

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 27th November 1997
9:00 a.m.

PRESENT:

Acting Treasurer (Vern Krishna, Q.C.), Adams, Angeles, Arnup, Backhouse, Carey, Carter, Chahbar, Cole, Cronk, Crowe, DelZotto, Gottlieb, MacKenzie, Manes, Marrocco, Millar, Ortved, Puccini, Ross, Ruby, Sealy, Stomp, Swaye, Topp and Wilson.

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The reporter was sworn.

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IN PUBLIC

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Ms. Lesley Cameron, Senior Counsel-Discipline introduced Mr. John Rosen who acted as Duty Counsel.

Re: Nellie M. LANTEIGNE -Sudbury

Ms. Katherine Corrick, acting as Secretary to Convocation placed the matter before Convocation.

Messrs. DelZotto and Topp and Ms. Cronk withdrew.

Mr. Glenn Stuart appeared for the Society and Mr. Chris Paliare appeared for the solicitor. The solicitor was not present.

Counsel for the solicitor brought a motion to clarify an Order made by Convocation on June 26th, 1997 and whether it accurately reflected the decision made by Convocation.

Mr. Paliare made submissions that the reference to the Undertaking given by the solicitor should not have been included in the Order and that the Order should be that the solicitor be reprimanded in Convocation.

Mr. Stuart made submissions that the Order accurately reflected the decision of Convocation which was in public.

There were questions from the Bench.

Counsel, the reporter and the public withdrew.

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the Order be settled in the form set out in paragraph 20 of the solicitor's submissions which read:

"Convocation hereby orders that Nellie Maria Lanteigne be reprimanded in Convocation."

Carried

27th November, 1997

It was moved by Ms. Sealy, seconded by Mr. Wilson that Convocation reject the words in italics in paragraph 23 relating to the publication of information about the solicitor.

Not Put

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the Order be settled as set out in paragraph 20 of the solicitor's submissions, that Convocation hereby orders that Nellie Maria Lanteigne be reprimanded in Convocation.

Re: Peter Newton WARD - Bracebridge

The Secretary placed the matter before Convocation.

Messrs. Millar, Adams, Wilson and Ruby and Ms. Angeles and Ms. Cronk withdrew for this matter.

Mr. Glenn Stuart appeared for the Society and Mr. Brian Heller appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 9th October, 1997, together with an Affidavit of Service sworn 27th October, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd October, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 6th November, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby, Chair
Philip M. Epstein, Q.C.
Nora Angeles

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

Glenn Stuart
for the Society

PETER NEWTON WARD
of the Town
of Bracebridge
a barrister and solicitor

Brian Heller
for the solicitor

Heard: September 30, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 29, 1997 Complaint D5/97 was issued against Peter N. Ward alleging that he was guilty of professional misconduct. This Complaint was withdrawn and replaced by Complaint D5a/97 issued on September 29, 1997.

The matter was heard in public on September 30, 1997 before this Committee composed of Clayton C. Ruby, Chair, Philip M. Epstein, Q.C. and Nora Angeles. The Solicitor attended the hearing and was represented by Brian Heller. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D5a/97

2. a) He failed to serve his client, Russell Matthews, in a conscientious, diligent and efficient manner in connection with a claim arising from an automobile accident involving Mr. Matthews' son, Clark Matthews, by not initiating an action against the other party to the accident within the limitation period, as it related to the parents of Clark Matthews only, notwithstanding the express instruction from his client to do so;
- b) He misled his client, Russell Matthews, with respect to the status of a claim, for which the Solicitor had been retained, arising from a motor vehicle accident involving Clark Matthews by
 - i) advising Mr. Matthews that a statement of claim had been issued, when, in fact, a statement of claim was at no time issued by the Solicitor, and
 - ii) representing that litigation in relation to the motor vehicle accident had been settled, including providing Mr. Matthews with a cheque in the amount of \$10,000 in purported settlement of the action, when in fact, a settlement had not been reached; and,
- c) He failed to reply promptly to correspondence from the Law Society, dated June 5, 1996 and August 6, 1996, with respect to a complaint by Roderic G. Ferguson.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D5a/97 and is prepared to proceed with a hearing of this matter on September 30-October 1, 1997.

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 D5a/97 and this agreed statement of facts with his counsel, Brian Heller, and admits the particulars and facts contained therein. The Solicitor admits that the facts alleged in the Complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 20, 1987, and is forty-seven years old. He practised as a member of a civil litigation firm from February 1988 to April 1989, following which time he commenced practice as a sole practitioner. Upon leaving his firm, he took ten family and civil litigation files to complete. Though his practice was 90% criminal law while with the firm, it has since been restricted to criminal law, save and except the ten files, all of which have been completed.

Particular 2(a) he failed to serve his client, Russell Matthews, in a conscientious, diligent and efficient manner in connection with a claim arising from an automobile accident involving Mr. Matthews' son, Clark Matthews, by not initiating an action against the other party to the accident within the limitation period, as it related to the parents of Clark Matthews only, notwithstanding the express instruction from his client to do so;

Particular 2(b) he misled his client, Russell Matthews, with respect to the status of a claim, for which the Solicitor had been retained, arising from a motor vehicle accident involving Clark Matthews by

- i) advising Mr. Matthews that a statement of claim had been issued, when, in fact, a statement of claim was at no time issued by the Solicitor, and
- ii) representing that litigation in relation to the motor vehicle accident had been settled, including providing Mr. Matthews with a cheque in the amount of \$10,000 in purported settlement of the action, when, in fact, a settlement had not been reached;

5. One of the ten civil files transferred to the Solicitor was that of Russell, Jill and Clarke Matthews ("the Matthews"). The Matthews retained the Solicitor in late 1988 in connection with a motor vehicle accident on October 28, 1988 in which Mr. Matthews and their son, Clarke, had been injured. After retaining the Solicitor, the Matthews specifically instructed him to issue a Statement of Claim against the other driver.

6. The Matthews knew the Solicitor socially and, as a result of that ongoing relationship and this retainer, the Matthews placed a high level of trust in the Solicitor to represent their interests. Given this trust, the Matthews never doubted that the Solicitor was pursuing their claim diligently.

7. Over the subsequent four and one half years, the Matthews met with the Solicitor on at least four separate occasions to discuss the progress of the action. On at least two occasions, the Matthews inquired whether a Statement of Claim had been issued as they were concerned about a limitation period elapsing. On each occasion, the Solicitor assured the Matthews that he had issued a Statement of Claim.

27th November, 1997

8. The Solicitor did initiate negotiations with Pilot Insurance, the insurer of the other party to the accident, through an individual at the insurer's Dwight office. The Solicitor states that it was his understanding, following discussions with the insurance company, that liability was not an issue, and the quantum of damages was the only issue. The Solicitor did not confirm this understanding in any written correspondence with the insurer or his client. The Solicitor further states that, at all times, he believed this matter would settle.

9. The Solicitor has at no time issued a Statement of Claim on behalf of the Matthews or taken any other steps to initiate an action with respect to the matters for which they had retained him, up to the present date.

10. Throughout this period, the Matthews and the Solicitor discussed the prospects for settlement on several occasions. Mr. Matthews advised the Solicitor that, in his own view, he considered \$18,000 to \$20,000 to be an appropriate settlement. The Solicitor, after consultation with other lawyers, encouraged the Matthews to consider a lesser amount, particularly once a period of two or three years had elapsed since the accident.

11. At some point in 1995, the Solicitor advised the Matthews that the insurer had suggested a settlement of \$10,000. Mr. Matthews indicated to the Solicitor that he would consider a proposal if someone put it forward, but he did not give any instructions to settle their claims for \$10,000.

12. During the relevant period, the Solicitor was aware of his obligations to pursue client matters in a timely manner and respond to his clients promptly and candidly.

13. In August 1995, the Solicitor delivered to Mrs. Matthews a sealed envelope addressed to Mr. Matthews. The envelope contained the Solicitor's personal cheque in the amount of \$10,000, payable to the Matthews. The cheque purported to be a settlement payment on the Matthews' claim. The Solicitor offered no further explanation of the payment and provided no settlement documentation to the Matthews. As the Matthews had not agreed on a settlement figure and they were concerned that they could prejudice their position by retaining the cheque, they returned the cheque to the Solicitor.

14. The Matthews attempted to contact the Solicitor subsequently to discuss their circumstances. The Solicitor did not reply to the Matthews. As a result, the Solicitor has never discussed this cheque with the Matthews.

15. Also in or about August 1995, the Matthews retained Mr. Roderic Ferguson of the firm of Ferguson & Boeckle to provide a second opinion on their claim as they were concerned by the view which the Solicitor had taken of their claim.

16. Mr. Ferguson arranged to meet with the Solicitor at his office on September 14, 1995, to review the Solicitor's file. This meeting was cancelled when Mr. Ferguson was advised that day that the Solicitor was not in his office. The meeting was re-scheduled for October 3, 1995.

17. Prior to this scheduled meeting, the Matthews provided Mr. Ferguson with a hand-written direction, dated September 14, 1995 (Document Book, Tab 1), which authorized the Solicitor to permit Mr. Ferguson's firm to review their file for the purpose of a second opinion.

18. The meeting scheduled for October 3, 1995, was cancelled by the Solicitor. A third meeting was scheduled for November 7, 1995, in the Solicitor's office. On that date, Mr. Ferguson attended with the Matthews at the Solicitor's office. They waited for the Solicitor for over an hour. When they left his office, the Solicitor had not appeared, and no explanation was provided by the Solicitor subsequently.

19. Before leaving the Solicitor's office, Mr. Ferguson delivered a direction, dated November 7, 1995, from the Matthews to the Solicitor requiring the Solicitor to transfer the file to Mr. Ferguson so that he could review it and provide a second opinion. The Solicitor states that he sent the file to Mr. Ferguson by regular mail to the Bracebridge office of Ferguson & Boeckle, on November 21, 1995. Without admitting the accuracy of the Solicitor's assertion, the Law Society does not take issue with it for the purpose of this hearing. The file was not received by Ferguson & Boeckle at that time. The Solicitor did not respond to follow-up calls from either Mr. Ferguson or the Matthews.

20. The Solicitor has remained in possession of his original file folder for this matter bearing the notation "21/11/95 contents forwarded to Rod Ferguson by mail" (Document Book, Tab 2). When searching through other materials in storage in September 1997, the Solicitor located a photocopy of the contents of his file, other than any photographs which he may have had. The Law Society was notified immediately, and a photocopy provided to discipline counsel thereafter.

21. By letter dated December 1, 1995 (Document Book, Tab 3), Mr. Ferguson assured the Solicitor that he was not attempting to lure the Matthews away from the Solicitor but confirmed that, in light of the Solicitor's refusal to respond to either Mr. Ferguson or the clients, the Matthews had instructed Mr. Ferguson to have the Solicitor's file delivered to him for the purposes of a second opinion. Mr. Ferguson confirmed that he had left a direction from the Matthews to that effect at the Solicitor's office. Mr. Ferguson advised the Solicitor that if he did not respond within seven days, Mr. Ferguson would have no choice but to report the matter to the Law Society.

22. The Solicitor did not respond to Mr. Ferguson. Consequently, Mr. Ferguson made a complaint to the Law Society by letter, dated December 12, 1995 (Document Book, Tab 4). This letter was copied to the Solicitor.

23. By letter dated December 12, 1995 (Document Book, Tab 5), the Solicitor advised Mr. Ferguson that he had only received Mr. Ferguson's letter of December 1, 1995, that day. The Solicitor also stated that he had forwarded the entire file by mail on November 20, 1995, after receiving the direction from the Matthews. This letter was delivered to the Bracebridge office of Ferguson & Boeckle on December 15, 1995.

24. By letter dated January 17, 1996 (Document Book, Tab 6), the Law Society forwarded a copy of Mr. Ferguson's complaint letter to the Solicitor and requested his comments on same. In response to this letter, the Solicitor forwarded to the Law Society, under cover of a letter, dated January 24, 1996 (Document Book, Tab 7), a copy of his letter, dated December 12, 1995, to Mr. Ferguson.

25. As noted in Mr. Ferguson's letter of February 20, 1996 (Document Book, Tab 8), to the Law Society, he stated that neither he nor his firm had received the Solicitor's file by the date of that letter.

26. By letter, dated March 28, 1996 (Document Book, Tab 9), the Law Society requested the Solicitor to advise whether he had yet delivered the file to Mr. Ferguson, to summarize the steps he had taken on behalf of the Matthews, and to provide details of the \$10,000 payment which he had forwarded to the Matthews.

27. As the Law Society had not yet received a reply from the Solicitor to its letter of March 28, 1996, the Law Society telephoned the Solicitor's office on May 1, 1996. The Solicitor's secretary advised that the Solicitor was in court but that she would bring the matter to his attention. The Law Society left a message asking the Solicitor to call to advise when his response could be expected. The Solicitor did not return the call.

28. On May 6, 1996, the Law Society telephoned the Solicitor's office and left a message with his assistant for him to return the call. On May 7, 1996, the Solicitor's assistant left a message with the Law Society to call back. On May 9, 1996, the Law Society returned the call but did not speak with the Solicitor.

29. On May 13, 1996, the Law Society left a message with the Solicitor's articling student confirming that the Solicitor had not responded to numerous messages and requiring a response by May 14, 1996.

30. By facsimile, dated May 14, 1996 (Document Book, Tab 10), the Solicitor provided a partial reply to the Law Society. The Solicitor stated as follows:

Given the cost of litigation and the length of time it would take to reach a trial date; [sic] it was understood that we would try to negotiate a settlement.

I then entered into discussions both by phone and in correspondence with Pilot Insurance. They agreed to settle the matter and quantum was the only outstanding issue.

I understood from my conversations with Mr. Matthews that he was prepared to settle for \$10,000.00.

In August of 1996 I provided Mr. Matthews with a cheque for \$10,000.00 from my own funds. This was money that I received from the sale of a lease.

At the time I was concerned about being forced out of the practice due to the \$40,000.00 outstanding from legal aid and the "rumour" that we might never be paid. Insofar as Mr. Matthew's [sic] and I were friends this was a matter I wished to resolve.

Particular 2(c) he failed to reply promptly to correspondence from the Law Society, dated June 5, 1996 and August 6, 1996, with respect to a complaint by Roderic G. Ferguson

31. By letter dated June 5, 1996 (Document Book, Tab 11), the Law Society acknowledged receipt of the Solicitor's letter of May 14, 1996, and again requested information relating to two items identified in the Law Society's letter of March 28, 1996, as well as further information not previously requested. The required information included documentation relating to the alleged settlement offer and a copy of the Solicitor's trust ledger card for the Matthews. The Solicitor did not reply.

