

6th December, 1991

MINUTES OF SPECIAL CONVOCATION

Friday, 6th December, 1991

9:30 a.m.

PRESENT:

The Treasurer (James M. Spence), Bellamy, Brennan, Campbell, Carter, Cass, Copeland, Cullity, Epstein, Feinstein, Finkelstein, Furlong, Goudge, Howie, Kiteley, Lax, McKinnon, Mohideen, Murray, S. O'Connor, Palmer, Peters, Rock, Scott, Somerville, Thom, Wardlaw and Weaver.

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"IN CAMERA"

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IN CAMERA Content Has Been Removed

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"IN PUBLIC"

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Mr. Finkelstein addressed Convocation concerning the recent newspaper article about his attendance and provided Convocation an explanation as to his involvement in cases in Vancouver and Ottawa which has resulted in his being out of town for much of the fall.

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The Treasurer spoke of the importance of the date of December 6th as being the second anniversary of the slaying of 12 women at the University of Montreal. The Treasurer in this connection noted the recent murder of Patricia Allen, a lawyer, in Ottawa and remarked that the Law Society had first reflected its concern with the problem of violence against women one year ago when it received a donation of a work commemorating the Montreal events.

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DISCIPLINE COMMITTEE

Re: HELEN LORRAINE TERRY, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Gavin MacKenzie appeared for the Society and Mr. Douglas Crane appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 10th June, 1991, together with an Affidavit of Service sworn 28th August, 1991 by Dawna Darlene Robertson that she had effected service on the solicitor by courier mail on 18th June, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 6th December, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

6th December, 1991

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Ms. Sandra Chapnik, Chair
Mr. Maurice Cullity, Q.C.
Ms. June Callwood

In the matter of
The Law Society Act

Gavin MacKenzie
for the Society

and in the matter of
HELEN LORRAINE TERRY
of the City
of Toronto
a barrister and solicitor

Thomas H. Marshall, Q.C.
for the solicitor

Heard: March 20 and April 22, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 28, 1990, Complaint D43/90 was issued against Helen Lorraine Terry alleging that she was guilty of professional misconduct.

The matter was heard in public on March 20 and April 22, 1991 before this Committee composed of Ms. Sandra Chapnik (Chair), Mr. Maurice Cullity, Q.C. and Ms. June Callwood. Ms. Terry attended the hearing and was represented by Thomas H. Marshall, Q.C. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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

Complaint D43/90

Professional Misconduct

- 2(a) While acting on an offer to purchase the Longview property in Port Hope for her clients, Robert Armstrong and Terrace Developments Limited, she breached her fiduciary duty in preferring her own interest and those of Charles O'Hara to those of her clients, Armstrong and Terrace, by taking steps to have a subsequent offer accepted;
- (c) While she was pursuing the subsequent offer mentioned in particular a) she failed to advise her clients, Robert Armstrong and Terrace Developments Limited, of the existence of the offer and that she had an interest in the subsequent offer.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. Helen Lorraine Terry (the "Solicitor") admits service of Complaint D43/90 and is prepared to proceed with a hearing of this matter on March 20, 1991.

II. FACTS RELEVANT TO COMPLAINT

2. The Solicitor was called to the bar in 1970. At all times material to Complaint D43.90, she was a sole practitioner who practised in Toronto.

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3. In late 1985 or early 1986, the Solicitor learned of a well-located property in Port Hope known as the Longview property, which had been subdivided into 78 undeveloped lots for residential use. The property was owned by Port Hope Development Company Limited, a company controlled by Robin Long and N.J. Long, who also carried on business as real estate brokers in Port Hope through Long Bros. (1982) Limited.

4. The Solicitor drew the property to the attention of one Nick Di Lorenzo, who retained her to submit an offer to purchase the property on his behalf. On Mr. Di Lorenzo's instructions, she drafted an offer to purchase in the name of Strathrose Limited ("Strathrose"), a company which had been previously incorporated by the Solicitor, and submitted that offer to the vendor on May 9, 1986. Attached as Exhibit "A" to this agreed statement of facts is a copy of the offer to purchase.

5. The offer was unacceptable to the vendor, which rejected it. Attached as Exhibit "B" to this agreed statement of facts is a copy of a letter dated June 3, 1986, from the Solicitor to a partner of Mr. Di Lorenzo's, Mr. Gus Mantia, a copy of which letter was sent to Mr. Di Lorenzo. Attached as Exhibit "C" to this agreed statement of facts is an Ontario Real Estate Association mutual release form in relation to the property, which form was signed on June 4, 1986, by the Solicitor in her capacity as President of Strathrose and by Robin Long on behalf of the vendor.

6. The Solicitor also drew the property to the attention of Phillip Owen, a real estate broker. Mr. Owen introduced the Solicitor to Robert Armstrong, the complainant, as a potential purchaser of the property and investor in the development of the site. Mr. Owen, Mr. Armstrong, and the Solicitor (among others) will testify at the hearing of this matter with respect to the matters in issue.

7. Mr. Owen and Mr. Armstrong met with the Solicitor at her office on May 28, 1986. The discussions at the meeting will be the subject of viva voce evidence. As a result of discussions with Mr. Owen and Mr. Armstrong an offer to purchase the Longview property was typed by the Solicitor's secretary. The offer to purchase identified Terrace Developments Limited ("Terrace"), a company controlled by Mr. Armstrong, as the purchaser. The offer to purchase drafted by the Solicitor is attached as Exhibit "D" to this agreed statement of facts.

8. Mr. Armstrong drew a cheque in the amount of \$10,000 on the account of Robar Ltd., another company which he controlled, on June 4, 1986. The cheque was payable to the Solicitor in trust, and represented the deposit to be submitted with the offer to purchase. A copy of the cheque is attached as Exhibit "E" to this agreed statement of facts. Copies of a duplicate deposit slip, trust bank statement, and client ledger card showing the deposit of this cheque into the Solicitor's trust account on June 5, 1986, are attached to this agreed statement of facts as Exhibits "F", "G", and "H" respectively.

9. At Mr. Owen's request, and with the Solicitor's knowledge, the offer to purchase which had been drafted by the Solicitor was reviewed by Mr. Owen's son, Loudon Owen, and by a colleague of Loudon Owen, both of whom were lawyers at Campbell, Godfrey & Lewtas of Toronto at the relevant time. The Solicitor arranged for the draft offer to purchase which was prepared in her office (Exhibit "D") to be delivered to Loudon Owen under cover of a letter dated June 16, 1986, a copy of which is attached as Exhibit "I" to this agreed statement of facts. The Solicitor met with Loudon Owen and Paul King on June 17, 1986. A revised offer to purchase was prepared by Mr. King, and the revised offer was returned to the Solicitor under cover of a letter from Loudon Owen dated June 30, 1986, a copy of which is attached as Exhibit "J" to this agreed statement of facts. A copy of the revised offer to purchase prepared by Mr. King is attached as Exhibit "K" to this agreed statement of facts.

10. The Solicitor travelled to Port Hope and delivered an envelope containing the offer to purchase (Exhibit "K"), in an unsigned form, to the vendor's agent during the week of July 7, 1986.

11. On July 17, 1986, the Solicitor met with Mr. Charles O'Hara, who had learned of the Longview property from Mr. Di Lorenzo. On July 21, the Solicitor travelled to Port Hope and attended at the property with Mr. O'Hara.

12. The Solicitor and Mr. O'Hara discussed the possibility of the two of them becoming partners in a joint venture to develop the property. Although the precise details of this arrangement were not finalized, they agreed that the Solicitor would prepare an offer to purchase the Longview property in the name of the Solicitor's company, Strathrose, and that Mr. O'Hara would put up the sum of \$10,000 as a deposit.

13. The Solicitor prepared an offer to purchase (the "O'Hara offer"), as agreed. A copy of the O'Hara offer is attached as Exhibit "L" to this agreed statement of facts.

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14. The Solicitor presented the O'Hara offer to the vendor's agent in Port Hope on July 29, 1986, and it was accepted the same day.

15. The Solicitor wrote a letter dated August 22, 1986, to Mr. Armstrong, which letter read as follows:

RE: Deposit on Longview Subdivision - Port Hope

"As you may already have heard from Phillip Owen, we were unsuccessful in the approach by Terrace Developments to the Long family for the purchase of the Longview subdivision. As Phil had suspected, the connection between the Hodgson family and the Longs was very close and the proposals in the offer for dealing with the interior parcel still owned by the Hodgsons was not viewed by the vendor with any great favour.

