Brennan that the solicitor be disbarred.

Lost

It was moved by Mr. Rock, seconded by Mr. Murray that the solicitor be permitted to resign.

Lost

Motion - April 23rd, 1992)

It was moved by Ms. Lax, seconded by Mr. Finkelstein that the solicitor be suspended for a period of 1 year definite and thereafter until a psychiatrist acceptable to both the Society and to the solicitor could certify that she was competent to resume the practice of law.

Carried

23rd April, 1992

CONVOCATION ADJOURNED AT 4:00 P.M.

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Confirmed in Convocation this *27th* day of *May*, 1992.


Treasurer