32. On July 10, 1996, the Law Society telephoned the Solicitor and left a message requesting his reply. The Solicitor did not reply.

33. On July 24, 1996, the Law Society telephoned the Solicitor and left a message requesting his reply. The Solicitor's assistant returned the call the following day and advised that the Solicitor was away that day but she would ask him to return the call the next day.

34. On July 26, 1996, the Law Society telephoned the Solicitor and left a message requesting his reply. The Solicitor did not reply.

35. By registered letter dated August 6, 1996 (Document Book, Tab 12), the Law Society confirmed that the Solicitor had not responded to the letter, dated June 5, 1996, or the subsequent telephone calls. The Law Society advised the Solicitor of his obligation to respond and requested that he reply within seven days, failing which the matter would be referred to the Chair of the Discipline Committee. The letter was signed for on August 12, 1996. The Solicitor did not reply.

27th November, 1997

36. The Matthews have now retained Mr. Ferguson to pursue a claim on behalf of their son and themselves in relation to the accident in 1988. A claim has been commenced against the Solicitor and the insured driver. The claim by Mr. Matthews against the insured driver appears to be statute barred, although a limitation issue has not yet arisen with respect to his son.

37. Mr. Matthews would testify that he feels that he has been victimized twice in these events: first, by the trauma of the accident; and, second, by the Solicitor's failure to pursue his claim in relation to the accident.

38. To date, the Solicitor has not provided a formal letter of reply to the Law Society, but he has replied through the discipline process.

V. DISCIPLINE HISTORY

39. The Solicitor was found guilty of professional misconduct on February 14, 1990 for failing to reply to the Law Society regarding two client complaints. The Solicitor was reprimanded in Committee.

DATED at Toronto, this 30th day of September, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Peter Newton Ward be suspended for a period of one month.

REASONS FOR RECOMMENDATION

This is a case where we are indebted to counsel for the efforts they have made to arrive at a joint submission.

The joint submission is one which seems to us eminently fair and reasonable. It involves a recommendation to Convocation, which we make, that this is an appropriate case for a suspension of one month duration, to commence, if possible December 15th next. We say 'if possible' because there is a trial obligation in a criminal matter starting in early December that just might have to postpone that date by a few days, and if so, of course, the trial obligation should have priority over our suspension.

We consider this to be an appropriate disposition because we start by acknowledging that misleading his client Russell Matthews and the failure to serve, which are related, constitute very serious matters. The failure to reply promptly to correspondence, again related, is less serious.

It is important to stress that the entire enterprise was unnecessary. The Solicitor, had he not chosen to take this case which is outside his usual sphere of practice, or had he chosen to follow through in a more diligent way, could have avoided all of this difficulty. And that is a context which we take into account.

It is important that there is no loss insofar as we can ascertain at this point in time that will inure to the client. Part of the claim is not statute barred. With respect to the part that is statute barred, it is apparent the Solicitor can make good himself the amount involved. Indeed the proffered cheque for \$10,000.00 was evidence of his intention to do that from the very beginning.

27th November, 1997

An undertaking has been signed which indicates: (1) that the Solicitor will not engage in the practice of law in relation to family law or civil litigation; (2) that he will enter into a programme of stress counselling with a physician, and continue in it for as long as may be required by that physician; and (3) that he will enroll in and co-operate with a programme equivalent to a practice review programme and abide by any recommendations made to him in the course of that programme. We consider that undertaking is an important part of the steps necessary to protect the public in this case.

Ordinarily, the third aspect of that undertaking, the practice review equivalent, would involve supervision by the senior lawyer in his field in the jurisdiction in which he practises, Muskoka. However, Mr. Ward is himself that senior lawyer, and we are very grateful that Mr. Heller, his counsel, has volunteered to take on that role and to do the supervision ordinarily required of a senior practitioner in the area.

The context in which these events took place are of some importance. We have had the benefit, and we append to these reasons, the medical opinion of Dr. Brian Butler, upon which we rely. It indicates that though there have been significant problems of stress, there is no ongoing emotional problem which would suggest that there will be future problems with Mr. Ward's practice. The events took place during a period of great stress, 1992 to 1995, when the Legal Aid Plan as a whole was threatened, and that threat was particularly grave for practitioners who, like Mr. Ward, survived on almost entirely a legal aid practice. It was a period during which a number of clients committed suicide, 5 in fact, and during which his son's best friend committed suicide. The client who he acted for on a bail hearing was released and promptly stabbed his wife to death.

All these circumstances combined to produce an activity which we think is out of character, given the information we now have, and which we hope will not be repeated again.

It is important that we take into account the co-operation with the Society shown by Mr. Ward in the investigation and prosecution of this complaint, which we are advised by counsel for the Society has been exemplary.

For all those reasons we are satisfied with the joint submission and that as a result of it the public will be adequately protected and the seriousness of the occasion properly marked. The Committee makes no recommendation as to costs, bearing in mind when we do so, that a practitioner in Bracebridge is going to receive some publicity when this matter goes to Convocation and that in itself will involve some hardship.

Peter Newton Ward was called to the Bar on April 20, 1987.

ALL OF WHICH is respectfully submitted

DATED this 9th day of October, 1997

Clayton C. Ruby, Chair

There were no submissions from either counsel.

It was moved by Mr. Carey, seconded by Mr. Topp that the Report be adopted.

Carried

The recommendation as to penalty was that the solicitor be suspended for a period of 1 month.

Mr. Stuart made joint submissions in support of the joint submissions made at the hearing and requested that the suspension commence December 14th, 1997.

It was moved by Ms. Sealy, seconded by Mr. MacKenzie that the solicitor be suspended for a period of 1 month commencing December 14th, 1997.

Carried

Re: Peter Michael MALONEY - Brampton

The Secretary placed the matter before Convocation.

Messrs. Millar, Wilson and Ruby and Ms. Cronk withdrew for this matter.

Ms. Christina Budweth appeared for the Society and Mr. Michael Caroline appeared for the solicitor, who was present.

Convocation had before it the Report of the Discipline Committee dated 9th October, 1997, together with an Affidavit of Service sworn 27th October, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd October, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 17th November, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby

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

Christina Budweth
for the Society

PETER MICHAEL MALONEY
of the City
of Brampton
a barrister and solicitor

Michael W. Caroline
for the solicitor

Heard: May 16, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 27, 1996 Complaint D298/96 was issued against Peter Michael Maloney alleging that he was guilty of professional misconduct.

The matter was heard in public on May 16, 1997 before Clayton C. Ruby sitting as a single bencher. The Solicitor attended the hearing and was represented by Michael W. Caroline. Christina Budweth appeared on behalf of the Law Society.

REASONS FOR DECISION

Peter Michael Maloney is charged that he is guilty of professional misconduct in that he misapplied \$1100.00, more or less paid to him by the Ontario Legal Aid Plan which was to be used to pay the agency account of a fellow solicitor, Aaron Harnett. The Solicitor concedes that he is guilty of professional misconduct respecting this incident in that he failed to honour an obligation in connection with his practice by reason of not making the payment. He resists the charge as particularized because a misapplication of these funds can take place only if they were impressed with a trust in his hands, and he maintains there was none.

Underlying and motivating these positions is an assumption, common to both counsel, that the penalty for misapplying these funds in circumstances like the present, would be significantly higher than that for a mere failure to honour an obligation in the course of one's practice.

The Facts

The Solicitor is 51 years old and was called to the Bar in 1981. He practices as a sole practitioner in Brampton, Ontario in the area of Criminal Law.

In 1993, the Solicitor acted on behalf of Mr. C., a young offender, in a serious criminal matter under a Legal Aid Certificate, a copy of which is enclosed (Exhibit Book - Tab 1). The Solicitor engaged the services of Aaron Harnett, a criminal lawyer called to the Bar in 1992, to assist Mr. C. in a situation when the Solicitor was unavailable due to other commitments.

In June 1993, the Solicitor submitted a final account for the matter to the Ontario Legal Aid Plan requesting \$1,789.32 in fees for the Solicitor's work and \$1,714.17 in disbursements (Exhibit Book - Tab 2). The disbursements included approximately \$1,373 representing fees billed by Aaron Harnett for his involvement in the matter, a copy of Mr. Harnett's account was enclosed.

In settling the account, the Ontario Legal Aid Plan's legal accounts examiner appeared to have disallowed Mr. Harnett's fees, instead paying the Solicitor for a maximum preparation of 8 hours.

By letter dated May 18, 1994, the Solicitor requested that the Legal Accounts Department of the Ontario Legal Aid Plan review the account (Exhibit Book - Tab 3). In the letter, the Solicitor indicated that Mr. Harnett (along with another lawyer who performed work) was looking to him for payment of the fees which would leave the Solicitor earning substantially less for his own work.

By letter dated August 10, 1994, Mr. Kenneth Back, Acting Deputy Legal Accounts Officer of the Ontario Legal Aid Plan, indicated that he is permitting additional fees of \$1,100.00 and that payment of the amount, less a statutory deduction would follow (Exhibit Book - Tab 4).

The additional payment was forwarded to the Solicitor in approximately August, 1994.

The Solicitor did not remit the payment to Mr. Harnett.

27th November, 1997

In a response to his request for payment, Mr. Harnett received a letter from the Solicitor dated December 4, 1994 in which the Solicitor indicated he was experiencing financial troubles and requested Mr. Harnett to be patient (Exhibit Book - Tab 5).

Despite leaving three phone messages in February 1995 and sending a letter by fax and by mail on March 3, 1995, Mr. Harnett received no further reply from the Solicitor.

By letter dated March 16, 1995, Mr. Harnett made a complaint to the Law Society regarding the Solicitor's non-payment of fees owed (Exhibit Book - Tab 6).

On May 1, 1995, the Law Society telephoned the Solicitor and left a message to call. The Solicitor did not respond until a second message was left by the Law Society on May 10, 1995. In a May 10, 1995 telephone call with the Law Society, the Solicitor stated that 40% of the account was turned over to Revenue Canada due to back taxes, but acknowledged that he owes Mr. Harnett the full amount and that he should have paid. The Law Society's telephone transaction sheet is Tab 7 of the Exhibit Book. The Solicitor admits that the telephone transaction sheet accurately sets out the events recorded therein.

Having been advised by Mr. Harnett in May, 1995 that he had issued a claim against the Solicitor in Small Claims Court for payment of his account, the Law Society decided to close its file since the issues raised with the Society were the same as those before the Court. The Law Society advised Mr. Harnett of the file closure by letter dated June 15, 1995 (Exhibit Book - Tab 8).

In March 1996, Mr. Harnett advised the Law Society by telephone that he had obtained a default judgment against the Solicitor. The Solicitor had contacted Mr. Harnett subsequent to his issuance of the Claim to discuss the matter because:

- (a) The Solicitor has specified the name of the young person who had been the recipient of Legal Aid in documentation filed with the Court and the Solicitor felt he could not file a defence in those circumstances; and
- (b) The Solicitor was claiming the full amount of his agency account which he was aware was settled by Legal Aid for some \$330.00 less.

Ultimately, Mr. Harnett did not agree to amend or adjust his claim to reflect the value of his work as settled by Legal Aid or remove the name of the client and he collected \$330.00 (plus interest plus costs) from the Solicitor that Legal Aid had not authorized or agreed to pay.

Mr. Harnett raised concern that notwithstanding judgment, the funds in question had been paid to the Solicitor by Legal Aid and suggested this could constitute a misapplication of funds (Exhibit Book - Tab 9). The Law Society subsequently reopened the complaint against the Solicitor in March, 1996.

In a letter to the Solicitor dated April 30, 1996, the Law Society requested a written response to Mr. Harnett's allegations (Exhibit Book - Tab 10).

By letter dated May 20, 1996, the Solicitor responded to the complaint (Exhibit Book - Tab 11). In his response, the Solicitor stated:

Out of whatever income my practice had I gave payment priority to those items which were necessary to keep the practice operating during the transition: rent, telephone, salaries, law society dues and insurance premiums and levies.

I am sorry that Mr. Harnett and others in part bore the brunt of the survival strategy of significantly delayed payments to some suppliers and I am pleased that he and one of his colleagues have now been paid in full.

Discipline History

On November 1, 1988, the Solicitor was Reprimanded in Committee for failing to file his Forms 2/3.

The Trust Relationship

"The hallmark of a trust is the fiduciary relationship which it creates between the Trustee and the beneficiary....And the object of describing a man as a resulting or constructive Trustee is to emphasize that he is a person who is under the express Trustee's fiduciary obligation to hold property, of which he is technically the owner, for the benefit of another....It originated to explain the position of one who at law held title and had all the appearance of full enjoyment, but who nevertheless because of Equities intervention had no right of personal enjoyment." Waters, D.W.M., "Law of Trusts in Canada", 2nd edition, Carswell, 1984, at p.31.

Moreover "...it is essential if the agent is to be...made by law a constructive Trustee, that there be property which the agent was required to keep separate from his own assets. If the agent, who is collecting monies from third parties for the principal...is to be a Trustee of any kind, it is vital that it be shown that the agent was required, contractually or otherwise, to keep those monies identifiable from other assets. Otherwise, the agent is a debtor only." Waters, supra, at p.46.

Application of the Law to the Facts of this Case

In Barry, et al. v. The Chief and The Council of the Garden River Band of Ojibwas, unreported, May 27, 1997, the Court of Appeal for Ontario said:

"As D.W.M. Waters, *Law of Trust in Canada*, 2nd edition (1984) explains at page 111, 'Whether a trust has been created is simply a matter of construction.'"

Accordingly, one must look at the nature of the transaction, the context in which it takes place, and the nature of the parties to it in order to determine if there existed a duty to "keep the assets distinct." Waters, supra, at p.68.

The regulatory scheme is relevant, though not determinative. The Law Society may characterize as trust money that which otherwise would not bear that character, for any number of reasons, including the necessity to appropriately supervise the profession. But the regulatory scheme established by law remains nonetheless the foundation of any analysis of a particular transaction by a lawyer. Regulation 708, Section 14 of The Law Society Act requires that every

member who receives money in trust for a client shall forthwith pay the money into an account designated as a trust account. For the purposes of assisting members in interpreting the obligation to keep proper books, records, and accounts, section 14(3) provides: "Trust money is money received by a member that belongs in whole or in part to a client or that is to be held on the client's behalf or to the client's or another's direction or order, and includes money advanced to a member on account of fees for services not yet rendered or money advanced on account of disbursements not yet made." (The absence of punctuation in this provision leaves it unclear whether what is created is a general obligation together with an "including" section providing examples, or whether there are two categories of trust money, the second being "money advanced on account of disbursements not yet made.")