Under the circumstances, I am returning the monies deposited in my trust account which were intended to be used as deposit monies in this transaction. Should there be any future developments, I will certainly be in touch with you and Phil."

A copy of the Solicitor's letter to Mr. Armstrong dated August 22, 1986, is attached as Exhibit "M" to this agreed statement of facts.

16. With her letter of August 22, 1986 (Exhibit "M"), the Solicitor enclosed a cheque drawn on her trust account in the amount of \$10,000 payable to Terrace. A copy of this cheque is attached as Exhibit "N" to this agreed statement of facts.

17. On August 28, the Solicitor met with Phillip Owen for lunch. The next day, Mr. Owen returned the Solicitor's trust cheque (Exhibit "N") to her. The Solicitor accepted the cheque, but sent it back to Mr. Armstrong under cover of a letter dated September 4, 1986, a copy of which is attached as Exhibit "O" to this agreed statement of facts.

18. In October, 1986, Loudon Owen was instructed on behalf of Mr. Armstrong and Terrace to write to the Solicitor to obtain clarification of the sequence of events, the relationship between Strathrose and the Solicitor, and the current status of the matter. Attached as Exhibit "P" to this agreed statement of facts is a copy of a letter dated October 27, 1986, from Loudon Owen to the Solicitor.

19. In response to his letter (Exhibit "P") Loudon Owen received a letter dated November 12, 1986, from Maxwell Johnston of McCarthy and McCarthy, who informed Loudon Owen that he had been retained on the Solicitor's behalf. A copy of Mr. Johnston's letter is attached as Exhibit "Q" to this agreed statement of facts.

20. Loudon Owen met with Mr. Johnston on December 12, 1986. At the meeting Mr. Johnston agreed to consult the Solicitor to obtain her instructions as to what information she was willing to divulge about the O'Hara offer.

21. On or about December 16, 1986, five shares of Strathrose Limited were issued to Mr. O'Hara. By that date the Solicitor also held five shares of Strathrose Limited. A copy of the shareholders' register for Strathrose Limited is attached as Exhibit "R" to this agreed statement of facts.

22. The sale of the Longview property to Strathrose Limited was completed on December 19, 1986. A copy of the statement of adjustments in relation to the closing is attached as Exhibit "S" to this agreed statement of facts. A copy of the deed whereby title was conveyed to Strathrose Limited is attached as Exhibit "T" to this agreed statement of facts. A copy of a mortgage (charge) back to Port Hope Development Company Limited in the amount of \$350,000 signed by the Solicitor in her capacity as President of Strathrose Limited and by Mr. O'Hara in his capacity as Vice-President of Strathrose Limited is attached as Exhibit "U" to this agreed statement of facts. A copy of the Solicitor's ledger statement in relation to the transaction is attached as Exhibit "V" to this agreed statement of facts.

23. Attached as Exhibit "W" to this agreed statement of facts is a copy of a letter from Mr. Johnston to Loudon Owen dated January 13, 1987, whereby Mr. Johnston informed Mr. Owen that the Solicitor was the sole shareholder of Strathrose at the time the O'Hara offer was submitted, but that Strathrose acted as trustee for interests which he was not authorized to disclose. Attached as Exhibit "X" to this agreed statement of facts is a copy of a letter from Loudon Owen to Mr. Johnston dated January 26, 1987. Attached as Exhibit "Y" to this agreed statement of facts is a copy of a letter dated February 2, 1987, from Mr. Johnston to Loudon Owen, with which was enclosed a copy of the O'Hara offer to purchase (Exhibit "L").

24. The Solicitor acknowledges that there was a solicitor-client relationship between Mr. Armstrong and Terrace and her as a result of her holding Terrace's \$10,000 deposit in her trust account. The terms and duration of her retainer, however, are in issue.

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25. The Solicitor further acknowledges that she had a personal financial interest in the O'Hara offer. Mr. Armstrong and Terrace learned of the Solicitor's personal financial interest in the O'Hara offer in early 1987.

26. Mr. Armstrong and Terrace commenced an action in the Supreme Court of Ontario against the Solicitor, Strathrose, and Mr. O'Hara on November 9, 1987. In that action the plaintiffs claim a declaration that they are the equitable owners of the Longview property; damages for breach of trust, breach of fiduciary duty, breach of contract, negligence, and fraud; punitive damages; and other relief. The Solicitor is defending the action, as are Strathrose and Mr. O'Hara. The Solicitor has been examined for discovery at length in those proceedings, and Mr. O'Hara has also been examined for discovery. Mr. Armstrong has not yet been examined for discovery, and the action has of course not been tried.

27. The Solicitor acknowledges that she obtained the advice of her counsel, Thomas H. Marshall, Q.C., in relation to this agreed statement of facts before signing it.

DATED at Toronto this 20th day of March, 1991."

FINDING OF PROFESSIONAL MISCONDUCT

The complaint which gives rise to this proceeding against Ms. Terry arises out of her alleged professional misconduct in the course of her involvement with a piece of property known as the Longview property.

The allegations of professional misconduct are as follows:

- a) While acting on an offer to purchase the Longview property in Port Hope for her clients, Robert Armstrong and Terrace Developments Limited, she breached her fiduciary duty in preferring her own interests and those of Charles O'Hara to those of her clients, Armstrong and Terrace, by taking steps to have a subsequent offer accepted;
- b) She deceived her clients, Robert Armstrong and Terrace Developments Limited by advising that the negotiations for the purchase of the Longview property were progressing satisfactorily when in fact they had been terminated by the vendor;
- c) While she was pursuing the subsequent offer mentioned in particular a) she failed to advise her clients, Robert Armstrong and Terrace Developments Limited, of the existence of the offer and that she had an interest in the subsequent offer.

The Solicitor was represented by Thomas H. Marshall, Q.C. and the Society by Gavin MacKenzie. Ms. Terry gave evidence on her own behalf and George Brigden, barrister and solicitor, testified on her behalf. The Society called Phillip Owen, Robert Armstrong, Loudon Owen, Lori Toime and Paul King as witnesses.

As noted in the Agreed Statement of Facts, the Solicitor learned that the Longview property was for sale in late 1985 or early 1986. Subsequently, there were three offers of purchase related to the said property with which Ms. Terry was involved, as follows:

1. On May 9, 1986, the Solicitor presented an offer to the vendor on behalf of Nick Di Lorenzo, in the name of Strathrose Limited, a company which had been previously incorporated by the Solicitor. We shall refer to this offer to purchase as the "Strathrose" offer. As the offer was unacceptable to the vendor, the deposit was returned to the purchaser and a mutual release signed on June 4, 1986.
2. On or about June 4, 1986, an offer to purchase was prepared by the Solicitor on behalf of Robert Armstrong in the name of one of his companies, Terrace Developments Limited (the "Terrace" offer). A deposit cheque of \$10,000 made payable to the Solicitor in trust was placed in the Solicitor's trust account on June 5, 1986.

A revised offer was subsequently prepared by Paul King of Campbell, Godfrey & Lewtas and forwarded to the Solicitor by letter dated June 30, 1986.

Sometime during the following week, the Solicitor delivered the revised Terrace offer in unsigned form, to the vendor. By letter dated August 22, 1986, the Solicitor advised Mr. Armstrong that the said offer was unacceptable to the vendor and she returned the deposit monies to him.

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3. On July 17, 1986, the Solicitor met with Charles O'Hara to discuss the possibility of entering into a joint venture to develop the property. As a result, an offer to purchase was prepared by the Solicitor in the name of her company, Strathrose Limited (hereinafter called the "O'Hara" offer).

The O'Hara offer was submitted by the Solicitor and accepted by the vendor on July 29, 1986.

The issue in this case revolves around the question of whether a solicitor-client relationship existed between the Solicitor and Robert Armstrong and/or Terrace Developments Limited (hereinafter referred to collectively as "Armstrong") on July 29, 1986, the date on which the O'Hara offer was presented to and accepted by the vendor.

Mr. Marshall claimed that the said solicitor-client relationship had been terminated on one of two dates -- either on June 17, 1986, when the file was "given over" to Loudon Owen of the law firm Campbell, Godfrey and Lewtas, or on July 7, 1986, when Ms. Terry allegedly informed Phillip Owen that the Terrace offer had been rejected by the vendor who, for various reasons, had refused to deal further with the proposed purchaser. Accordingly, it was submitted that, in either event, at the date of the presentation of the third offer on July 29, 1986, the Solicitor had no legal obligation to either Armstrong or Terrace.