When one analyzes Regulation 14(3) it is apparent that this money, if it is within the terms of this subsection at all, can only do so if it is "money advanced on account of disbursements not yet made." No other language in that subsection refers to this situation. Subsection 6 distinguishes between "disbursements" (in that case "made") and "expenses" ("incurred" on behalf of a client, interpreted by Convocation as meaning expenses incurred and paid on behalf of a client). It is doubtful that this is a disbursement. It is an expense incurred on behalf of a client. If it were necessary to reach a conclusion on this point, which I do not think it is, I would decide that expenses incurred but not paid for are not provided for in this scheme.

The problem of statutory interpretation is further compounded by the fact that section 6(b) provides that "money shall not be paid into a trust account that is received by the member on account of fees for which a billing has been delivered or for services already performed for which a billing is delivered forthwith thereafter or is received to reimburse the member for disbursements made or expenses incurred on behalf of a client."

Moreover, these provisions have been interpreted by the Discipline Committee on September 8, 1994 in a general context as follows:

"Your Committee also considered that in circumstances where the solicitor had not paid the disbursements or expenses, it would be the expectation of the client that the money sent to the solicitor would be earmarked to pay the disbursements itemized on the solicitor's billing.

"Your Committee was of the view [where the money was forwarded in payment of unpaid expenses which had been incurred on behalf of the client] money received from the client in respect of unpaid disbursements was impressed with a trust and did not fall within the classification of s.14(6)(b) of the Regulation. The Committee was of the view that in order for money received from a client in respect of disbursements to fall within the classification of s.14(6)(b), the disbursements must be both incurred and paid on behalf of the client."

This interpretation was confirmed by Convocation and was by direction of Convocation communicated to the Profession in "The Advisor" in November of 1994 in language that puts the focus a little differently than did the document, supra, that was put before Convocation. The Advisor said:

"Money received should be viewed as trust money where it is received from a client pursuant to a billing, not to reimburse the solicitor for money already expended for disbursements, but rather in payment of unpaid expenses which have been incurred on behalf of the client. Also considered was the situation in which the solicitor had not paid the disbursements or expenses *and the client had an expectation that the money sent to the solicitor would be earmarked to pay the disbursements itemized on the solicitor's billing.* The Committee determined that the proper interpretation of the provisions of Regulation 708 is that money paid to a solicitor pursuant to a billing in respect of disbursements incurred is trust money until such time as the disbursements are paid. That is, section 14(6)(b) only applies where disbursements are incurred and paid on behalf of the client." [my italics]

The italicized portion of "The Advisor" extract brings the decision more closely into line with the law of trusts which commands an examination of all the circumstances before a determination is made as to whether any particular payment was impressed with a trust. Moreover, the underlying materials that were then before the Discipline Committee, which have been provided to me, do not advert to any particular form of communication nor structure for payment, nor do those material contemplate the specific situation of a payment of a Legal Aid account by the Legal Aid Plan.

It is clear that some circumstances will mandate a determination that a constructive trust has been created. For example, in Bernard Baum, September 28, 1995, Convocation proceeded without argument (counsel conceded the trust) to discipline on the basis that improper withdrawal of funds paid by various clients be kept in his trust account in respect of GST obligations constituted misappropriation because of his failure to remit any of the funds removed to Revenue Canada. Similarly, in Lawrence Ducas, November 28, 1996, Convocation found, without argument, that a solicitor who received funds delivered to him and marked "in trust" in the amount of \$650 by the Royal Insurance Company for payment of a medical report misapplied those funds when he used them in partial payment of his outstanding account for legal services. But each case turns on its own facts.

In Re Century 21 Brenmore Real Estate Ltd. (1980), 28 O.R. (2d) 653 (Ont.C.A.), a deposit had been paid under an agreement for sale of land to a real estate agent who was the listing broker. It was to be held pending completion of the sale, and a portion of the deposit was by the rules of the local real estate board payable to another agent, the selling broker. The Court of Appeal held that though there was a debt owing by the listing broker to the selling broker, no trust had been created. In the course of his judgment for the Ontario Court of Appeal Justice Arnup said:

"I, of course, accept that a person may by express words declare himself to be Trustee of property for himself and another. However, I have the same difficulty as Anderson, J., did in spelling out that result from the circumstances I have stated. This claimed legal result seems to me to be quite inconsistent with the right of the listing broker to pay to the selling broker his due commission out of any monies the listing broker happens to have. For example, out of his general account."

Equally, Mr. Maloney could have paid the account from the lawyer he retained prior to payment from Legal Aid had he wished and had his financial circumstances permitted, out of his general account. I find this analysis helpful here.

27th November, 1997

An examination of all the circumstances must take into account not only the regulatory scheme created by the *Legal Aid Act* but also the practice of the Legal Aid Plan in connection with payment of such amounts as these.

As indicated by Regulation 657/92 made under the *Legal Aid Act*, November 2, 1992, the scheme whereby at certain volume levels particular reductions in overall fees payable occur, is one which operates with respect to funds it calls "fees" in general and does not distinguish between fees, disbursements, and obligations incurred respecting other solicitors.

In June, 1994, the Legal Aid Plan announced a change in plan payment policy to the effect that

"the policy of the Plan is to pay the solicitor who acknowledged the certificate for all services provided under the certificate, no matter what solicitor actually did the work. The payee can be changed if the solicitor submitting the account provides a direction and an indemnity with the account.

"The Plan is considering a change in this policy so that the cheque would be payable to the lawyer who submitted the account."

This change was made.

The Solicitor in other cases has taken advantage of the information given him to authorize and instruct the Legal Aid Plan to pay agency accounts directly to the solicitor who rendered the services (letter to Ontario Legal Aid Plan, January 17, 1995).

In an announcement under the heading "Lawyers as Agents" the Legal Aid Plan said to the Profession:

"Lawyers working as agents for other lawyers on Legal Aid certificates should be aware that their fees may be affected by Revenue Canada or other third-party garnishments or demands filed with the Plan. They should ensure that the lawyer for whom they are working agrees to pay their account as settled by the Legal Accounts Department whether or not payment to the principal lawyer is reduced by the intervention of a third-party claim."

There is no evidence called by the Law Society that Mr. Harnett made any such arrangement to keep the money due to him segregated in the hands either of Legal Aid or the solicitor. This amounts as a recognition that when Revenue Canada seized monies owing to the solicitor, they would also be seizing monies owing to a third party which would not be segregated and kept distinct unless arrangements were made to effect that result.

In September, 1994 the vexing question of agent fees was again dealt with by the Legal Aid Bulletin distributed to the profession. After noting the problem created because a number of solicitors had been failing to honour their obligations to their fellows who had acted as agents, the Legal Aid Bulletin said:

"Lawyers working as agents should be alert to the possibility that their account to a lawyer on the certificate may be reduced by a federal demand for income taxes or GST against the lawyer who accepted the certificate. As information about whether or not payments to particular lawyers are subject to income tax or other garnishees is confidential, lawyers acting as agents should make inquiries of their principals when accepting a retainer. Lawyers subject to third-party demands are obliged to honour their agents accounts as settled by the Legal Accounts Department."

27th November, 1997

No attempt is made here to suggest that these obligations amount to a trust nor that the obligation of the solicitor who accepts money in payment of an agent account is a fiduciary one. The language is consistent with the existence of an obligation to honour debts incurred in connection with one's practice.

Similarly in the Legal Aid Bulletin of November, 1994 under the heading "Agent Accounts" the Legal Aid Plan said:

"Lawyers are requested to be mindful that a lawyer acting as a agent contracts with the lawyer who acknowledged the certificate and not with the Legal Aid Plan."

This language seems to indicate that Legal Aid does not contemplate the existence of anything beyond a bare contractual obligation between the two solicitors, leaving the creation of any trust with a fiduciary obligation to the solicitors themselves if they see fit.

Finally, the Legal Aid Bulletin of February, 1995 distributed to the profession created the following scheme to take advantage of electronic technology under the heading of "Direct Deposits of Legal Aid Payments":

"Starting early in the 1995/96 fiscal year, the Plan will be offering direct electronic deposit for the payment of Legal Aid accounts *into lawyers' general accounts*. The funds will be deposited by Friday of the week in which the account is paid." [my italics]

I am advised by counsel that this "direct deposit" method of settlement of solicitor's accounts remains in force for those who choose to receive payment of the Legal Aid accounts in that way.

The significance of this is, of course, is apparent. If the money was impressed with a trust, it would be inappropriate for the money to be paid into lawyers' general accounts. Indeed, the Law Society's own earlier ruling, if correct, indicates that this would be an inappropriate deposit respecting payments such as the present.

Looking at all the circumstances one must ask whether these monies were impressed with a trust by either Legal Aid or by Mr. Harnett. There is no evidence as to any agreement respecting this issue from Mr. Harnett and the obligation to prove a trust must rest with the Law Society. The evidence of what Legal Aid intended, or what the Law Society intended, is equivocal and viewing the evidence as a whole I would not find an intention to impose a trust in these circumstances. That is not to say that the Legal Aid Plan could not, by changing some of its practices, and by making express what is now a matter of conjecture, create a trust. This would have a salutary effect in that it would prevent the seizure of these monies by third parties or by Revenue Canada. Indeed, I am at a loss to understand why such seizures have been allowed to continue unchallenged, if indeed this is money impressed with a trust.

In a letter to Legal Aid complaining about the amount of the settlement and asking for a review dated May 18, 1994, the Solicitor attempted to obtain payment of part of Mr. Harnett's account which had been disallowed. Speaking of this, the Solicitor said:

"The other lawyers who did work on the file are looking to me for payment of their fees in the amount of \$1,618.23 which would leave me earning less than \$400 in fees for my work on the file."

27th November, 1997

This language indicates to me that it was not brought home to the solicitor that the amount to be paid by Legal Aid was a trust since the suggestion and implication of the letter was that he owed that amount to the solicitor regardless of what Legal Aid did and that is inconsistent with the notion that whatever amount Legal Aid settled Mr. Harnett's account at would be the amount Mr. Harnett was entitled to, i.e., with the solicitor acting as a mere conduit.

The allegation of misappropriation is dismissed. The complaint is established as a failure to honour an obligation in connection with the practise of law.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Peter Michael Maloney be reprimanded in Convocation and that he pay Law Society costs in the amount of \$2,000 payable at the rate of \$200 per month.

REASONS FOR RECOMMENDATION

This matter proceeded before me as a test case because the Law Society desires a ruling that will clarify the standards and penalties that govern these relations. Mr. Maloney has been singled out for that purpose and the Law Society has very fairly made it clear that whatever my decision on the merits it does not wish Mr. Maloney to be treated more harshly as a result of their decision to bring this case forward as an allegation of misappropriation and to ask for increased culpability and penalty beyond that which has been sought in the past.

Peter Maloney has acted on behalf of the gay community for many years both in his private life and in his law practice. He has dedicated himself to public causes and has run for public office. His professional life is marked by private kindnesses and selfless service to other. His reputation in the community is both exemplary and well deserved. Susan Eng, former Chair of the Metropolitan Toronto Police Services Board writes that she has had occasion to refer criminal cases to Mr. Maloney and "was consistently awed by his handling of the clients and his perceptiveness and professional excellence." However, as she noted, recent difficulties in the criminal field together with the death of his closest friend from AIDS caused him to move to Brampton and change his practice. Ms Eng writes: "Of course, I am no psychologist, but it seemed to me that Peter felt guilty that all his close friends had died or were seriously ill but he had escaped." The Solicitor has presently endured physical stress and emotional difficulty which explains to my satisfaction this conduct as being both out of character and impelled by burdens that might well crush other members of the profession.

In these circumstances, the joint submission of both counsel is that in this case it would be appropriate that there be a reprimand in Convocation, that the facts and circumstances be published in the Gazette, and that costs in the amount of \$2,000 be paid by the Solicitor at the rate of \$200 per month.

It does not trouble me that this case has been determined to be one of debt rather than trust.

27th November, 1997

The amount paid by Legal Aid for counsel fees is so modest and so circumscribed by restrictions and delays of various kinds that it is in many ways inadequate. Legal Aid practices have become more difficult to sustain than ever before. And yet the need for our members to provide Legal Aid has never been greater. Those who fulfil that obligation to the profession at large and to the public should do so secure in the knowledge that when they deal with either the Legal Aid Plan or other solicitors with whom they have arranged to work as agents, they are paid promptly. It is the least we owe them. The hardship caused by non-payment of professional fees is serious. The decision to prefer one's own financial needs to those of a fellow practitioner to whom one has promised payment is unacceptable. It is deserving, absent mitigating circumstances, of a suspension the length of which would be determined by the gravity of the offence, the circumstances of the offender, and the harm done. Such suspensions need not be lengthy. But they communicate to the profession the importance of honouring obligations such as these.

Peter Michael Maloney was called to the Bar on April 10, 1981.

ALL OF WHICH is respectfully submitted

DATED this 9th day of October, 1997

Clayton C. Ruby

There were no submissions from either counsel.

It was moved by Mr. Crowe, seconded by Mr. DelZotto that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation and pay costs in the amount of \$2,000 payable at the rate of \$200 per month.

Both counsel made submissions in support of the recommended penalty.

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

It was moved by Mr. Topp, seconded by Mr. Cole that the solicitor be reprimanded in Committee and that costs be stricken.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be reprimanded in Committee and that the costs be stricken.

Convocation turned into a Committee of the whole.

The Treasurer administered the reprimand.

Re: Farida Mir Mohammed SHAIKH - Toronto

The Secretary placed the matter before Convocation.

Messrs. Millar, Manes, Wilson and Crowe, Ms. Backhouse and Ms. Cronk withdrew for this matter.

27th November, 1997

Ms. Lesley Cameron appeared for the Society and Ms. Janet Leiper appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 17th September, 1997, together with an Affidavit of Service sworn 22nd September, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 19th September, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th November, 1997 (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

Nancy L. Backhouse, Chair
Marshall A. Crowe
Ronald D. Manes

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

Lesley Cameron
for the Society

FARIDA MIR MOHAMMED SHAIKH
of the City
of Toronto
a barrister and solicitor

Janet Leiper
for the solicitor

Heard: May 27 and June 27, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 17, 1996 Complaint D356/96 was issued against Farida Mir Mohammed Shaikh alleging that she was guilty of professional misconduct.

The matter was heard in public on May 27, 1997 and June 27, 1997 before this Committee composed of Nancy L. Backhouse, Chair, Marshall A. Crowe and Ronald D. Manes. The Solicitor attended the hearing and was represented by Janet Leiper. Lesley Cameron appeared on behalf of the Law Society.

DECISION

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

Complaint D356/96

2. a) She has breached section 18 of Regulation 708 under the *Law Society Act* as she has failed to produce to the Law Society the books and records of her practice for examination, despite requests to do so.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D356/96 and is prepared to proceed with a hearing of this matter on May 27 and 28, 1997.

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 D356/96 with her counsel, Janet Leiper, and admits the facts set out below.

IV. FACTS

4. The Solicitor practises as a sole practitioner in the City of Toronto and was called to the Bar on February 8, 1994.

5. On June 5, 1996, a Law Society examiner attended at the Solicitor's office for the purpose of conducting an audit. He was advised by the receptionist that the Solicitor was not in and left a business card with a request that the Solicitor call him. At Tab 1 of the Document Book are the Law Society examiner's handwritten notes of his attendance.

6. At approximately 5:00 p.m. on June 5, 1996, the Solicitor left a message for the Law Society examiner on his voice mail stating that she would be unavailable June 6, 7 and 10, but would call in the morning of June 6 to find out why the Law Society examiner had attended at her office. The Law Society examiner's handwritten notes of this telephone call are at Tab 2 of the Document Book.

7. By letter dated June 14, 1996, sent by ordinary mail, the Law Society examiner wrote to the Solicitor advising that he had been instructed to conduct an examination of her books and records and requesting that she produce them (Tab 3, Document Book). The Solicitor did not reply. The examiner also telephoned the Solicitor on that date but could not leave a message as her message box was full. His handwritten notes of this telephone call are at Tab 4 of the Document Book.

8. By letter dated June 28, 1996, sent by ordinary mail, the Law Society examiner again wrote to the Solicitor enclosing a copy of his letter of June 14, 1996 and requesting a response (Tab 5, Document Book). The Solicitor did not reply.

9. By letter dated July 15, 1996, the Law Society examiner again wrote to the Solicitor by ordinary mail requesting that she give some priority to the request for production so that it could be resolved without involving a Discipline Committee (Tab 6, Document Book). The Solicitor did not reply.

27th November, 1997

10. By letter dated July 29, 1996, sent by ordinary and registered mail, the Law Society examiner again wrote to the Solicitor advising that if the matter was not resolved within two weeks of the date of that letter, it would be referred to discipline. An Acknowledgement of Receipt of a Registered Item card indicates that the letter was picked up on July 30, 1996 (Tab 7, Document Book). The Solicitor did not reply.

11. On February 3 and 4, 1997, Janet Leiper, counsel for the Solicitor, and the examiner exchanged telephone calls to arrange an appointment for the Solicitor to produce her books and records. Arrangements were made for February 28, 1997 at 10:00 a.m. The Law Society examiner's handwritten notes of these telephone calls are at Tabs 8, 9 and 10 of the Document Book.

12. By facsimile transmission dated February 4, 1997, the Law Society examiner provided Ms. Leiper with a list of books and records required for the examination (Tab 11, Document Book).

13. On February 27, 1997, Ms. Leiper advised the Law Society examiner that the Solicitor would be unable to keep her appointment for February 28, 1997 due to the Solicitor's mother's illness. The Law Society examiner's handwritten notes of the telephone calls are at Tab 12 of the Document Book.

14. By telephone calls on March 25 and 26, 1997, the Solicitor and the Law Society examiner arranged an appointment for April 4, 1997. The Law Society examiner's handwritten notes of these telephone calls are at Tabs 13 and 14 of the Document Book.

15. On April 2, 1997, the Solicitor called the Law Society examiner to reschedule the appointment due to court commitments and suggested April 11 or 14, 1997. The Law Society examiner called back on April 3, 1997 and left a message rescheduling to April 11, 1997. The Law Society examiner's handwritten notes of the April 2 and 3, 1997 telephone calls are at Tab 15 of the Document Book.

16. On April 10, 1997, the Solicitor's secretary called the Law Society examiner to advise that the Solicitor had been delayed and could not confirm her availability for her April 11, 1997 appointment. By telephone call on April 11, 1997, the Solicitor rescheduled her appointment for April 16, 1997. The Law Society examiner's handwritten notes of these telephone calls are at Tab 16 of the Document Book.

17. By letter dated April 18, 1997, the Law Society examiner confirmed his attendance at the Solicitor's office on April 16, 1997, at which time the Solicitor had produced trust account cheque stubs for the period January 31, 1996 to November 14, 1996. The letter listed the outstanding records and confirmed the Solicitor's agreement to produce these records at the next appointment, scheduled for April 24, 1997 (Tab 17, Document Book).

18. In the morning of April 24, 1997, the Solicitor left the Law Society examiner a voice mail message advising that she had been unable to obtain her books and records from her accountant and that she would call to reschedule. The Law Society examiner's handwritten notes of this telephone call are at Tab 18 of the Document Book.

19. On April 28, 1997, the Law Society examiner called the Solicitor and asked her to drop off her books and records at the Society as soon as possible. The Law Society examiner's handwritten notes of this telephone call are at Tab 19 of the Document Book.

27th November, 1997

20. On April 29, 1997, the Solicitor left a voice mail message for the Law Society examiner that she would pick up her books and records from her accountant by no later than the following Monday, being May 5, 1997, and that she would get the books and records to him. The Law Society examiner's handwritten notes of this telephone call are at Tab 20 of the Document Book.

21. On Friday, May 23, 1997, the Law Society received the following books and records from the Solicitor:

- Trust deposit book for the period September 11, 1995 to October 31, 1996
- Trust bank statements, cashed cheques, and deposit slips for the period February 1, 1996, to November 14, 1996
- Client ledger cards.

22. To date the following books and records remain missing:

- Trust reconciliations for the period January 31, 1996 to November 14, 1996
- General account journals for the period January 31, 1996 to the present
- Chronological file of fee billings for the period January 31, 1996 to the present
- General bank statements, cashed cheques and deposit slips for the period January 31, 1996 to the present.

23. In addition, the Society wishes to review certain of the Solicitor's client files and a sampling of previous years' books and records, but has not specifically requested production of these documents from the Solicitor as it wishes to first review all of the above documents.

V. DISCIPLINE HISTORY

24. On January 27, 1997, the Solicitor was reprimanded in Committee for failing to file since her call to the Bar.

DATED at Toronto this 27th day of May, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Farida Shaikh be Reprimanded in Convocation if she produces any of the books and records set out at paragraph 22 of the Agreed Statement of Facts by the time this matter reaches Convocation, failing which that she be suspended for a period of one month and thereafter until she makes that production.

REASONS FOR RECOMMENDATION

The Solicitor is 49 years of age and was called to the Bar in 1994. Since her call, her fledgling practice has been beset with difficulties, both personal and professional. She suffered from major depression. She declared bankruptcy and has since been reinstated in 1996.

27th November, 1997

Ms. Shaikh stands charged with breaching section 18 of Regulation 708 in that she failed to produce to the Law Society the books and records of her practice for examination despite requests to do so. On the first occasion on which the Committee sat, we made a finding of professional misconduct based on an Agreed Statement of Facts, marked as exhibit 2. The Agreed Statement of Facts demonstrates a history of her failure to produce books and records despite requests to do so over the last twelve months, including the period of adjournment between the Committee's sitting on May 27th and June 27th, 1997.

Paragraph 22 of the Agreed Statement of Facts sets out the books and records which remain missing. It would be impossible for the Law Society auditor to conduct an audit of this solicitor's practice without these books and records. The effect of the failure to produce the books and records, that is, the Law Society's inability to conduct an audit, is the most serious consequence of the allegations of which the Solicitor has been found guilty. It is a very weighty consideration in terms of the penalty we impose, notwithstanding that there are obvious mitigating factors with this Solicitor.

On the other hand, we are somewhat persuaded by Ms. Leiper's submission and we do consider that the Solicitor is making every effort to comply with the Law Society's request.

Our obligation is the protection of the public and to ensure that like conduct is deterred with respect to other solicitors, notwithstanding that there may be mitigating circumstances such as in this case, nevertheless, the requirements of section 18 of the Regulation are pre-eminent in the Solicitor's obligations and fundamental to the audit function of the Law Society. And by virtue of that, compliance with this section is fundamental to a solicitor's obligation to the Society and to the public. Having said that, it is our view and our recommendation that the Solicitor be reprimanded in Convocation if she produces any of the books and records set out at paragraph 22 of the Agreed Statement of Facts by the time this matter reaches Convocation and if not, the Solicitor be suspended for one month and thereafter until she makes that production.

In view of the circumstances of the Solicitor and the submissions of Ms. Leiper, there will be no costs.

Farida Mir Mohammed Shaikh was called to the Bar on February 8, 1994.

ALL OF WHICH is respectfully submitted

DATED this 17th day of September, 1997

Ronald D. Manes, for the Committee

Ms. Cameron asked that the following corrections be made to the Report:

- (1) page 6, paragraph under heading Recommendation as to Penalty, 2nd line: delete the words "any of" so the phrase would read - "produces the books and records";
- (2) page 7, 2nd paragraph, 7th line: delete the words "any of" so the phrase would read "produces the books and records".
- (3) page 6, 1st paragraph under heading Reasons for Recommendation, should read that the solicitor is "50" years of age not 49.

27th November, 1997

It was moved by Ms. Ross, seconded by Ms. Sealy that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if she produces the books and records, failing which she be suspended for a period of 1 month and thereafter until the books and records are produced.

Ms. Cameron advised that not all of the books and records had been produced and made submissions in support of the 1 month suspension.

Ms. Leiper made submissions in support of a lesser penalty either that the solicitor be suspended for a period of 1 week and suspended indefinitely thereafter or that the solicitor be suspended as of December 31st, 1997 if the materials are not produced.

Ms. Cameron made further submissions in reply.

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

It was moved by Mr. MacKenzie, seconded by Ms. Puccini that the solicitor be suspended for a period of 1 month and indefinitely thereafter until the materials are produced.

Lost

It was moved by Mr. Swaye, seconded by Mr. Ortved that the matter be adjourned to the next Discipline Convocation in January 1998.

Carried

It was moved by Mr. Topp, seconded by Mr. Marrocco that the matter go back to the Committee to see if the materials produced satisfies the order and that the Committee reconsider the penalty.

Not Put

It was moved by Mr. Topp but failed for want of a seconder that the finding be vacated and the matter return to a new Committee.

It was moved by Mr. DelZotto, seconded by Ms. Ross that the records be produced in 1 week except the general ledgers.

Carried

Counsel, the solicitor, the report and the public were recalled and informed of Convocation's decision that the records be produced in 1 week and the matter be adjourned to the January Discipline Convocation.

The solicitor waived the requirement that when the matter comes before Convocation that there be a quorum made up of Benchers at this Convocation.

Convocation took a brief recess at 11:00 a.m. and resumed at 11:20 a.m.

Re: Warren Arnold SINGER - Toronto

The Secretary placed the matter before Convocation.

Messrs. Wilson, Gottlieb, Ruby, Topp and Marrocco and Ms. Cronk withdrew for this matter.

27th November, 1997

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

Convocation had before it the Report of the Discipline Committee dated 27th July, 1997, together with an Affidavit of Service sworn 21st August, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 19th August, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th November, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby, Chair
Gary L. Gottlieb, Q.C.
Robert C. Topp

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

Georgette Gagnon
for the Society

WARREN ARNOLD SINGER
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 15, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Complaint D19/97 was issued on February 11, 1997 and Complaint D186/97 was issued on May 16, 1997 against Warren Arnold Singer alleging that he was guilty of professional misconduct.

The matter was heard in public on July 15, 1997 before this Committee composed of Clayton C. Ruby, Chair, Gary L. Gottlieb, Q.C. and Robert C. Topp. The Solicitor attended the hearing and represented himself. Georgette Gagnon appeared on behalf of the Law Society.

DECISION

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

Complaint D19/97

2. a) He operated general account transactions through the mixed trust account:

27th November, 1997

- i) between March 1993 and January 1994, the Member breached section 14(6)(b) of Regulation 708 under the *Law Society Act* by paying into his trust account money which he received on account of fees for which billings had been delivered;
 - ii) between March 1993 and January 1994, the Member breached section 14(8) of Regulation 708 under the *Law Society Act* by drawing money from the trust account by way of disbursements which were of a personal nature.
- b) He failed to maintain the books, records and accounts in connection with his practice on a current basis as required by section 15(1) and 15(2)(a) of Regulation 708 made under the *Law Society Act*.

Complaint D186/97

2. a) He failed to produce the books and records of his law practice to the Law Society for examination in contravention of section 18 of Regulation 708 made pursuant to the *Law Society Act*; and
- b) From May 31, 1996 to February 1, 1997, he practised law while his rights and privileges as a member were suspended for failure to pay his errors and omissions insurance levy.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D19/97 & D186/97 and is prepared to proceed with a hearing of these matters on July 15 and 16, 1997.

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. THE COMPLAINT

D19/97

- 2(a) He operated general account transactions through the mixed trust account:
- i) between March 1993 and January 1994, the Member breached section 14(6)(b) of Regulation 708 under the *Law Society Act* by paying into his trust account money which he received on account of fees for which billings had been delivered;
 - ii) between March 1993 and January 1994, the Member breached section 14(8) of Regulation 708 under the *Law Society Act* by drawing money from the trust account by way of disbursements which were of a personal nature;
- (b) He failed to maintain the books, records and accounts in connection with his practice on a current basis as required by section 15(1) and 15(2)(a) of Regulation 708 made under the *Law Society Act*.

D186/97

- 2(a) He failed to produce the books and records of his law practice to the Law Society for examination in contravention of section 18 of Regulation 708 made pursuant to the Law Society Act; and
- (b) From May 31, 1996 to February 1, 1997, he practised law while his rights and privileges as a Member were suspended for failure to pay his errors and omissions insurance levy.

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D19/97 and D186/97 and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. BACKGROUND

4. The Solicitor was called to the Bar on March 22, 1991. He practised as a sole practitioner in Toronto, Ontario. The Solicitor has been administratively suspended since May 31, 1996 for non-payment of his errors and omissions insurance levy.