In support of this contention, it was pointed out that no offer for the property was ever executed by either Armstrong or Terrace; moreover, the terms of the proposed unsigned offer did not accord with the minimum requirements of the vendor as outlined in its property Data or Fact Sheet (filed as Exhibit 8 to the hearing). Furthermore, the law firm of Campbell, Godfrey and Lewtas and not Helen Terry was indicated as the "purchaser's solicitor" on the revised offer which the law firm had prepared. Finally, Mr. George W. Brigden testified that he overheard Ms. Terry and a man (whom he could not identify at the time) "speaking loudly" on July 7, 1986. He could not recall the particulars of the conversation. Mr. Brigden was Ms. Terry's landlord at the time and he subsequently learned that the visitor was Phillip Owen. The implication of Mr. Brigden's evidence, according to Mr. Marshall, was to confirm Ms. Terry's testimony that Phillip Owen (Mr. Armstrong's friend and partner) was upset in learning that the Terrace offer had been rejected and that the vendor would no longer deal with him or Armstrong. Thus, what Mr. Brigden had heard on July 7, 1986, was the noise emanating from the discussion or "argument" about this between Phillip Owen and the Solicitor.

Accordingly, it was submitted by Mr. Marshall that the Solicitor's retainer was clearly at an end, either on June 17, 1986, when the matter was given over to the law firm Campbell, Godfrey & Lewtas, or on July 7, 1986, when Ms. Terry advised Phillip Owen of the rejection of the Terrace offer.

On the other hand, Mr. MacKenzie asserted that the solicitor-client relationship between the Solicitor and Armstrong and Terrace was ongoing at the relevant time. As noted above, the Society called Phillip Owen, Robert Armstrong, Loudon Owen, Lori Toime, and Paul King as witnesses. Mr. MacKenzie submitted that both the viva voce evidence given under oath by the witnesses and the documentary evidence, attested to the continuing solicitor-client relationship between Armstrong and Ms. Terry as at July 29, 1986.

In summary, the Society's witnesses testified that Armstrong and Phillip Owen met with the Solicitor on May 28, 1986, as a result of which an offer for the Longview property was drafted by the Solicitor and a deposit cheque in the sum of \$10,000, made payable to the Solicitor, in trust, was provided to her on June 5, 1986. At Mr. Owen's request and with the concurrence of the Solicitor, the offer to purchase was reviewed by Mr. Owen's son, Loudon Owen and by a colleague of his, Paul King, at Campbell, Godfrey and Lewtas. Both of the said solicitors unequivocally stated that they were retained by Armstrong to review and redraft the Terrace offer and that the firm was to have no further involvement in the transaction. It was their understanding that Ms. Terry would continue to act as the solicitor for the purchasers. Furthermore, Phillip Owen did not recall meeting with Ms. Terry on July 7, 1986, and he categorically denied having had an indication or knowledge that the Terrace offer had been rejected until the end of August, 1986.

Finally it was submitted that the following documentary evidence confirms the ongoing solicitor-client relationship between the parties:

1. The deposit cheque of \$10,000 given by Armstrong was deposited into the Solicitor's trust account on June 5, 1986. The monies remained in the account until August 22, 1986, when the deposit was returned to Armstrong by means of a cheque made payable to Terrace drawn on the Solicitor's trust account. At no time were the deposit monies transferred to the law firm of Campbell, Godfrey and Lewtas.

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2. In a letter dated August 22, 1986, addressed to Robert Armstrong, Ms. Terry explained the rejection of the Terrace offer by the vendor, and then, stated:

Under the circumstances, I am returning the monies deposited in my trust account which were intended to be used as deposit monies in this transaction. Should there be any future developments, I will certainly be in touch with you and Phil. (emphasis added).

It was noted that, even at this late date, after the O'Hara offer had been accepted, there was no mention of another offer or of the Solicitor's personal interest in it.

3. Ms. Lori Toime, a legal secretary at Campbell, Godfrey, & Lewtas who was working for Loudon Owen at the relevant time, recorded the following telephone message taken July 28, 1986, one day before the Solicitor presented the O'Hara offer: (From: H. Terry for L. Owen, filed as Exhibit #3):

"Is going to Port Hope tomorrow to see what she can do."

After a careful review of all of the evidence, we find that there was indeed, a continuing solicitor-client relationship between Ms. Terry and Armstrong at the time of the July 29, 1986, offer. In making this determination, we accept the evidence of the Society's witnesses in respect of that relationship, over that of Ms. Terry where their evidence is conflicting.

We reject the Solicitor's contention that the law firm of Campbell, Godfrey & Lewtas was retained to "take over the file" and find that the firm's retainer included only the review and revision of the Terrace offer. In making this finding, we accept the evidence of Paul King and Loudon Owen as well as that of Phillip Owen and Robert Armstrong to that effect. The fact that the revised offer was forwarded to Ms. Terry and that she retained the deposit monies in her trust account, lends credence to this view.

In addition, we find as a fact that neither Phillip Owen nor Robert Armstrong were made aware of the rejection of the Terrace offer until August 22, 1986, at the earliest. In making this determination, we reject the evidence submitted by the Solicitor regarding her alleged meeting on July 7, 1986, with Phillip Owen and we accept the latter's testimony that both he and Armstrong were apprised of the rejection of the offer by means of the Solicitor's August 22, 1986, letter. Both the evidence of Ms. Toime and the wording of the August 22, 1986 letter are consistent with this view.

Accordingly, we find that, at the time of the presentation and acceptance of the O'Hara offer on July 29, 1986, a solicitor-client relationship existed between Armstrong and the Solicitor.

That is not to say that we accept all of the evidence put forward by the Society's witnesses. We do not accept the contention of Robert Armstrong and Phillip Owen, for example, that there was a definitive deal with Ms. Terry regarding profit sharing in respect of the Terrace offer. Nevertheless, in our view, the overwhelming preponderance of evidence establishes a continuing, ongoing solicitor-client relationship between the Solicitor and Armstrong as at July 29, 1986. Thus, Ms. Terry had a duty to her clients to disclose to them at that time, in July, 1986, the existence of the O'Hara offer and her interest in it. She clearly did not do this. In that regard, we note Ms. Terry's acknowledgement in the Agreed Statement of Facts that Armstrong and Terrace only learned of her personal financial interest in the O'Hara offer in early 1987. In the circumstances, we also find that the Solicitor breached her fiduciary duty to her clients in preferring her own interests and those of Charles O'Hara to those of Armstrong and Terrace.

This Committee therefore, finds the Solicitor guilty of professional misconduct in respect of the allegations contained in particulars 2(a) and 2(c) of the complaint.

On the other hand, after a careful review of the evidence including the several exhibits filed, this Committee has insufficient evidence to find that the Solicitor advised Armstrong and Terrace that the negotiations were "progressing satisfactorily" after they had been terminated by the vendor. Accordingly, particular 2(b) of the complaint is hereby dismissed.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Helen Lorraine Terry be reprimanded in Convocation.

REASONS FOR RECOMMENDATION

Mr. Marshall urged the Committee to impose upon the Solicitor, the "lightest possible penalty" or a reprimand in Committee. Mr. MacKenzie was of the view that a reprimand in Convocation or possibly, a short suspension, would be more appropriate in the circumstances.

After reviewing the evidence and the submissions of counsel, the Committee recommends that the penalty be a reprimand in Convocation. We summarize the matters to be considered in mitigation of penalty as follows:

1. There has been no other report of misconduct by the Solicitor throughout her 20 years of practice.
2. A number of letters of support attest to the high regard and respect the Solicitor enjoys in the legal and general community.
3. It was clear that publicity in connection with these proceedings will be a source of great embarrassment to the Solicitor and her family.
4. The Solicitor has endured much anguish as a result of this matter. The pending discipline and court proceedings put her under considerable stress and anxiety. After this incident came to light, the Solicitor developed a heart condition and also, developed a type of cancer which is presently in remission.
5. The Solicitor co-operated with the Society in its investigation and entered into an Agreed Statement in respect of several complex matters. This was most helpful both to the Society in presenting its case, and to the Committee.
6. Finally, the Committee members were persuaded that this matter represents an isolated event and that there is little or no risk to the Solicitor's clients or to the public, in the future. This was basically an unsophisticated attempt by the Solicitor to earn additional monies. In the end, the property was sold at a loss and if anything, she lost monies.

On the other hand, the Committee views this as a very serious matter of professional misconduct. In our opinion, the public interest demands a more severe penalty than a reprimand in Committee.

Helen Lorraine Terry was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 19th day of March, 1970.

ALL OF WHICH is respectfully submitted

DATED this 10th day of June, 1991

"Sandra Chapnik"
Sandra Chapnik
Chair

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

There were no submissions by either counsel.