V. FACTS

Complaint D19/97

2(a) Operation of general account transactions through the mixed trust account.

5. The Solicitor operated a mixed trust account #94-05216 and a general firm account #94-07014 at the Canadian Imperial Bank of Commerce. On March 19, 1993, the Solicitor closed the general firm account #94-07014. This general account had been in an overdraft position the previous month. Attached at Tab 1 of the Document Book is a copy of the Solicitor's general firm account bank statements for February and March 1993.

6. Commencing on March 22, 1993, the Solicitor processed general account transactions through his mixed trust account #94-05216 until January 1994.

7. At the request of the Law Society's audit examiner, the Solicitor prepared a ledger detailing general account transactions from March 1993 to January 1994 through his mixed trust account. Attached at Tab 2 of the Document Book is a copy of the trust account ledger prepared by the Solicitor showing general receipts and disbursements.

8. The Solicitor deposited earned legal aid account payments directly into his mixed trust account. The Solicitor also paid office expenses from the same mixed trust account.

9. The Solicitor's general receipts' journal shows that the Solicitor improperly deposited earned money into his mixed trust account. Although the Solicitor's record is for general receipts, he made deposits to his trust account. The Solicitor's ledger indicates "receipts - general account". Attached at Tab 3 of the Document Book is a copy of the Solicitor's general receipts' document for the period March 1993 to September 1993.

10. The Solicitor improperly disbursed funds from the mixed trust account as indicated in the general disbursements journal. Although the record is for general disbursements, the Solicitor drew cheques on his mixed trust account. The Solicitor's ledger indicates "disbursements". Attached at Tab 4 of the Document Book is a copy of the Solicitor's general disbursements documents for the period March 1993 to September 1993.

27th November, 1997

11. The Solicitor recorded the deposits of earned legal account payments on the general section of the client ledger and not to the trust account. Attached at Tabs 5 through 15 of the Document Book are records indicating the Solicitor's depositing of earned fees from legal aid accounts directly to his mixed trust account.

12. The Solicitor's trust deposit book from the Canadian Imperial Bank of Commerce shows general deposits, earned fees and personal monies deposited by the Solicitor into his mixed trust account. Attached at Tab 16 of the Document Book is a copy of the Solicitor's trust account deposit book from March 24, 1993 to January 14, 1994 detailing general deposits.

13. The Solicitor's trust bank statements and cancelled trust cheques show that general office and personal expenses were paid by the Solicitor from his mixed trust account. Attached at Tab 17 of the Document Book are copies of the Solicitor's trust bank statement and trust cheques from March 1993 to December 1993. The Solicitor's trust bank reconciliations were described in two parts. The first section reconciled the client money in the trust account and the second section is identified as "general (transactions from trust)". The Solicitor reconciled earned fees and capital injections to the bank. The adjusted bank balances of the trust and general sections of the reconciliation are equal to the total amount of money on deposit in the trust account. Attached at Tab 18 of the Document Book are copies of the Solicitor's trust bank reconciliation and listing from March 1993 to December 1993.

14. The following chart is an appendix summarizing the Solicitor's use of his mixed trust account for direct legal aid receipts and general money received and for payment and disbursement of general office expenses.

PARTICULARS	DISBURSEMENT	RECEIPT
March 24, 1993 Client - Higgins Payment of Legal Aid Account (Document Book - Tab 5, 16)		281.57
March 24, 1993 Client - Campbell Payment of Legal Aid Account (Document Book - Tab 6, 16)		748.14
March 24, 1993 Client -Antoine Payment of Legal Aid Account (Document Book - Tab 7, 16)		748.14
March 24, 1993 W. Singer - Draw -cheque A-3 (Document Book - Tab 2 & 17)	\$ 500.00	
March 31, 1993 W. Singer - Draw - cheque A-5 (Document Book - Tab 2 & 17)	350.00	
April 2, 1993 W. Singer - Draw - cheque H-6 (Document Book - Tab 2 & 17)	650.00	
April 26, 1993 Client - Teixeira Payment of Account (Document Book - Tab 8 & 16)		1,122.22
April 30, 1993 W. Singer - Draw - cheque A-14 (Document Book - Tab 2 & 17)	800.00	
May 5, 1993 W. Singer - Draw - cheque A-16 (Document Book - Tab 2 & 17)	700.00	
May 14, 1993 Client - Rouleau Payment of Legal Aid Account (Document Book - Tab 9 & 16)		281.57
May 19, 1993 W. Singer - Draw - cheque A-26 (Document Book - Tab 2 & 17)	200.00	
May 19, 1993 Client - Cayer Payment of Legal Aid Account (Document Book - Tab 10)		663.77

PARTICULARS	DISBURSEMENT	RECEIPT
May 19, 1993 Client - Thexton Payment of Legal Aid Account (Document Book - Tab 10)		402.68
May 31, 1993 Law Society - Dues - cheque A-31 (Document Book - Tab 2 & 17)	1,605.00	
June 7, 1993 Client - Nguyen Payment of Legal Aid Account (Document Book - Tab 11)		521.46
June 8, 1993 W. Singer - Draw - cheque A-34 (Document Book - Tab 2 & 17)	700.00	
July 19, 1993 Client - Blackman Payment of Agency Account (Document Book - Tab 12, 16)		227.90
July 19, 1993 W. Singer - Draw - cheque 02 (Document Book - Tab 2 & 17)	600.00	
July 19, 1993 Receiver General - GST Payment - cheque 03 (Document Book - Tab 2 & 17)	90.10	
August 23, 1993 W. Singer - Draw -cheque 07 (Document Book - Tab 2 & 17)	1,100.00	
September 14, 1993 Bell Canada Rebate (Document Book - Tab 2 & 16)		50.97
September 14, 1993 Client - Nguyen Payment of Legal Aid Account (Document Book - Tab 2 & 16)		371.95
October 1, 1993 City Core Management - Rent Payment - cheque 012 (Document Book - Tab 2 & 17)	562.19	
October 14, 1993 Bell Canada Payment - cheque 016 (Document Book - Tab 2 & 17)	493.19	

PARTICULARS	DISBURSEMENT	RECEIPT
November 1, 1993 City Core Management - Rent Payment - cheque 024 (Document Book - Tab 2 & 17)	578.93	
November 4, 1993 W. Singer - Capital (Document Book - Tab 2 & 16)		300.00
November 10, 1993 Reliable Office Cleaning-Office Payment - cheque 031 (Document Book - Tab 2 & 17)	32.10	
November 12, 1993 Bell Canada - Office Payment - cheque 033 (Document Book - Tab 2 & 17)	119.49	
December 1, 1993 City Core Management - Rent Payment - cheque (missing) (Document Book - Tab 2 & 17)	578.93	
December 2, 1993 Client - Belchior Payment of Legal Aid Account (Document Book - Tab 13 & 16)		726.19
December 6, 1993 W. Singer - Draw- cheque (missing) (Document Book - Tab 2)	260.00	
December 13, 1993 Client - Wilson Payment of Legal Aid Account (Document Book - Tab 14 & 16)		894.32
December 24, 1994 Client - Duong Payment of Legal Aid Account (Document Book - Tab 15 & 16)		630.58
January 1, 1994 City Core Management - Rent Payment - cheque (missing) (Document Book - Tab 2 & 21)	578.93	
January 2, 1994 W. Singer - Draw - cheque (missing) (Document Book - Tab 2 & 21)	1,000.00	

PARTICULARS	DISBURSEMENT	RECEIPT
January 18, 1994 Bell Canada Payment - cheque (missing) (Document Book - Tab 2& 21)	137.17	
February 1, 1994 Debit Memo (Document Book - Tab 2)	19.00	

15. On December 15, 1993, the Solicitor opened a new general bank account #122-1233 at the Royal Bank. Attached at Tab 19 of the Document Book is a copy of the Solicitor's Royal Bank general account bank statement for December 1993.

16. By letter dated March 8, 1995, the Solicitor wrote to the Law Society admitting that from March 1993 to December 1993 he operated his general account transactions through his mixed trust account. Attached at Tab 20 of the Document Book is a copy of the Solicitor's letter to the Law Society dated March 8, 1995.

17. The Solicitor admits that he closed his firm general account on March 19, 1993. The Solicitor further admits that on March 22, 1993 he commenced using his mixed trust account for deposits of his earned legal aid account payments and for payment of his general office expenses. The Solicitor admits mingling his own personal money with his clients' trust money in the mixed trust account.

Particular 2(b) - Failure to maintain books and records on a current basis

18. The Law Society's examination of the Solicitor's books and records commenced in October 1994 and completed in October 1995, showed that the Solicitor was not maintaining current books and records for his law practice as required by Section 15(1) and 15(2a) of Regulation 708 made pursuant to the Law Society Act. The auditor examined the Solicitor's books and records for the period March 1993 to October 1995.

19. On October 12, 1994 the Law Society's auditor advised the Solicitor about what books and records were required to conduct an examination of his law practice. The Solicitor did not make books and records available on that date.

20. The following chart details attempts by the Law Society to conduct and complete an examination of the Solicitor's books and records. The chart also details the Solicitor's failure to maintain his books and records on a current basis.

Tabs 22-41, Document Book

	Current Monthly Trust Comparisons, including Trust Listings and Reconciliations Section 15(1)(h) & 2(a)	Trust Receipts Journal 15(1)(a)	Trust Disbursement Journal 15(1)(b)	Clients Trust Ledgers 15(1)(c)	General Receipts Journal 15(1)(e)	General Disbursement Journal 15(1)(f)	Fees Book and/or Chronological File of Copies of Billings 15(1)(g)
Oct.12/94 (Tab 30)	Not Produced - CIBC & Royal	Not Produced	Not Produced	Not Produced	Not Produced	Not Produced	Not Produced
Nov.11/94 (Tab 31)	Not Produced - CIBC & Royal	Not Produced	Not Produced	Not Produced	Produced - not Current - July 1994	Produced - not Current - July 1994	Not Produced
Jan.13/95 (Tab 32)	Not Produced - CIBC & Royal	Not Produced	Not Produced	Not Produced	Produced - not Current - July 1994	Produced - not Current - July 1994	Not Produced
Jan.30/95 (Tab 33)	No Produced - CIBC & Royal	Not Produced	Not Produced	Not Produced	Produced - not Current - July 1994	Produced - not Current - July 1994	Not Produced
Feb.3/95	Not Produced - CIBC & Royal	Not Produced	Not Produced	Not Produced	Produced	Produced - not Current - January 1995	Produced - not Current
Feb.6/95 (Tab 34)	Not Produced - CIBC & Royal	Not Produced	Not Produced	Not Produced	Produced	Produced - not Current - January 1995	Produced - not Current
March 2/95 (Tab 35)	Not Produced - CIBC & Royal	Not Produced	Not Produced	Not Produced	Produced	Produced - not Current - January 1995	Produced - not Current

	Current Monthly Trust Comparisons, including Trust Listings and Reconciliations Section 15(1)(h) & 2(a)	Trust Receipts Journal 15(1)(a)	Trust Disbursement Journal 15(1)(b)	Clients Trust Ledgers 15(1)(c)	General Receipts Journal 15(1)(e)	General Disbursement Journal 15(1)(f)	Fees Book and/or Chronological File of Copies of Billings 15(1)(g)
March 9/95 (Tab 36)	Not Produced - CIBC. Royal Produced.	Not Produced	Not Produced	Not Produced	Produced	Produced not Current - January 1995	Produced - not Current
April 6/95 (Tab 37)	Not Produced - CIBC. Royal Produced.	Not Produced	Not Produced	Not Produced	Produced	Produced not Current - January 1995	Produced - not Current
May 15/95 (Tab 38)	Not Produced - CIBC. Royal Produced.	Not Produced	Not Produced	Not Produced	Produced	Produced not Current - January 1995	Produced - not Current
June 28/95	Not Produced - CIBC. Royal Produced.	Not Produced	Not Produced	Not Produced	Produced	Produced not Current - January 1995	Produced - not Current
August 4/95 (Tab 39)	Not Produced - CIBC. Royal Produced.	Not Produced	Not Produced	Not Produced	Produced	Produced not Current - January 1995	Produced - not Current
Sept.7/95	CIBC & Royal Produced.	Produced	Produced	Produced	Produced	Produced not Current - January 1995	Produced - not Current

21. On September 17, 19, 27 and October 17, 1995, the Solicitor failed to produce sufficient invoices to examine general disbursement expenses. Updated fees journal, general cash disbursements, books updated from January 1995 and trust cheques number 44-64 were also not produced by the Solicitor.

22. On June 19, 1996, the Solicitor produced his fees journal to the Law Society's auditor. As a result, sufficient records were available to complete the audit for the period March 1993 to October 1995. Attached at Tab 42 of the Document Book is a copy of the Solicitor's fees journal.

Complaint D186/97

2(a) Failure to produce books and records

23. On August 15, 1996, the Law Society commenced an audit of the Solicitor's practice to investigate possible instances of the Solicitor practising while under suspension and required the Solicitor's books and records.

24. The following chart sets out the Law Society's attempts to obtain production of the Solicitor's books and records.

October 15, 1996	Theda Lean, an examiner for the Law Society, visited the Solicitor's office and was advised that the Solicitor no longer had an office at that location but appeared to be practising law as faxes had been coming to the office for him. (Tab 43)
October 29, 1996	Theda Lean sent a letter to the Solicitor advising him of the audit and requesting that he contact the Law Society. (Tab 44)
November 12, 1996	Solicitor phoned to advise that he received the letter of October 29, 1996 and that he had moved from his prior location. He stated he would call the Law Society again. (Tab 45)
November 21, 1996	The Law Society received a voice mail message from the Solicitor advising that he would call again on December 5, 1996. (Tab 46)
November 28, 1996	The Law Society left a voice mail message for the Solicitor requesting that he return the call. (Tab 47)
December 3, 1996	The Law Society received a voice mail message from the Solicitor advising that he would call back after December 9, 1996. (Tab 48)
December 17, 1996	The Law Society sent a letter to the Solicitor again advising him of the audit and requesting that he produce books and records. The letter requested the Solicitor to contact the Law Society prior to January 6, 1997 to arrange an appointment. (Tab 49)
January 7, 1997	The Law Society sent a follow up letter to the Solicitor requesting that he respond to the letter of December 17, 1996. A copy of the letter of December 17, 1996 was included again advising him of the audit and requesting that he produce books and records. (Tab 50)
January 28, 1997	The Law Society visited the Solicitor's former office and was advised that the Solicitor still picks up mail and messages there. The examiner left a business card and requested that the Solicitor be advised to contact the Law Society. (Tab 51)

January 28, 1997	The Law Society sent a letter to the Solicitor by both registered and regular mail advising that the matter would be sent to the Chair and Vice Chairs of Discipline if not resolved within two weeks of the date of the letter. A copy of the letter dated January 7, 1997 was included and a copy of the letter of December 17, 1996 advising him of the audit and requesting that he produce books and records. (Tab 52)
January 29, 1997	The Solicitor phoned and provided new phone numbers and a new address. He said he would have his bookkeeper contact the Law Society to schedule an appointment. (Tab 53)
January 31, 1997	The Law Society left a message at the phone number provided by the Solicitor on January 29, 1997 requesting that he return the Law Society's call. (Tab 54)
February 5, 1997	The Law Society left a message at both phone numbers provided by the Solicitor requesting that he return the Law Society's call. (Tab 55)
February 5, 1997	The Law Society sent a letter to the address which was provided by the Solicitor on January 29, 1997 requesting that he arrange an appointment to commence the audit. (Tab 56)
February 6, 1997	The Law Society sent a letter to the Solicitor's former office requesting that he arrange an appointment to commence the audit. (Tab 57)

To date, the Solicitor has failed to produce his books and records to the Law Society in contravention of Section 18 of Regulation 708 made pursuant to the Law Society Act.