The Report was adopted.

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

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

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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6th December, 1991

Re: ERNEST ROVET, Toronto

Mr. Scott placed the matter before Convocation.

The reporter was sworn.

Messrs. Rock, Campbell, Howie and Thom withdrew.

Mr. Gavin MacKenzie appeared for the Society. Mr. Alan Lenczner appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 13th November, 1991, together with an Affidavit of Service sworn 3rd December, 1991 by R. Foppiano that he had effected service on the solicitor by registered mail and by courier mail on 14th November, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 6th December, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Kenneth E. Howie, Q.C., Chair
Stuart Thom, Q.C.
Samuel Lerner, Q.C.

In the matter of
The Law Society Act

Gavin MacKenzie
for the Society

and in the matter of
ERNEST ROVET
of the City
of Toronto
a barrister and solicitor

Alan Lenczner
for the solicitor

Heard: October 1, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 8, 1991, Complaint D116/91 was issued against Ernest Rovet, alleging that he was guilty of professional misconduct.

The hearing was heard in public on October 1, 1991, before this Committee composed of Kenneth E. Howie, Q.C., Chair, Stuart Thom, Q.C. and Samuel Lerner, Q.C. The Solicitor appeared at the hearing and was represented by Alan Lenczner, Q.C. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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

Complaint D116/91

- 2(a) In written submissions to the Canada Labour Relations Board, he knowingly made false representations about facts material to the case before the Board. Reference is made to rule 10 of the Rules of Professional Conduct and commentary 2(b), (e), (f), and (g) thereof;
- (b) In connection with the case referred to in particular (a), he assisted his client to prepare false documents in support of his false representations; and
- (c) From April 1989 to April 1991, he charged personal expenses as fees without the knowledge or consent of his partners or clients. Reference is made to rule 9 of the Rules of Professional Conduct and commentaries 1, 4, 5, and 8 thereof.

6th December, 1991

DECISION

The following Agreed Statement of Facts was placed before the Committee.

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D116/91 and is prepared to proceed with a hearing of this matter on October 1, 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 admits the particulars set forth in Complaint 116/91.

IV. BACKGROUND FACTS

4. The Solicitor was a partner in Fogler, Rubinoff from April, 1989, until May, 1991, when he withdrew from the firm as a result of the disclosure of the incidents referred to in the complaint. He has not practised law since May, 1991, as he voluntarily has undertaken to the Society not to do so pending the hearing of the complaint.

5. The Solicitor has no prior discipline record.

V. FACTS RELEVANT TO THE COMPLAINT

6. On April 30, 1991, a lawyer who had recently been retained by a company which had formerly been represented by the Solicitor wrote to the Society's Senior Counsel-Discipline, Gavin MacKenzie, to inform the Society that the company (which the lawyer did not identify) was aware of apparently serious professional misconduct on the part of an Ontario lawyer (whom the lawyer also did not identify), but that the company would be willing to provide information to the Society about the matter only if it were to receive certain assurances that the identity of the company would not be disclosed to anyone other than those required to know for the purpose of the investigation. The lawyer added that it was his view and the view of two other senior members of the profession with whom he had consulted that it was in the public interest that the matter be investigated and that the Society would not find out the details of the matter unless the company were to receive the assurances sought.

7. On May 1, 1991, Mr. MacKenzie replied to the lawyer's letter as follows:

"Thank you for your letter of yesterday's date.

Based upon the summary of the Solicitor's alleged professional misconduct as set forth in the fourth paragraph of your letter, it is evident to me that you are quite right that the public interest requires that this matter be investigated by the Society. In light of your belief that the matter will not be reported to the Society unless your client is assured that the Society will endeavour to keep its identity confidential, I am pleased to co-operate in achieving that end.

Specifically, I can assure you as follows:

1. I will personally assume the responsibility of acting as the Society's counsel in relation to the matter until the matter is completed. Barring unforeseen circumstances, your client need not be concerned that another counsel appointed to act for the Society may not feel bound by any assurances which you receive from me.

2. In accordance with the Society's usual policy, during the investigative phase of the proceeding no information will be divulged about the investigation to anyone but the complainant and its counsel.

3. Should I decide upon the completion of the investigation to recommend that a complaint of professional misconduct be sworn and filed, I will draft the proposed complaint in such a way that your client is not identified.

4. If a complaint is authorized by the chair or a vice-chair of the discipline committee, I will endeavour to ensure that any statement of agreed facts or similar document which may become public and which is to be put before the discipline committee at the hearing of the complaint will not identify your client by name, but

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will rather identify your client by the use of a pseudonym. Similarly, I will endeavour to relate the material facts in any such document in such a way that your client is not identified indirectly. The statement of agreed facts will specify that the client has been identified pseudonymously, so that there can be no suggestion that the committee has been misled as to the true identity of the complainant. Whether it is possible to prepare such an agreed statement will of course be dependent upon the degree of co-operation of the solicitor and his or her counsel.

5. Whether or not the solicitor and defence counsel co-operate in this way, your client may be assured that its name will not be divulged by the Society pending the hearing. Should the recommendations of the special committee on discipline procedures (the Yachetti committee) as approved by Convocation be implemented by the time the complaint is filed and served, the name of the solicitor, the date scheduled for the hearing, and the complaint will be publically available. As mentioned above, however, the complaint will not identify your client, and its anonymity will accordingly be maintained even if a journalist or a member of the public requests and obtains a copy of the complaint.

6. I am reluctant to undertake unreservedly at this juncture that I will necessarily request that the hearing be held in camera. I am concerned that an inference may erroneously be drawn that the Society is trying to conceal the functioning of its discipline process from public scrutiny for the purpose of protecting one of its members from adverse publicity. If we are to secure the co-operation of the solicitor and his or her above, and we are able to be sure that your client will not be identified in a public hearing, I would prefer that the hearing be held in public. I will undertake, however, to request that the hearing be held in camera if it is necessary to do so to protect your client's anonymity.

7. Finally, I will undertake to ask the committee not to identify your client in any report which it may prepare as a result of the hearing.

I trust that this proposal meets with your approval.

I would be grateful if you would communicate your instructions to me as soon as possible.

Thank you for your co-operation."

8. In accordance with this arrangement, the company which the Solicitor represented has been identified in this agreed statement of facts as "A Company", and its officers and others who were involved in the matter have also been identified pseudonymously.

9. In early January, 1991, A Company learned that certain of its employees were considering joining a union. The company's president, B, spoke to several lawyers who specialize in the representation of employers in labour relations matters, most of whom informed him that there was little the company could do that would be effective in blocking the unionization of the employees.

10. One of the lawyers with whom B spoke was the Solicitor, who was not as pessimistic about the company's prospects of blocking the unionization attempt as were most of the other lawyers with whom B spoke.

11. B arranged to meet with the Solicitor, and they met for the first time on January 8, 1991. Another executive employed by A Company, C, was also in attendance. The Solicitor outlined the process of union certification under applicable legislation. He told B and C that the number of employees who would be included in the bargaining unit is a critical factor in the success of an organizational drive.

12. The Solicitor also asked B and C whether A Company had any plans to increase the size of the company's work force, as that would affect the size of the bargaining unit and might have the effect of reducing the proportion of employees who supported the union.

13. B informed the Solicitor that the company's business had increased significantly in the autumn of 1990 and that an expansion of the work force was justifiable. The Solicitor said that he knew of a company, D Company, which was able to provide employees who were favourably disposed to the employer's interests in an organizational drive, on a contract basis, until the union organizing campaign was over. The fact that B was concerned about the possibility of disruption to the company's operations as a result of any work action that might be taken by its existing employees was an additional reason that B found attractive the Solicitor's suggestion that D Company be consulted. B instructed the Solicitor to arrange a meeting with a representative of D Company.

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14. Two days later, on January 10, 1991, a representative of D Company met with the Solicitor and B. After preliminary discussions about how many additional employees were justifiable, the Solicitor left the meeting and A and D Company's representative negotiated an agreement in principle that day whereby A Company agreed to utilize the services of D Company and to employ a specified number of workers provided by D Company. The Solicitor was informed of the agreement in principle.

15. On January 17, 1991, the Solicitor met with representatives of A Company and D Company. At that time, the main terms of an agreement were worked out. The agreement called for a separate, confidential contract to be entered into between D Company and a numbered company owned by the principal shareholders of A Company. This separate contract provided for extra payments to be made to D Company. At the conclusion of the meeting the numbered company made an initial payment to D Company in the amount of \$125,000. The numbered company agreed to pay that sum to D Company each week until the certification application was concluded.

16. Over the next few days the Solicitor drafted the two contracts. The initial drafts of the contract between A Company and D Company, whereby the former agreed to employ certain workers of the latter, were dated December 14, 1990.

17. On January 23, 1991, the Solicitor met with representatives of A Company and D Company to deal with certain issues which had to be resolved before the contracts could be signed. During or after the meeting, the Solicitor and the others in attendance learned that the union had filed an application for certification the previous week. One effect of the filing of the application was to settle the bargaining unit for the purpose of determining support for the union as of the date of filing. As of the date of filing, there was an agreement in principle between A Company and D Company whereby the former would hire extra workers and the number of workers had been determined and were on standby, but none of them had yet started to work for A Company. A Company nevertheless decided, with the Solicitor's concurrence, to carry into effect the agreed upon strategy of employing workers provided through D Company and to submit that they should be treated as members of the unit and eligible to vote.

18. On or after January 23, 1991, the Solicitor prepared the two contracts in their final form. The contract between A Company and D Company was backdated to November 23, 1990, and its commencement date was specified as being January 1, 1991.

19. In addition, at the request of B, correspondence between A Company and D Company was created. This correspondence purported to reflect negotiations between the two companies beginning in early October, 1990, which culminated in the November 23, 1990, contract. This correspondence was generated in draft form by a junior lawyer in the Solicitor's firm in consultation with B, to the Solicitor's knowledge. The junior lawyer gave the draft correspondence to the Solicitor, who then gave them to B and a representative of D Company, E. The letters were then typed on the letterheads of A Company and D Company, and copies were returned to the Solicitor.

20. In late February, 1991, B and E had a falling out, and B concluded that E would be a liability to A Company if called upon to testify. Another representative of D Company, F, was introduced to A Company. To the Solicitor's knowledge, new backdated contracts and correspondence were prepared and signed. This time F signed on behalf of D Company, as if he had been involved from the beginning.

21. As the certification process continued, A Company continued to make weekly payments in the amount of \$125,000 to D Company.

22. The Solicitor made his final written submission to the labour relations board in relation to the certification application in a letter dated March 11, 1991. The submission made was voluntary and not required. The statutory reply, which was required, was accurate and was filed. No contractual documents were appended to the voluntary submission. In his letter the Solicitor made the following representations which he knew to be false:

1. That negotiations between A Company and D Company began in October, 1990. (in fact negotiations began on January 10, 1991,); and
2. That the contract was made on November 23, 1990, and that the new workers were employed beginning on January 1, 1991. (In fact there was no agreement in principle until January 10, the terms of the contract were not agreed upon until after the date on which the certification application was filed, and the new workers were not paid for any work they did for A Company until at least January 23, 1991.)

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23. The labour relations board granted the certification application. Shortly thereafter, representatives of A Company consulted with another lawyer, who, after consulting with other senior members of the bar, reported the matter to the Society and to the Solicitor's firm.

24. The Solicitor's firm thereupon reviewed the Solicitor's file. Because it appeared that several undocumented disbursements (payments to the Solicitor's American Express account) had been charged to A Company, the firm retained an accounting firm, Price, Waterhouse, to review the Solicitor's fee billings from April, 1989, to April 1991.

25. Price Waterhouse's examination in conjunction with a follow up review by the Society disclosed that the Solicitor charged numerous personal expenses to client files and arranged for the firm to pay these expenses.

26. The Solicitor accomplished this by giving his American Express and VISA receipts to his secretary and instructing her to attribute the expenses to specified files. The secretary then requisitioned firm cheques payable to American Express and VISA. The Solicitor charged client related expenses to the client as disbursements which were separately shown on the client's accounts. The Solicitor included personal expenses which he incurred in clients' fees and these amounts were not separately shown on the client's accounts, which showed a gross amount as the firm's fee.

27. The personal expenses which the Solicitor charged to clients as fees included such items as newspaper subscriptions, airplane tickets, automobile expenses, restaurant meals, drycleaning, hardware, baseball and theatre tickets, household items, landscaping, photographs, furniture, ski equipment, clothes, books and art. It is not possible to determine precisely the amount of personal expenses included by the Solicitor in client fee billings over the period during which the Solicitor was a partner in Fogler, Rubinoff (a period of two years), but the amount is in the range of approximately \$35,000. The Solicitor generally reduced the fee billings to accommodate the personal expenses so that he did not overcharge or double bill the client.

28. The Solicitor has co-operated fully in the Law Society's investigation, and voluntarily undertook not to practise pending the hearing of the complaint. He has not practised, pursuant to his undertaking, since May 11, 1991.

29. The Solicitor has read this agreed statement of facts in its entirety and has taken the advice of his counsel, Alan Lenczner, Q.C., before signing it.

DATED at Toronto this 1st day of October, 1991."

The Committee finds the Solicitor guilty of professional misconduct in respect of counts (a), (b) and (c) to paragraph 2 of the Complaint.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the Solicitor be suspended from practice for a period of six months from an effective date of June 1, 1991.

REASONS FOR RECOMMENDATIONS

The evidence demonstrated that the Solicitor is an intelligent, experienced, wholly competent practitioner of many years experience, who enjoyed an enviable reputation within the legal community and with an apparently sound family relationship.

The character evidence led on his behalf uniformly makes these points:

- (a) The Solicitor has never been known to have engaged in unethical or improper activities, other than the conduct evident in these complaints.
- (b) His conduct in respect of the complaints appears to be an aberration, and the Committee is unanimously of the belief that the possibility of the conduct re-occurring is at least remote.

The Solicitor has engaged himself actively in community activities, to the obvious benefit of the public in general.

The position of the Law Society with respect to the penalty was that the individual complaints, for which the Solicitor has been found guilty, might call for a reprimand in Convocation but that the combination of the two significant acts of misconduct together require a more severe penalty.

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The Law Society believes that there should be a suspension of six to twelve months.

Counsel for the Solicitor takes the position that there should be a reprimand in Convocation as the appropriate penalty, but that if a suspension is required, it should be a maximum of six months.

It was argued strenuously, that the length of the suspension is relatively unimportant in comparison to the impact the complaints have already had and that he has already been seriously punished by the publicity associated with respect to his conduct.

It is obviously necessary for the Committee to consider two aspects in assessing any penalty.

- (a) The penalty must be sufficient to deter the Solicitor, and in this connection, the Committee is satisfied that the prospect of re-occurrence is at least remote. The Committee is not unmindful that these complaints represent the first and hopefully last brush of the solicitor with the disciplinary process.
- (b) The interest of the public in ensuring that the penalty fits the wrongdoing of the Solicitor. It should be clearly noted that the Committee was unanimously of the view that the conduct of the Solicitor was not such to require a penalty of disbarment or permission to resign.

The Solicitor voluntarily agreed to suspend practice as of May 1991, and has not engaged in practice since that time. It should be understood that this was done voluntarily and not at the request of the Law Society.

In all the circumstances, the Committee was unanimously of the view that a suspension for six months is an appropriate penalty in this case. Because the Solicitor has not practiced since May 1991, the Committee was further of the view that it would be in order to back date the suspension to June 1, 1991.

Ernest Rovet was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 26th day of March, 1971.

ALL OF WHICH is respectfully submitted

DATED this 13th day of November, 1991

"K. E. Howie"
Kenneth E. Howie, Q.C., Chair

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

There were no submissions by either counsel.

The Report was adopted.

It was moved by Mr. Scott, seconded by Mr. McKinnon that the Recommendation as to Penalty contained in the Report that is, that the solicitor be given a 6 month suspension effective June 1st, 1991 be adopted.

Counsel for the Society put before Convocation his letter of December 4th, 1991 to Mr. Lenczner which was marked as Exhibit 3. Mr. MacKenzie indicated that the suspension should run from the date of Convocation rather than June 1st.

Ms. O'Connor left Convocation briefly during Mr. MacKenzie's submissions.

Counsel took questions from the Bench.

Mr. Lenczner made representations in support of the Committee's recommended penalty.

Messrs. Murray and Brennan left Convocation briefly.

Mr. MacKenzie made submissions in reply and a letter from Mr. Weatherill to Mr. MacKenzie dated May 14th, 1991 was filed as Exhibit 4.

Counsel for the solicitor answered further questions from the Bench.

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

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CONVOCATION ADJOURNED FOR A SHORT RECESS
.....

CONVOCATION RESUMED IN CAMERA
.....

IN CAMERA Content Has Been Removed

Ms. Mohideen and Ms. Palmer entered Convocation.
.....