2(b) Practising law while under suspension

25. On May 31, 1996, the Solicitor was suspended for failure to pay his errors and omissions insurance levy. A registered letter was sent to the Solicitor advising him of his suspension. Attached at Tab 58 of the Document Book is a copy of the Law Society's letter to the Solicitor dated May 31, 1996 advising him that his membership had been suspended .

26. On June 5, 1996 an acknowledgement of receipt of the Law Society's registered letter was signed for. Attached at Tab 59 of the Document Book is a copy of the acknowledgement of receipt.

27. From May 31, 1996 to February 1, 1997 the Solicitor practised law while his rights and privileges as a member were suspended. The following chart describes the Solicitor's court appearances and dates of attendances in court as a practising solicitor and counsel of record.

MATTER	DATES OF COURT ATTENDANCES
1. R v. Tammy Rose Hardy	June 12, 1996 July 4, 1996 September 24, 1996 January 24, 1997
2. R v. Rohan Albert Granston	January 14, 1997
3. R v. Cynthia Leigh Rainville	November 18, 1996
4. R v. Rafael Omasta and Ryszard Omasta	June 12, 1996 August 8, 1996
5. R v. Young Offender	November 13, 1996 November 14, 1996

R v. Tammy Rose Hardy

28. The Solicitor appeared as solicitor/counsel of record on the matter of Her Majesty the Queen and Tammy Rose Hardy in the Ontario Court (General Division) on June 12, July 4, September 24, 1996 and January 24, 1997. Ms. Hardy is charged with two counts of importing a narcotic contrary to Section 5(1) of the *Narcotic Control Act*. Attached at Tab 68 of the Document Book is a copy of the indictment against Tammy Rose Hardy.

29. On June 12 and July 4, 1996 the Solicitor represented Ms. Hardy during judicial pre-trials of this matter conducted in Judge's chambers. On September 24, 1996, the Solicitor represented Ms. Hardy in court wherein she pleaded guilty to both charges before Mr. Justice Thomas. On July 4, 1996, the Solicitor requested an adjournment of Ms. Hardy's sentencing. The Solicitor appeared again on January 24, 1997 on behalf of Ms. Hardy before Mr. Justice Thomas and requested an adjournment of her sentencing to January 31, 1997. Attached at Tab 67 of the Document Book is a copy of a letter to the Law Society from Paul J. Evraire, Q.C., Director Senior General Counsel, Ontario Regional Office of the Crown Attorney regarding the Solicitor.

R v. Rohan Albert Granston

30. The Solicitor acted as solicitor/counsel of record for Rohan Albert Granston in the matter of Her Majesty the Queen and Rohan Albert Granston. Mr. Granston is charged with one count of importing a narcotic contrary to Section 5(1) of the *Narcotic Control Act*. Attached at Tab 69 of the Document Book is a copy of the indictment against Rohan Albert Granston.

31. On December 11, 1996, the Solicitor represented Mr. Granston in the Ontario Court (Provincial Division) and waived the preliminary hearing of the matter. The indictment reveals that the Solicitor represented Mr. Granston in the Ontario Court (General Division) during a judicial pre-trial on January 14, 1997 and set a trial date for March 17, 1997.

Attached at Tab 67 of the Document Book is a copy of a letter to the Law Society from Paul J. Evraire, Q.C. Director Senior General Counsel, Ontario Regional Office of the Crown Attorney, regarding the Solicitor.

R v. Cynthia Leigh Rainville

32. The Solicitor appeared as solicitor/counsel of record on Her Majesty the Queen and Cynthia Leigh Rainville. Ms. Rainville is charged with one count of importing a narcotic into Canada contrary to Section 5(1) of the *Narcotic Control Act*. The Solicitor attended for trial of this matter on November 18, 1996 in the Ontario Court (General Division). The matter was not reached and the Solicitor set a new trial date for June 2, 1997. Attached at Tab 70 of the Document Book is a copy of the indictment against Cynthia Leigh Rainville.

R v. Rafael Omasta and Ryszard Omasta

33. The Solicitor appeared as solicitor/counsel of record for Rafael and Ryszard Omasta on June 12 and August 8, 1996 in the Ontario Court (General Division) in the Regional Municipality of Peel. The Omastas were charged with eight counts of possession of stolen property in violation of Section 354(1) of the Criminal Code of Canada and three counts of fraud in violation of Section 380(1) of the Criminal Code of Canada. Attached at Tabs 64 and 65 of the Document Book is a copy of the transcript of court proceedings heard before the Honourable Mr. Justice Langdon on January 31, 1997 in Her Majesty the Queen v. Rafael and Ryszard Omasta and a letter to the Law Society from Paul M. Taylor, Crown Attorney. Attached at Tab 71 of the Document Book is a copy of the indictment against Rafael and Ryszard Omasta.

R v. Young Offender

34. On November 13 and 14, 1996 the Solicitor appeared in the matter of Her Majesty the Queen v. Young Offender, who was charged with theft and use of violence contrary to Section 344 of the Criminal Code of Canada. The trial in the matter commenced on March 8, 1996 and continued on March 28, April 3 and November 13, 1996 with a conviction. The matter was adjourned to January 22, 1997 for sentence and further adjourned to February 19, 1997. The Solicitor appeared in court on the matter on all occasions except January 22 and February 19, 1997. Attached at Tab 62 of the Document Book is a copy of a letter to the Law Society from Paul M. Taylor, Crown Attorney, regarding the Solicitor. Attached at Tab 72 of the Document Book is a copy of the court information of the Brampton court regarding the Young Offender.

35. Between May 31, 1996 and February 1, 1997 the Solicitor billed the Ontario Legal Aid Plan for legal services that he provided to several clients. The Solicitor's Legal Aid number is 4623888. The following chart details the Solicitor's performance of legal services between May 31, 1996 and February 1, 1997 for which he billed the Legal Aid Plan at a time when the Solicitor was suspended from practising law.

Client	Date	Description of Service
J. Pellicore Certificate No. 31244495 (Tab 73)	May 31, 1996	Attendance at Brampton Provincial Court for guilty plea.
	May 31, 1996	Travel to court and back to office.
	December 3, 1996	Attendance at Brampton Provincial Court for sentencing.
	December 3, 1996	Travel to court and back to office.
S. Nedd Certificate No. 31246513 (Tab 74)	July 3, 1996	Attendance at Brampton Provincial Court for judicial pre-trial.
	July 3, 1996	Travel to court and back to office.
	August 14, 1996	Attendance at Brampton Provincial Court for guilty plea and sentencing.
	August 14, 1996	Travel to court and back to office.
	August 26, 1996	Attendance at Brampton Court for trial
	August 26, 1996	Travel to court and back to office.
T. Hardy Certificate No. 31248004 (Tab 75)	June 12, 1996	Attendance at Ontario Court - General Division for judicial pre-trial.
	June 12, 1996	Travel to Court and back to office.
	September 23, 1996	Attendance at Ontario Court - General Division for guilty plea.
	September 23, 1996	Travel to court and back to office.
D. Guitard Certificate No. 31254244 (Tab 76)	June 10, 1996	Attendance at Brampton Provincial Court for judicial pre-trial.
	June 10, 1996	Travel to court and back to office.
	August 2, 1996	Attendance at Brampton Provincial Court for guilty plea and sentencing.
	August 2, 1996	Travel to court and back to office.
	August 9, 1996	Attendance at Brampton Provincial Court.
	August 9, 1996	Travel to court and back to office.

M. Garrett Certificate No. 51187915 (Tab 77)	June 20, 1996	Attendance at Old City Hall for pre-trial with Crown Attorney.
	July 22, 1996	Attendance at court where matter put over.
	August 7, 1996	Review of material including meeting with co-counsel.
	August 9, 1996	Travel and meet with client.
	August 11, 1996	Preparation for trial and review of case law.
	August 15, 1996	Attendance at Old City Hall where Crown elects to proceed by indictment, client elects trial by Provincial Court Judge, enters plea and sentencing.
	August 26, 1996	Attendance at Old City Hall for bail hearing.
	September 26, 1996	Attendance at Old City Hall for pre-trial with Crown Attorney.
	September 30, 1996	Attendance at Old City Hall where client found guilty after trial and sentenced.
D. Hughes Certificate No. 51223779 (Tab 78)	September 30, 1996	Attendance at Old City Hall where accused detained in custody.
	December 9, 1996	Attendance at Old City Hall for guilty plea and sentencing.
R. Rampersaud Certificate No. 53049117 (Tab 79)	July 11, 1996	Attendance at East Mall Court for sentencing.
A. Singer Certificate No. 52070808 (Tab 80)	September 25, 1996	Attendance at East Mall for adjournment.
	November 7, 1996	Attendance at East Mall where client is sentenced.
	December 10, 1996	Attendance at Scarborough Court where pre-sentencing hearing adjourned.
	January 18, 1997	Attendance at Scarborough Court for sentencing.
G. Ingram Certificate No. 54027319 (Tab 81)	July 30, 1996	Attendance at Old City Hall for withdrawal of charges.

VI. DISCIPLINE HISTORY

36. The Solicitor does not have a discipline history.

DATED at Toronto this 15th day of July, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Warren Arnold Singer be suspended for a period of nine months and indefinitely thereafter until his books and records are brought up to date to the satisfaction of the Society.

REASONS FOR RECOMMENDATION

The Solicitor has been practising since July of 1991. That practice consists mainly of a criminal practice and within the criminal practice, it consists mainly of Legal Aid work. These have been difficult years for Legal Aid and the solicitors who rely upon those payments. Very often, during that period, the payments have been slow, verging on non-existent and that leaves, in the ordinary practice, unless there are other sources of funds, no way to pay staff let alone oneself. Indeed, that appears to be what happened in this case, at least to some extent. We view it as a serious mitigating factor.

On the other hand, we are cognizant that these are serious offences and they contain what counsel for the Society fairly put as "some elements of ungovernability".

For eight long months, the Solicitor practised while under suspension. He engaged in a variety of criminal cases during that period. This is a very serious problem for the profession and a serious offence. Repeated attempts were made by the Society to obtain books and records and information and those attempts were ignored or rebuffed.

All in all, there is enough here to give us some concern beyond the concern that would arise in a minimal case.

During this period, the Solicitor's fifteen year marriage broke up. Indeed, the divorce papers were signed only last month in connection with this matter. The books and records were being tended, such as that was, with the assistance of his former wife. That proved inadequate. Clearly, in the view of the Society, he now no longer has enough money to function and to pay the amounts owed in connection with his practice. Indeed, the Society does not seek costs in this particular case only because they are satisfied that the Solicitor could not pay them.

Why this occurred is, to some extent, perplexing and indeed a mystery. The absence of co-operation with the Society is in marked contrast to the remorse exhibited by the Solicitor at the hearing and which the Society agrees has lately been the case in its relationships with him. He presently is living in Miami, Florida; he has promised never to do this again. We have been told that none of the practising while under suspension involved new clients, although this has not been verified by the Society.

In these circumstances, we urge the Solicitor, before he resumes the practice of law, to engage in Practice Review and he has indicated that he would do so. The Society has asked for a twelve month suspension which of course would become effective at the next available Convocation, which is September 25th next.

27th November, 1997

We note that there is usually an additional period of suspension beyond the period during which the Solicitor practised while under suspension and we take into account all of the conduct which the Solicitor has admitted and try and balance it against the personal problems the Solicitor has had.

We therefore recommend to Convocation that they suspend the Solicitor for nine months. The Solicitor has offered to give his undertaking that he will not practise effective as of the date of the hearing and we accept that undertaking and fully expect that pursuant to it, he will not practise. That will be taken into account by Convocation in assessing the fitness of the nine month period we are recommending. That suspension, given that the books and records are still not up to date, will continue from month to month thereafter until the books and records are brought up to date to the satisfaction of the Society.

Warren Arnold Singer was called to the Bar on March 22, 1991.

ALL OF WHICH is respectfully submitted

DATED this 27th day of July, 1997

Clayton C. Ruby, Chair

Ms. Cameron asked that the following corrections be made to the Report:

- (1) page 21, last line - add the word "are" so that the sentence then read: "The books and records are inadequate."
- (2) page 22, 3rd paragraph, 1st line - delete the word "before" and replace it with the word "once" so that it then read: "...., we urge the Solicitor, once he resumes the practice of law, to engage in Practice Review..."

It was moved by Mr. Carey, seconded by Mr. Ortved that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 9 months and indefinitely thereafter until his books and records are brought up to date to the satisfaction of the Society.

Ms. Cameron and the solicitor made submissions in support of the recommended penalty with the commencement of the suspension being retroactive from September 25th, 1997.

It was moved by Ms. Ross, seconded by Mr. Crowe that the solicitor be suspended for a period of 9 months commencing September 25th, 1997 and indefinitely thereafter until his books and records are brought up to date to the satisfaction of the Society.

Carried

Re: Kenneth Ross BRUCE - Kingston

The Secretary placed the matter before Convocation.

Messrs. Millar, Wilson, and Cole and Ms. Sealy and Ms. Cronk withdrew for this matter.

Ms. Christina Budweth appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

27th November, 1997

Convocation had before it the Report of the Discipline Committee dated 20th October, 1997, together with the Affidavit of Service sworn 27th October, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd October, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 4th November, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benches prior to Convocation, the reading of it was waived.

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Paul D. Copeland, Chair
Thomas E. Cole
Hope Sealy

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

Christina Budweth
for the Society

KENNETH ROSS BRUCE
of the City
of Kingston
a barrister and solicitor

William Bishop
for the solicitor

Heard: September 17, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 3rd, 1997 Complaint D203/97 was issued against Kenneth Ross Bruce alleging that he was guilty of professional misconduct.

The matter was heard in public on September 17, 1997 before this Committee composed of Paul D. Copeland, Chair, Thomas E. Cole and Hope Sealy. The Solicitor did not attend the hearing. He was represented by William Bishop. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D203/97

2. a) During March and April 1995, he misappropriated \$3,827.97, more or less from his mixed trust account;
- b) During the period July 1994 to and including December 1994 he misappropriated \$14,756.83 more or less from trust funds received from clients for land transfer taxes and registration fees as follows:

DATE	CLIENT	AMOUNT
July 26, 1994	Amey	\$ 765.00
July 21, 1994	Ball	986.00
January 14, 1995	Beck	996.85
June 21, 1994	Dickson	1,525.00
August 5, 1994	Eix/Reid	1,069.00
October 3, 1994	Henriksen	2,765.00
December 12, 1994	Jerrett	1,085.00
September 1, 1994	Martineau	340.00
July 20, 1994	McMahon	1,875.00
July 21, 1994	Tyrell	665.00
August 8, 1994	Zavadiuk	1,649.98
July 20, 1994	Zufelt	<u>1,035.00</u>
		\$14,756.83

- c) During the period September 1993 to July 1994, he misappropriated \$250.00, more or less, received from the following clients for registration of discharges of mortgages:

DATE	CLIENT	AMOUNT
September 3, 1993	Bayuz	\$ 50.00
March 31, 1994	Lloyd	50.00
April 7, 1994	Lumley	50.00
May 3, 1994	Adam	50.00
July 4, 1994	Fahey	<u>50.00</u>
		\$250.00

- d) He misapplied \$3386.23, more or less, as follows:

CLIENT	AMOUNT
Beck sale	\$ 190.35
Flieler sale	626.00
Garbutt sale	656.89
Honey sale	107.00
Labenz sale	106.50
Maynard sale	50.00
Merklinger re estate	40.00
Robbins purchase	860.00
Tyrell purchase	151.20
Vyas purchase	500.00
Zufelf purchase	<u>98.29</u>
TOTAL	3,386.23

- e) He failed to maintain sufficient trust funds in his mixed trust account to meet client trust obligations;
- f) (i) In or about July, 1994, the Solicitor borrowed \$15,000 from his client Dr. Fahey contrary to Rule 7 of the Rules of Professional Conduct.
- (ii) He failed to disclose the said borrowing during the course of the Society's audit of his practice in December 1994.
- (g) The Solicitor breached an Order of Convocation that he suspend his practice for failure to pay his late filing levy by continuing to practise during the period June 24, 1994 to November 28, 1994.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D203/97 and is prepared to proceed with a hearing of this matter on September 16 & 17, 1997

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 D203/97 and this Agreed Statement of Facts with his counsel, William Bishop, and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. BACKGROUND FACTS

4. The Solicitor was called to the Bar of the Province of Ontario in 1972. He was suspended as a result of a discipline hearing on May 23, 1996 and currently remains suspended.

5. The Law Society initiated its investigation of the Solicitor because he failed to file a Form 2 Certificate and a Form 3 Public Accountant Report for his fiscal year ended May 31, 1993.

6. The Society froze the Solicitor's mixed trust account at the Bank of Nova Scotia, account no. 591-10, on April 27, 1995 during its first attendance at the Solicitor's office.

7. As of this date, the bank statement for this account showed a balance of \$8,981.87 (Document Book - Tab 1). The listing of trust obligations showed that the total of funds held in trust by the solicitor should have been \$16,993.47 (Document Book - Tab 2). The Solicitor created a shortage of \$8,010.61 without causing an overdraft on the account because he had funds remaining in trust from 2 estates and other clients.

8. Mr. William J.F. Bishop agreed to co-sign for the Solicitor on a second trust account opened on April 27, 1995. This account was used on May 1, 1995 to close a purchase transaction for a client with the knowledge of the Law Society.

9. On May 12, 1995 the Solicitor was suspended for non-payment of annual fees and the trust account has remained inactive since.

V. FACTS

2(a) Misappropriation - \$3,827.97

10. During the months of March and April 1995, the Solicitor withdrew a total of \$3827.97 from his trust account at the Bank of Nova Scotia for his own use. He never recorded the withdrawals nor allocated them to specific client ledgers. The cheque stubs from the cheques he used to withdraw funds were left blank.

11. The listing of trust obligations from April 27, 1995 indicates that the Solicitor overdrew 15 of 20 client trust ledgers (Document Book - Tab 2). In order to reconcile the trust bank account, the auditor posted the following withdrawals to a ledger card in the name of the Solicitor (Document Book - Tab 3).

DATE	PAYEE	CHEQUE	AMOUNT
January 11, 1995	Montreal Trust - Personal Line of Credit Interest	0021	\$ 85.97
March 2	Kenneth R. Bruce	0046	100.00
March 13	Kenneth R. Bruce	0051	100.00
March 24	Kenneth R. Bruce	0060	107.00
March 28	Kenneth R. Bruce	0061	50.00
March 31	Kenneth R. Bruce	0062	100.00
March 11	Kenneth R. Bruce	0251	650.00
April 17	Kenneth R. Bruce	0069	100.00
April 19	Kenneth R. Bruce	0070	150.00
April 6	Kenneth R. Bruce	0119	100.00
April 12	Kenneth R. Bruce	0124	100.00
April 5	Hartman & Martin	0123	50.00
April 13	Ian Milne (office landlord)	0125	600.00
April 13	Kenneth R. Bruce	0127	250.00
April 26	James Gekko	0128	50.00
April 19	Kenneth R. Bruce	0129	125.00
April 24	Kenneth R. Bruce	0130	100.00
April 4	Patricia Campbell (spouse)	067	450.00
April 25	Ian Milne (office landlord)	151	460.00
April 26	Kenneth R. Bruce	131	100.00
TOTAL			\$ 3,827.97

12. The Solicitor issued and signed all of these cheques, endorsed those payable to him, and received cash for cheques 46, 51 and 119. The Solicitor's files contain no record of any fees he had earned against which he could charge the debits he made.

13. The member reluctantly produced blank cheque stubs for the above listed cheques to the auditor for the Law Society.

14. The Solicitor admitted to the auditor that he had been using the trust account as a general account but maintained that the money removed was his. Despite requests for confirmation, the Solicitor has provided no evidence to indicate that this is in fact so.

2(b) Misappropriation - \$14, 756.83 representing land transfer tax and registration fees

15. The following table provides a summary of the transactions discussed below:

Client	Closing Date	Date Trust Funds Deposited	Date LTT Transferred to General Account	Position of General Account at time of Misappropriation	Date Deed Registered	LTT Paid From
Amey	July 25/94	July 25/94	July 26/94	Overdrawn	Sept. 28/94	General
Ball	June 17/94	June 17/94	July 21/94	Overdrawn	October 27/94	General
Beck	Jan. 13/95	Jan. 13/95	Jan. 14/95	NSF	Jan. 13/95	General - NSF
Dickson	June 10/94	June 10/94	June 21/94	Overdrawn	July 12/94	General
Eix/Reid	July 29/94	July 29/94	Aug. 5/94	New Account*	Nov. 8/95 **	Client**
Henriksen	Sept. 30/94	Sept. 30/94	Oct. 3/94	Credit	June 13/95 **	Client**
Jerrett	Dec. 15/94	Dec. 15/94	Dec. 12/94	Overdrawn	Jan. 17/95	General
Martineau	Aug. 31/94	Aug. 31/94	Sept. 1/94	Credit	Nov. 22/94	General
McMahon	June 15/94	June 15/94	July 20/94	Overdrawn	Feb. 19/96**	Client**
Tyrrell	July 26/94	July 21, 26/94	July 21/94	Overdrawn	Sept. 28/94	General
Zavadiuk	July 29/94	July 29/94	Aug. 8/94	Credit	Nov. 17/94	General
Zufelt	June 30/94	June 30/94	July 20/94	Overdrawn	July 12/94	General

*New Account - The firm or general account was moved from the Bank of Montreal to Montreal Trust at the end of July 1995 to avoid paying the ever-increasing overdraft.

**Denotes files completed by William Bishop. The clients had to pay a second time for the registration fees and the Land Transfer Taxes.

27th November, 1997

16. The Solicitor held a mixed trust bank account and a general bank account at the Bank of Montreal in Kingston, account nos. 1030-198 and 1030-171 respectively, until July 31, 1994. As of July 31, 1994 the Solicitor transferred his clients' trust funds to a mixed trust account at Montreal Trust in Kingston, account no. 6755508. He also opened a general account at Montreal Trust in Kingston, account no. 6755516. On November 30, 1994 the Montreal Trust in Kingston changed ownership and became the Bank of Nova Scotia. The mixed trust account automatically became account no. 591-10 and the general account became account no. 380784.

Amey Purchase:

17. The Solicitor acted for Arthur Amey on the purchase of 58 Chestnut Street, Kingston, Ontario. The total purchase price due on the closing date, July 25, 1994 was \$94, 181.76. The Solicitor received \$97,776.16 from the client and the client's mortgagor, Canada Trust, which he deposited in his mixed trust bank account at the Bank of Montreal on July 25, 1994.

18. The Solicitor transferred \$3594.40 from the mixed trust account to his general account at the Bank of Montreal on July 26, 1994 to pay, in the first part, \$1495 for fees, disbursements, and the Land Transfer Tax and, in the second part, \$2100 in repayment of a general cheque issued to Canada Trust. He required \$765 for the Land Transfer Tax and the fees for registering the deed and mortgage.

19. The parties signed the transfer and mortgage documents on July 14, 1994. The Solicitor did not swear a Land Transfer Tax affidavit nor pay for the registration of the deed and mortgage and the Land Transfer Tax until September 28, 1994, 3 months after the date of closing.

20. The Solicitor misappropriated \$765.00 on July 26, 1994 and made restitution on September 28, 1994.

Ball Purchase:

21. The Solicitor acted for Gerald and Faye Ball in a real estate purchase and sale. The purchase price was \$120,000 and the balance on the closing date, June 17, 1994, was 120,314.61. The Solicitor received \$141, 734.69 from the Ball sale proceeds and deposited these funds in the Bank of Montreal mixed trust account on June 17, 1994. The Solicitor billed \$1756.50 for the fees, Land Transfer Tax, registration of the deed, and other disbursements. The Land Transfer Tax owing, the registration fee for the deed, and the fee for the sheriff's certificate totalled \$986.00.

22. The Solicitor transferred \$700.50 on June 20, 1994 and \$1056.50 on June 21, 1994 from the mixed trust account at the Bank of Montreal to his general account. The transaction closed on June 17, 1994. The Solicitor did not register the transfer of the deed until October 27, 1994, four months after the date of closing. The Land Transfer Tax, registration of the deed, and the fee for the sheriff's certificate were paid by cheques from the Montreal Trust general account on October 27, 1994.

23. The Solicitor misappropriated \$986.00 on July 21, 1994 and made restitution on October 27, 1994.

Beck Purchase:

24. The Solicitor acted for Paul and Eunice Beck in a real estate purchase and sale. The purchase price was \$122,185.72, but because the Becks assumed a vendor take back mortgage, the balance due to them on closing was \$339.18. The Solicitor calculated the Land Transfer Tax as \$942, but due to a math error, it should have been \$946.85. The Solicitor billed \$1581.99 for fees and disbursements. He received and deposited the proceeds from the Beck sale in the Bank of Nova Scotia mixed trust account on January 13, 1995. On the day of closing the Solicitor transferred \$2116.99 to his general bank account at the Bank of Nova Scotia. The client paid these funds in trust to the Solicitor partially for the Land Transfer Tax and for fees and disbursements.

25. The Solicitor paid the Minister of Finance \$996.85 on January 13, 1995 to pay for the Land Transfer Tax and registration of the deed. The Bank returned this cheque marked insufficient funds, though the client had advanced this money to the Solicitor. The Minister of Finance remains unpaid.

26. The Solicitor misappropriated \$996.85 on January 14, 1995, and has not made restitution. The Lawyers Fund for Client Compensation granted the clients \$996.85.

Dickson Purchase:

27. The Solicitor acted for Mary Dickson and Harold Leakey on their purchase of 1877 McAlpine Road, Gananoque, Ontario. The purchase price was \$170,000.00 and the balance due on closing was \$169,591.85. The Land Transfer Tax, and the fees for registering the deed, the zoning certificate, and the tax certificate totalled \$1525. The Solicitor billed a total of \$2274.50 for fees and disbursements. On closing day, June 10, 1994, the Solicitor received and deposited \$174,308.70 in the Bank of Montreal mixed trust account. The Solicitor transferred \$1484.51 from the Bank of Montreal mixed trust account to the Bank of Montreal general account on June 21, 1994 which included funds advanced by the client to pay for fees and disbursements related to the transaction.

28. The Solicitor paid the Land Transfer Tax on July 12, 1994, from the Bank of Montreal general account, but the Bank returned the cheque marked insufficient funds. The deed and mortgage were signed by the parties on June 9, 1994, however, the Land Transfer Tax Affidavit was sworn by the Solicitor on July 12, 1994.

29. On September 22, 1994, the member paid for the Land Transfer Tax, registration of the deed, fee for the zoning certificate, and the fee for the tax certificate by a certified cheque from the Montreal Trust general bank account.

30. The Solicitor misappropriated \$1525 on June 21, 1994, and did not make restitution until September 22, 1994.

Eix/Reid Purchase:

31. The Solicitor acted for Julie Eix and John Reid on the purchase of 144 James Street, Kingston, Ontario. The purchase price was \$120,000 and the balance due on closing was \$120,634.52. The Solicitor billed \$1069 for the Land Transfer Tax, and the fees for registration of the deed, registration of the mortgage, the sheriff's certificate. He billed a total of \$1819.50 for fees and disbursements. The member received \$122,454.02 from the clients on July 29, 1994 and deposited it in the mixed trust account at the Bank of Montreal. He transferred the trust funds from this account to the Montreal Trust trust account on August 1, 1994.