Re: ALLEN WEINSTEIN, Thornhill

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Weaver and Messrs. Campbell and Wardlaw withdrew.

Mr. Gavin MacKenzie appeared for the Society. No one appeared for the solicitor and the solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 13th November, 1991, together with an Affidavit of Service sworn 3rd December, 1991 by Renzo Foppiano that he had effected service on the solicitor by registered mail and courier mail on 20th November, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 6th December, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

In the matter of
The Law Society Act

Gavin MacKenzie
for the Society

and in the matter of
ALLEN WEINSTEIN
of the Town
of Thornhill
a barrister and solicitor

Daniel Kayfetz
for the solicitor

Heard: November 13, 1991

6th December, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 2, 1991, Complaint D84/91 was issued against Allen Weinstein, alleging that he was guilty of professional misconduct.

The hearing was heard in public on November 13, 1991, before this Committee composed of James J. Wardlaw, Q.C., Chair, Mary P. Weaver, Q.C. and Mrs. Netty Graham. Mr. Daniel Kayfetz appeared on behalf of Mr. Weinstein who was not in attendance. Mr. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

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

Complaint D84/91

- 2(a) he dishonestly obtained investment monies from the following clients by promising them valuable mortgage security, but giving them instead either no mortgage at all, a mortgage on property that was already substantially overmortgaged, or a bogus mortgage:

<u>Client</u>	<u>Amount</u>
Avana Group Ltd./Unifonds Ltd.	\$ 40,000.00
Marion Barr	10,000.00
Horst and Beatrice Behrends	35,000.00
Rita Chapell	10,000.00
Alan and Joni Debora	35,000.00
Feldbloom	60,000.00
Audrey Fische	30,000.00
Artis Grecia	45,000.00
Alice Gummerson	50,000.00
Helen Hucaluk	30,000.00
Sara Katz	20,000.00
Fred Mauti	30,000.00
Marlene Morrison	30,000.00
Joseph and Mary Nigra	30,000.00
Jessie Orme	30,000.00
Tom and Jessie Schmol	80,000.00
Arlie Shaban	145,000.00
James Toy	65,000.00
Joseph Vieira	60,000.00
	<u>\$835,000.00</u>

EVIDENCE

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

- 1. The Solicitor admits service of Complaint D84/91 and is prepared to proceed with a hearing of this matter on November 13, 1991.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

- 3 The Solicitor has reviewed Complaint D84/91 and this agreed statement of facts with his counsel, Daniel Kayfetz, and admits the particulars contained in the complaint. The Solicitor also admits that the particulars in the complaint together with the facts set out herein constitute professional misconduct.

IV. FACTS

- 4. The Solicitor was called to the bar on March 26, 1971. He was a sole practitioner from 1983 until February 1990 when he became associated with the firm Neal & Smith.

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5. In 1982 the Solicitor provided clients' money to finance another client who was renovating houses. Because of a downturn in the economy at that time certain of these mortgages went into default. The renovator walked away from the properties. Rather than admit to his clients that their mortgages went bad and that they would have to either take over the properties or lose their investments, he personally took over some of the properties and continued to make payments from his own resources. He later obtained funds improperly from clients to keep making mortgage payments, as set forth below. He hoped he would be able to sell the properties for a high enough price that none of his clients would lose any money. His repeated obtaining of funds from clients to pay other clients had a snowball effect, and continued over a period of eight years.

6. On January 16, 1991 the Solicitor attended at the Law Society and made disclosure of his misappropriation of clients' funds as set forth herein. On January 17, 1991 the Solicitor delivered a letter in which he purported to resign his membership, which was not accepted by the Society, and signed an undertaking not to engage in the practice of law.

7. Between 1983 and 1990 the Solicitor misapplied and misappropriated \$700,000 of client funds entrusted to him for investment. The Solicitor's statement, confirming the misapplications and misappropriations, is attached as Exhibit 1.

8. The following is a list of clients from whom the Solicitor received funds and amounts that remain owing to them:

<u>Client</u>	<u>Amount</u>
Avana Group Ltd./Unifonds Inc.	\$ 40,000.00
Marion Barr	10,000.00
Horst and Beatrice Behrends	35,000.00
Rita Chapell	10,000.00
Alan and Joni Debora	35,000.00
Feldbloom	60,000.00
Audrey Fische	30,000.00
Artis Grecia	45,000.00
Alice Gummerson	50,000.00
Helen Hucaluk	30,000.00
Hurley Construction	2,500.00
Sarah Katz	20,000.00
Fred Mauti	60,000.00
Marlene Morrison	30,000.00
Joseph and Mary Nigra	52,000.00
Jessie Orme	30,000.00
Vivienne Rojas	40,000.00
Tom and Jessie Schmol	80,000.00
Arlie Shaban	145,000.00
James Toye	65,000.00
Joseph Vieira	<u>60,000.00</u>
	<u>\$929,500.00</u>

9. The difference between \$700,000 and \$929,500 is that some of the clients were given valid mortgages.

10. The Solicitor forged mortgages by adding numbers to unregistered documents or filling in pre-signed blank mortgages which he represented to be valid and registered mortgages securing clients' investments. The following clients were deceived in this manner: Avana Group Ltd./Unifonds Inc., Alan and Joni Debora, Joseph and Mary Nigra, Shaban Catering and Joseph Vieira.

11. The Solicitor is unable to repay any of the amounts owed to clients.

Alan and Joni Debora Mortgage - \$35,000

12. In April 1986, Alan and Joni Debora (the "Debora's") gave the Solicitor \$35,000 which he misrepresented to them would be invested in a second mortgage registered on a property known municipally as 58 Joanna Crescent, Thornhill ("58 Joanna").

13. The Solicitor provided the Debora's with a document which he represented to be a duplicate registered mortgage bearing Instrument #LT 404905 ("the Debora mortgage") as well as a reporting letter dated April 30, 1986. These documents are attached as Exhibits 2 and 3 respectively.

14. The Solicitor forged the Debora mortgage. A copy of the genuine Instrument #LT 404905 is attached as Exhibit 4. The Solicitor never registered a mortgage in favour of the Debora's on title to 58 Joanna.

15. 58 Joanna was purchased in January of 1985 for \$92,000. A copy of the abstract of title of 58 Joanna is attached as Exhibit 5. The property is registered in the name of Edward Rice ("Rice"), a client of the Solicitor. The Solicitor maintains he has a half interest in the property. In March 1986 there were three existing mortgages registered on the property. They are as follows:

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<u>Date</u>	<u>Mortgagee</u>	<u>Amount</u>
January 28/85	Polaris Trust Fund	\$ 69,000.00
April 1/85	Fred and Sylvina Mauti	30,000.00
December 9/85	Richard and Patricia Bertolli	<u>15,000.00</u>
		<u>\$104,000.00</u>

16. The Debora's mortgage funds were deposited into the Solicitor's trust account and disbursed as follows:

<u>Payee</u>	<u>Amount</u>
478271 Ontario Inc.	\$16,286.73
Edward Rice	18,189.27
Transferred to general account	<u>524.00</u>
	<u>\$35,000.00</u>

17. The Solicitor made some monthly mortgage payments on the Debora mortgage either from an account in the name of his client Rice, an account controlled by the Solicitor, or from one of the Solicitor's own accounts both of which were maintained at National Trust, 2900 Warden Avenue, Scarborough.

Avana Group Ltd./Unifonds Inc. Mortgage ("Avana") - \$36,000

18. In October, 1987, the Solicitor misrepresented to Avana that he would invest \$36,000 from a maturing investment in a second mortgage registered on title to 58 Joanna.

19. The earlier investment was one of \$70,000 made in April of 1984 in a mortgage on 63 Mutual Street. Attached as Exhibits 6 and 7 are a copy of the Mutual Street mortgage and the reporting letter. The reporting letter falsely describes the mortgage as a first mortgage when it is in fact a fifth mortgage.

20. The Solicitor did not disclose to his clients that in September of 1982 the Mutual Street property was purchased under power of sale from Chap-Kay Holdings Inc. for \$134,000. After the purchase from Chap-Kay, 63 Mutual Street was registered in the name of Stanley Marchand as nominee for the Solicitor.

21. The Solicitor's trust ledger statements show that the \$70,000 advanced by Avana on April 5, 1984, was disbursed as follows:

<u>Payee</u>	<u>Amount</u>
Enid Kastner	\$30,400.00
CIBC	24,873.15
Sylvina Mauti	8,264.33
White & Company (Bailiffs)	2,304.02
Toronto Hydro	1,842.16
Stanley Marchand	1,317.84
Mortgage Centre	600.00
A. Weinstein (fees and disb.)	369.50
Other	<u>20.00</u>
	<u>\$70,000.00</u>

22. On October 2, 1987, 63 Mutual Street was sold for \$257,000 to Six Hundred Investments Limited. As at September 30, 1987 there were six mortgages registered on title, they were as follows:

<u>Date</u>	<u>Mortgagee</u>	<u>Amount</u>
September 2/82	Chap-Kay Holdings Inc.	\$120,000.00
December 31/82	John and Edith Pullen	30,000.00
November 2/83	Horst and Beatrice Behrends	25,000.00
April 10/84	Avana Group/Unifonds	70,000.00
March 29/85	Richard and Patricia Bertolli	36,000.00
February 27/86	Shaban Catering Ltd.	<u>30,000.00</u>
		<u>\$316,000.00</u>

23. On closing, the Pullen, Avana, Bertolli and Shaban mortgages were discharged. A new mortgage for \$150,000 was registered. There was a \$70,000 difference between the net sale proceeds and the face amount of all mortgages registered on title. The Society has been able to confirm that Avana received \$34,361.

24. The Solicitor failed to advise Avana that there had been a loss on the sale of 63 Mutual Street and falsely represented to them that the remaining funds had now been invested in a second mortgage on 58 Joanna.

25. The Solicitor purported to report the registration of a mortgage on 58 Joanna to the clients and provided them with a document with a forged number which he represented to be a duplicate registered mortgage bearing Instrument #LT 422480 ("the Avana mortgage"). Attached as Exhibits 8 and 9 are a copy of the

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Avana mortgage and reporting letter dated March 26, 1988 which were sent to the client. Attached as Exhibit 10 is a copy of the genuine Instrument #LT 422480.

26. The Solicitor never registered a mortgage in favour of Avana on title to 58 Joanna.

27. The Society has been able to establish that the Solicitor made some mortgage payments to Avana from one of the bank accounts maintained at National Trust, 2900 Warden Avenue.

Joseph and Mary Nigra Mortgage - \$30,000

28. The Solicitor acted for Joseph and Mary Nigra (the "Nigra's"). In November 1987, the Solicitor received \$30,000 in trust on behalf of those clients. In 1988 the Solicitor represented to the Nigra's that their investment had matured and that their money would be reinvested in a mortgage registered on 58 Joanna.

29. In March 1987 the Solicitor received a further \$49,850 on behalf of the Nigra's. These funds were disbursed as follows, without any security being given:

<u>Payee</u>	<u>Amount</u>
Stanley Marchand	\$15,000.00
Mr. and Mrs. Bertolli	31,664.13
Mr. and Mrs. Nigra	2,147.37
White & Company	<u>1,038.50</u>
	<u>\$49,850.00</u>

30. The Solicitor supplied the Nigra's with a forged mortgage Instrument #LT 492233 with a face value of \$30,000 ("the Nigra mortgage"), a copy of which is attached as Exhibit 11. A copy of the genuine Instrument #LT 492233 is attached as Exhibit 12.

31. No mortgage in favour of the Nigra's was ever registered on title to 58 Joanna.

Shaban Catering Ltd. ("Shaban") Mortgage - \$115,000

32. In September, 1988, the Solicitor received \$118,091.25 from Shaban for investment. The funds were deposited in an interest bearing account at the Royal Bank of Canada, 42 McNicol Avenue, Willowdale, Account #7041742.

33. In May 1989, the Solicitor misrepresented to Shaban that the funds had been invested in a second mortgage registered on a property known municipally as 180 Dudley Avenue, Unit 605, Thornhill ("180 Dudley").

34. As evidence of the aforesaid, the Solicitor provided Shaban with a reporting letter dated July 13, 1989 and a copy of a document purporting to be a registered duplicate mortgage bearing Instrument #LT 579928 ("the Shaban mortgage"), copies of which are attached as Exhibits 13 and 14 respectively.

35. The Solicitor forged the Shaban mortgage. Attached as Exhibit 15 is a copy of the genuine Instrument #LT 579928. No mortgage in favour of Shaban was ever registered on title to 180 Dudley.

36. A copy of the abstract of title of 180 Dudley is attached as Exhibit 16. The title search indicates that the property was purchased in February of 1989 for \$159,900 and was registered in the name of Rice. The Solicitor claims a half interest in the property.

37. Some mortgage payments were made on the Shaban mortgage. It is unclear where the funds advanced by Shaban were disbursed.

Joseph Vieira ("Vieira") Mortgage - \$60,000

38. In June 1989 the Solicitor received \$118,00 from Mr. Vieira which was invested in a \$120,000 mortgage to Marie Bokuluta. The mortgage was paid off in February 1990 at which time the Solicitor repaid Vieira \$62,738.62.

39. The Solicitor misrepresented to Vieira that the remaining \$60,000 would be invested in a second mortgage on 58 Joanna.

40. In March, 1990, the Solicitor misrepresented to Vieira that Vieira had a second mortgage for \$60,000 registered as Instrument #LT 662118 ("the Vieira mortgage") on 58 Joanna. Attached as Exhibits 17 and 18 respectively are a copy of the Vieira mortgage and reporting letter dated July 2, 1990 that were sent to Vieira.

41. The Solicitor forged the Vieira mortgage. Attached as Exhibit 19 is a copy of the genuine Instrument #LT 662118. No mortgage in favour of Vieira was ever registered on title to 58 Joanna.

6th December, 1991

42. The Solicitor disbursed the \$60,000 he falsely represented was invested in a mortgage as follows:

<u>Payee</u>	<u>Amount</u>
Candev Financial Services	\$22,349.00
Edward Rice	17,500.00
Elsie Bernstein	10,133.33
Edward Rice	9,000.00
Power Master Mechanical	820.00
Allen Weinstein	197.67
	<u>\$60,000.00</u>

Edward Rice Purchase of 58 Joanna Crescent, Thornhill

43. The Solicitor acted for Rice and himself in purchasing the above-noted property for \$92,000 on January 28, 1985, from CMHC.

44. The closing funds came from the following sources:

Polaris Trust Fund	\$ 69,000.00
Fred Mauti	25,000.00
Edward Rice	<u>12,000.00</u>
	<u>\$106,000.00</u>

45. Polaris Trust Fund received a first mortgage for \$69,000 which was signed on January 28, 1985, attached as Exhibit 20.

46. Fred and Sylvina Mauti received a second mortgage for \$30,000 which was signed on January 25, 1985 but not registered until April 1, 1985, attached as Exhibit 21.

47. The Solicitor acted on the transactions for Polaris Trust Fund as well as Fred and Sylvina Mauti.

48. The first and second mortgages were prepared and signed at the same time. The Solicitor knew at the time of the execution of the mortgages that the property was overmortgaged.

V. PENALTY

49. The Society submits that the appropriate penalty in the circumstances of this case is disbarment. The Solicitor joins in this submission.

DATED at Toronto this 13th day of November, 1991."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Allen Weinstein be disbarred.

REASONS FOR RECOMMENDATION

The usual penalty for dishonestly obtaining investment money, by promising clients valuable mortgage security, but giving instead either no mortgage at all, a mortgage on property that was already substantially overmortgaged or a bogus mortgage is disbarment.

The Committee sees no reason to make any other recommendation.

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

ALL OF WHICH is respectfully submitted

DATED this 19th day of November, 1991

"J. Wardlaw"
James J. Wardlaw, Q.C.
Chair

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

There were no submissions.

6th December, 1991

The Report was adopted.

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

Counsel for the Society supported the Committee's recommended penalty.

The Recommendation as to Penalty was adopted.

Counsel retired.

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Re: LEE EDWARD WARD, Carleton Place

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

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

The solicitor requested an adjournment in order to retain counsel. Counsel for the Society did not oppose the request.

Convocation granted an adjournment to the next Discipline Convocation.

Counsel and the solicitor retired.

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Re: PETER MICHAEL HOLLYOAKE, Burlington

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

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

Convocation had before it the Report of the Discipline Committee dated 18th November, 1991, together with an Affidavit of Service sworn 3rd December, 1991 by Renzo Foppiano that he had effected service on the solicitor by registered mail and courier mail on 21st November, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 6th December, 1991 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Dennis R. O'Connor, Q.C., Chair
Kenneth E. Howie, Q.C.
Frances Kiteley

In the matter of
The Law Society Act

Patrick Sheppard & Gavin MacKenzie
for the Society

and in the matter of
PETER MICHAEL HOLLYOAKE
of the City
of Burlington
a barrister and solicitor

Not Represented
for the solicitor

Heard: May 14,15, 1991 and
October 11, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

6th December, 1991

REPORT

On October 4, 1990, Complaint D169/90 was issued against Peter Michael Hollyoake, alleging that he was guilty of professional misconduct and conduct unbecoming.

The hearing was heard in public on May 14 and 15, 1991 and October 11, 1991, before this Committee composed of Dennis R. O'Connor, Q.C., Chair, Kenneth E. Howie, Q.C. and Frances Kiteley. Mr. Hollyoake attended the hearings and was not represented. Patrick Sheppard and Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

Mr. Hollyoake appeared before the Committee on Complaint D169/90. There are two particulars of misconduct in this complaint, one of professional misconduct and one of conduct unbecoming.

The first particular alleged that Peter Michael Hollyoake was guilty of professional misconduct. To identify the professional misconduct alleged to have taken place the following particulars are provided:

- 2.(a) His correspondence of August 16, 1989, to a fellow solicitor was offensive and totally inconsistent with the proper tone of a professional communication from a lawyer;
- (b) In a letter dated August 30, 1989, he threatened criminal prosecution in order to secure some civil advantage for his client;
- (c) By letter dated March 20, 1990, he admitted to taping a conversation with a fellow solicitor employed by the Law society of Upper Canada and that this recording was made without her knowledge or consent;

The second particular alleged that Peter Michael Hollyoake was guilty of conduct unbecoming. To identify the conduct unbecoming alleged to have taken place the following particular is provided:

- 3.(a) On or about June 13, 1990, he used rude and abusive language towards B. Denise Ashby, a lawyer employed by the Law Society who was conducting an investigation into a complaint against him.

After a hearing the Committee was satisfied that the allegations of professional misconduct set out in paragraphs 2 (a), (b) and (c) above had been established and that the allegation of conduct unbecoming a barrister and solicitor in paragraph 3(a) had been established.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT & CONDUCT UNBECOMING

The evidence disclosed that the Solicitor acted on his own behalf in connection with litigation involving members of his family arising from his late mother's estate. The opposing parties were represented by the law firm of Thatcher, Corvese, Wands & Culver in Burlington. It was common ground that the Solicitor was very emotionally involved and upset by the litigation.

The facts giving rise to the particulars set out in paragraphs 2(a) and (b) arose from correspondence with the Solicitors for the other parties. The facts resulting in particular 2(c) and paragraph 3(a) resulted from communications with the Law Society Staff.

Particular 2(a)

On August 16, 1989, the Solicitor wrote the solicitors acting on the other side and said, inter alia:

"As usual, your client is full of shit".

Particular 2(b)

On August 30, 1989, the Solicitor again wrote stating:

"Accordingly, I now demand that you return to my office all of these documents and all photocopies in your possession, and that their return be completed by noon, today, August 30th, 1989.

If you refuse this request, I would advise you that I fully intend to take the following steps:

6th December, 1991

1. Report the matter to the local police department, and see that criminal charges are laid against those who took and those who are in possession of these documents.
2. Report the matter to the Law Society of Upper Canada and demand an investigation and discipline proceedings.
3. Amend the Statement of Claim to have each and every partner as a party defendant in the proceedings.

Govern yourselves accordingly."

Particular 2(c)

In a letter dated March 20, 1990, to Ms. Denise Ashby of the Law Society of Upper Canada, the Solicitor admitted he had tape recorded an earlier phone conversation with her. She testified she had not been advised that the conversation was being taped. He refused to produce the tape to the Law Society investigators.

Particular 3(a)

In a phone conversation on June 13, 1990, the Solicitor told Ms. Ashby to "fuck off".

This hearing was complicated by the behaviour of the Solicitor. In certain incidents his behaviour was reprehensible.

On the first day, May 14, 1991, he gave evidence in chief without the benefit of counsel. He refused to finish his evidence and refused to be cross-examined. He made certain comments to the effect that the Law Society had already made up its mind that he should be disbarred, that the hearing he was going through was in fact a "joke" and that he considered himself inconvenienced that he should have to appear before a disciplinary body.

On the other hand, on the next day, perhaps because he had had an opportunity to consider the matter, his attitude changed and he became cooperative with the Committee and was of some assistance in giving the Committee insight into his problems and in particular his personal problems. These had undoubtedly created the emotional overlay for his behaviour and resulted in large part from the litigation within his own family.

The members of the Committee had no doubt that the Solicitor has been under enormous pressure because of the family problems. At the conclusion of the hearing on May 15, 1991, the findings noted above were made. The hearing was adjourned for penalty.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Peter Michael Hollyoake be reprimanded in Convocation.

REASONS FOR RECOMMENDATION

Pending the adjournment, the Committee urged the Solicitor to seek psychiatric assistance, to which he agreed. The Committee adjourned the matter in order for the Solicitor to do so and to return with either a psychiatric report or psychiatric evidence.

The matter came back to the Committee on October 11, 1991.

The Solicitor attended and filed a report dated October 7, 1991 from Dr. K.A. Kafato, a psychiatrist practising in Burlington. The Solicitor's attitude and appearance were much improved. He advised he had initially seen a psychologist in May and June, 1991, and latterly had seen Dr. Kafato 5 or 6 times.

After the findings of professional misconduct and conduct unbecoming, on May 15, 1991, the Society had suggested a penalty based on the premise that the Solicitor was ungovernable. Mr. MacKenzie, who appeared on behalf of the Law Society on October 11, 1991, properly pointed out that no allegation of ungovernability was before the Committee and that in any event the record did not support such a finding. He submitted, however, that the conduct of the Solicitor was sufficiently serious to warrant a penalty imposed by Convocation.

The Committee noted that there was a substantial improvement in attitude which seemed to result from the Solicitor gaining insight into his personal problems. However, it was also clear that there was still a lack of remorse and a failure to fully appreciate that what he had done was wrong.

6th December, 1991

In his report Dr. Kafato described the family stresses that led to the inappropriate behaviour. He describes the Solicitor as follows:

"Psychiatrically presenting symptomatology appears to be compatible with Peter being very emotional and very easily irritable, somewhat circumstantial and suspicious. He does not appear to be suffering from any significant psychiatric disorder. One wonders whether or not there is some affective disorder. Although he did not describe any depressive mood, I found him to display high energy, there was certainly evidence of circumstantiality and slight flight of ideas. They were all in conjunction with negative feelings, anger either directed to his father or to the Law Society, which reflects Peter's difficulties in dealing with authoritative figures.

In the diagnostic category in the light of the first contact, I cannot basically formulate any definite psychiatric diagnostic formulation. However, I can say that Peter is a very tense, apprehensive person who likely has a degree of upswings in his mood, at times he can be very suspicious, and that would be more evident with authoritative figures. There was no medication prescribed. I will continue to see him to provide insight and understanding."

The Doctor also stated:

"He feels that in the Upper Canada Law Society, the discipline committee members were not truthful, they have a clique, they tend to protect each other. In fact when he was facing them he accused them of not being that honest. He feels that they have been vindictive with him and labours with the idea that by identifying him as mentally disturbed, they can get him regarding his statement that his father was 'full of crap'".

Despite this, the Committee felt some optimism that the Solicitor would not repeat this type of conduct. It noted that he had been at the bar for 15 years, with no previous discipline record and this matter arose from a family litigation. The Committee encouraged the Solicitor to continue his psychiatric treatment.

Peter Michael Hollyoake was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th day of April, 1976.

ALL OF WHICH is respectfully submitted

DATED this 18th day of November, 1991

"D. O'Connor"
Dennis R. O'Connor, Q.C., Chair

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

There were no submissions by counsel or the solicitor.

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

Counsel for the Society supported the recommended penalty.

The solicitor made no submissions.

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

It was moved by Mr. Thom, seconded by Mr. Cullity that the solicitor be suspended for 1 month.

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

The matter was stood down to give the solicitor time to formulate his position.

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Mr. MacKenzie and the solicitor returned and the solicitor indicated he wanted the matter to proceed.

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

The motion to reprimand the solicitor was adopted and the motion to suspend was lost.

6th December, 1991

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

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

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Re: DAVID HARRIS, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

The matter was spoken to by Mr. MacKenzie, counsel for the Society who indicated that Mr. Harris said he would be seeking an adjournment.

An adjournment was granted peremptory to the solicitor to the next Discipline Convocation in January 1992.

Counsel retired.

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CONVOCATION ADJOURNED AT 1:10 P.M.

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Confirmed in Convocation this *22nd* day of *February* 1992.



Treasurer