32. The Solicitor transferred \$1819.50, paid in trust by the client for the fees and disbursements related to the client's transaction, from the Montreal Trust mixed trust account by debit memo to the Montreal Trust general bank account on August 5, 1994.

33. The Solicitor had not registered the deed or the mortgage, or paid the Land Transfer Tax when he was suspended on May 12, 1995 for non-payment of annual fees. The client had to advance funds to William Bishop for the Land Transfer Tax and the registrations. Mr. Bishop registered the deed, a correcting deed and the charge on November 10, 1995, more than six months after closing.

34. The Solicitor misappropriated \$1069 on August 5, 1994. He has not made restitution. The Lawyers Fund for Client Compensation granted the client \$1700 in December, 1996.

Henriksen Purchase:

35. The Solicitor acted for Al and Sheila Henriksen in a real estate purchase from McGregor. The purchase price was \$286,000 and the balance on the closing date, September 30, 1994, was 285,878.68. The Land Transfer Tax was \$2765. On September 30, 1994 the Solicitor received \$289, 531.69 from the client and deposited the funds in his Montreal Trust mixed trust account. The Solicitor transferred \$3653.01 by a debit memo from his Montreal Trust trust account to his Montreal Trust general account. The client paid this money in trust to the Solicitor for the Land Transfer Tax, and the fees and disbursements

36. The Solicitor did not pay the Land Transfer Tax or register the documents on closing, September 30, 1994. The mortgagors signed two Registry Office instruments, one on September 29, 1994, and one on September 30, 1994. The Solicitor paid \$100 from his general bank account at the Bank of Nova Scotia to the Minister of Finance for the registration fees for the two mortgages on November 21, 1994. The Solicitor never registered the deed.

37. The clients had to advance funds to William Bishop who registered the deed on June 13, 1995, more than 9 months after the transaction closed.

38. The Solicitor misappropriated \$2765 on October 3, 1994 and has not made restitution. The clients received a grant of \$3033.67 from the Lawyer's Fund for Client Compensation in March, 1994. They paid \$218.67 to Mr. Bishop and \$2815 to the Minister of Finance for the Land Transfer Tax and registration of the deed.

Jerrett Purchase:

39. The Solicitor acted for Mary D. Jerrett on her purchase of Unit 506, 1 Mowat Avenue, Kingston, Ontario. The purchase price was \$131,000 and the balance due on closing, December 15, 1994, was \$130,218.96. The Solicitor received \$138,413.32 from the client and deposited the funds into his mixed trust account at the Bank of Nova Scotia on December 15, 1994. The Land Transfer Tax and the fee for registering the deed totalled \$1085. The Solicitor billed a total of \$1824 for fees and disbursements. He transferred these funds from the mixed trust account at the Bank of Nova Scotia to the general account. The Solicitor registered the mortgage on December 15, 1994. The deed was not registered until January 17, 1995. The cheque the Solicitor paid for the Land Transfer Tax and registration of the deed was cashed on January 19, 1994.

40. The Solicitor misappropriated \$1085 on December 12, 1994 and made restitution on January 17, 1995.

Martineau Purchase:

41. The Solicitor acted for Gerry Martineau on the purchase of property from Montreal Trust. The purchase price was \$38,000 and the balance due on closing, August 31, 1994, was \$37,210.21. The Solicitor received \$38,364.30 from the client and deposited the funds in the Montreal Trust mixed trust bank account on August 31, 1994.

42. The Solicitor transferred \$1138.50 from the Montreal Trust mixed trust account to the Montreal Trust general account. The client paid these funds in trust for fees and disbursements. The member did not pay a total of \$340 for the Land Transfer Tax, the fee for registering the deed, the fee for registering the mortgage, or the fee for registering the Document General until November 22, 1994.

43. The Solicitor misappropriated \$340 on September 1, 1994 and made restitution on November 22, 1994.

McMahon Purchase:

44. The Solicitor acted for Karen McMahon in a real estate purchase from Roberts. The purchase price was \$210,000 and the balance due on closing was \$205,417.44. On the day of closing, June 15, 1994, the Solicitor received \$208,090.30 from the client and deposited this amount in his Bank of Montreal mixed trust account. The fees and disbursements totalled \$2,866.50. The client paid \$1875 of these funds for the Land Transfer Tax and registration of the deed. On July 20, 1994 the Solicitor transferred \$2672.86 from the Bank of Montreal mixed trust account to the Bank of Montreal general account to pay for fees and disbursements.

45. The Solicitor never registered the deed, or paid the Land Transfer Tax. Mr. William Bishop took carriage of Ms. McMahon's file when the Law Society suspended the Solicitor. He wrote to Ms. McMahon on January 25, 1996 advising her that her deed had not been registered. Ms. McMahon provided \$2500 to Mr. Bishop to pay for registration of the deed and other disbursements. Mr. Bishop registered the deed on February 19, 1996, more than one and a half years after the closing date.

46. The Solicitor misappropriated \$1875 on June 15, 1994 and has not made restitution. Ms. McMahon received a discretionary grant of \$2700 from the Lawyer's Fund for Client Compensation.

Tyrrell Purchase:

47. The Solicitor acted for Ronald Tyrrell on his purchase of unit 812, 66 Greenview Drive, Kingston, Ontario. The purchase price was \$84,000 and the balance on closing was \$84,319.10. The Solicitor received \$8719.10 from the client on July 21, 1994 and \$32,501.75 from the Canadian Imperial Bank of Commerce ("CIBC") Mortgage Corp., the client's mortgagor, on July 26, 1994 which he deposited in the Bank of Montreal mixed trust account. The CIBC mortgage advance was reduced by the amount owed to the CIBC by the vendor. The Land Transfer Tax, and the registration fees for the deed and mortgage totalled \$656. The Solicitor billed a total of \$1285 for fees and disbursements. He Solicitor deposited these funds into his general trust account at the Bank of Montreal on June 21, 1994.

48. The vendor executed the transfer document on July 8, 1994, but the Solicitor did not register it or pay for the Land Transfer Tax and fee for registration until September 28, 1994, more than two months after closing.

49. The member misappropriated \$665 on July 21, 1994 and made restitution on September 28, 1994.

Zavadiuk Purchase:

50. The Solicitor acted for William Zavadiuk on a real estate purchase and sale transaction. The purchase price was \$89,000 and the balance due on closing, July 29, 1994, was \$85,540.11. The Solicitor received \$86,654.61 from the client and deposited the funds into the Bank of Montreal mixed trust account on July 29, 1994. The Land Transfer Tax, and the registration fees for the deed and mortgage totalled \$715 and the fees and disbursements amounted in total to \$1514.50.

51. The Solicitor transferred the client's trust funds, on July 31, 1994, from the Bank of Montreal trust account to the Montreal Trust trust account. He then transferred \$2642.81 from the Montreal Trust trust account to the Montreal Trust general account on August 9, 1994. These funds included money paid by the client in trust for fees and disbursements, as well as \$618.01, \$316.97 and \$133 which the client directed the Solicitor to pay Michael A. McCue, Gananoque Light & Power, and Trousdale and Trousdale, respectively.

52. The Solicitor issued cheques from the Montreal Trust general account, on July 29, 1994, to pay Michael A. McCue and Gananoque Light & Power. The Bank dishonoured these cheques because of insufficient funds in the account. The Solicitor paid Trousdale and Trousdale a certified cheque for \$133 on August 10, 1994. He finally paid Michael McCue \$618.01 and Gananoque Light & Power \$325.97 on October 20 and 21, 1994, respectively.

53. The Solicitor misappropriated \$618.98 that the client directed him to pay to Michael A. McCue and \$316.97 that the client directed him to pay to Gananoque Light & Power on July 29, 1994 and made restitution on October 20 and 21, 1994, respectively.

54. The vendors executed the deed and mortgage on July 29, 1994, but the member did not register either or pay the Land Transfer Tax and registration fees until November 17, 1994.

55. The Solicitor misappropriated \$715 from the client on July 29, 1994 and made restitution on November 17, 1994.

Zufelt Purchase:

56. The Solicitor acted for Brian and Margaret Zufelt on a real-estate purchase and sale transaction. The purchase price was \$121,000 and the balance due on closing was \$120,361.32. The member received \$123,186.09 from the client and deposited the funds in the Bank of Montreal mixed trust account on the closing date, June 30, 1994. \$1659 of this amount was provided by the client in trust to pay for fees and disbursements. The Land Transfer Tax, and registration of the deed amounted to \$985. The Solicitor omitted to charge the client \$50 for registration of the mortgage.

57. The Solicitor transferred \$2401.29 from the Bank of Montreal trust account to the Bank of Montreal general account on July 20, 1994. The difference between this amount and the amount from the Zufelt sale proceeds was posted to the Zufelt client ledger. The vendor executed the deed on June 28, 1994, and the mortgage on June 30, 1994. The Solicitor paid the registration fees and Land Transfer Tax on July 12, 1994. However, the cheque made in payment of these fees was returned because of insufficient funds. The member issued a certified cheque for these expenses on September 22, 1994.

58. The Solicitor misappropriated \$1035 on July 20, 1994 and made restitution on September 22, 1994.

2(c) Discharges of Mortgage

59. On numerous occasions clients advanced registration fees for discharging a mortgage to the Solicitor, but he failed to register the discharge. The funds were provided by the clients for the purpose of paying for the registration of the discharge. Rather than applying the funds for this purpose, the Solicitor transferred them from his trust account to his general account which was overdrawn thereby creating the misappropriation of a total of \$250.00.

Bayuz Estate Sale to Turgeon:

60. The member acted for the Bayuz Estate on a sale. The Solicitor received the closing funds and disbursed them on September 28, 1993. The fees and disbursements including a \$50 fee to register the discharge of the mortgage amounted to \$852.50. The Solicitor transferred \$852.50 from the trust account at the Bank of Montreal in Kingston to the general account at the same branch on September 30, 1993. He never registered the discharge.

Lloyd Sale to Asselstine:

61. The Solicitor acted for Beverly Lloyd on her sale to Asselstine. The fees and disbursements, including \$50 to register the discharge of the mortgage, amounted to \$692. On March 31, 1994, the Solicitor transferred \$692 from the trust account at the Bank of Montreal in Kingston to the general account at the same branch. He never registered the discharge.

Lumley Sale to Fernandez/Brooks:

62. The Solicitor acted for Moira Lumley on her sale to Fernandez/Brooks. The fees and disbursements which include a \$50 fee to register the discharge of the mortgage, amounted to \$846.08. The Solicitor transferred \$846.08 from the trust account at the Bank of Montreal in Kingston to the general account at the same branch on April 27, 1994. He never registered the discharge.

Adam Sale to Ryandale:

63. The Solicitor acted for Jeffrey and Susan Adam on their sale to Ryandale. The fees and disbursements, including a \$50 fee for registration of the discharge of the mortgage, amounted to \$638.50. The Solicitor transferred \$638.50 from the trust account at the Bank of Montreal in Kingston to the general account at the same branch on May 3, 1994. He never registered the discharge.

Fahey Sale to Gordon/Rudder:

64. The Solicitor acted for Ronald Fahey on his sale to Gordon/Rudder. The fees and disbursements, including \$50 to register the discharge of the mortgage amounted to \$638.50. On July 4, 1994, the Solicitor transferred \$638.50 from the Bank of Montreal in Kingston to the general account at the same branch. He never registered the discharge.

2(d) Misapplications - \$3,386.23

Beck

65. The Solicitor acted for Paul and Eunice Beck on the sale of 125 Centre Street, Belleville, Ontario. The purchasers provided a deposit of \$5000 to the realtors. The realtors were entitled to \$4809.65 for a real estate commission, and owed \$190.35 to Mr. and Mrs. Beck. The Solicitor calculated the amount due on closing to be \$20,280.45. The Solicitor's Reconciliation of Trust included a receipt of the commission refund. The Solicitor had not received the refund from the Realtors, when he paid the clients \$190.35, nor has he to date. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Flieler

66. The Solicitor erred in calculating the amount he owed to his clients from the sale proceeds of 14 Greenview Drive, Kingston. He transferred the total amount he had billed for fees and disbursements from the trust account to the general account when there were insufficient funds to cover the transfer. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Garbutt

67. The Solicitor received \$5879.61 in trust for his client, Garbutt. He issued a cheque to Gurnsey Real Estate for \$5099 leaving a trust balance of \$780.61 for the client. The Solicitor paid \$1437.50 in fees and disbursements to himself creating an overdraft of \$656.89. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Honey

68. The firm Howell, Fleming paid the Solicitor less than he had expected from the sale of the client's property at 1023 Ward Street, Bridgenor. He did not adjust the client's proceeds from the sale to reflect this. He transferred \$802.50 from the trust account to the general account for fees and disbursements when only \$695.50 was available. This created a shortage of \$107 in the trust account. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Labenz

69. The Solicitor held \$9041.85 in trust funds for his client, Labenz, on July 31, 1994. He paid the Receiver General \$9148.35 for non-resident withholding taxes for the client creating a shortage of \$196.50 in the trust account. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Maynard

70. On March 7, 1995, the Solicitor paid \$50 to the Minister of Finance for his client Maynard when there were no funds held in trust for the client. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Merklinger

71. The Solicitor held \$1950 in trust for the client as of June 30, 1994. On August 11, 1994, the Solicitor paid the Minister of Finance \$1990 on behalf of the client creating a shortage in the trust account of \$40. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Robbins

72. On February 28, 1995, the Solicitor held \$945.62 in trust for Robbins. On March 2, 1994, the Solicitor paid the client \$945.62 and the Minister of Finance \$795 and \$65 on the client's behalf creating a shortage of \$860 in the trust account. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Tyrrell

73. The Solicitor acted for Tyrrell in a real estate purchase. He deposited \$8719.10 from the client, on July 20, 1994, and \$32,501.75 from the CIBC, on July 26, 1994, into the Bank of Montreal mixed trust account, totalling \$41,220.85. On the day of closing, July 26, 1994, the Solicitor paid \$41,372.05 on the client's behalf to the firm Jacob, MacPherson & Hogan,

resulting in a misapplication of \$151.20 in trust funds. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Vyas

74. As of December 23, 1994 the Solicitor held no funds in trust for the client, Vyas, but paid the client \$500, causing a shortage of \$500 in the trust account. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

Zufelt

75. On June 30, 1994, the Solicitor held \$2824.77 in trust for his clients, Mr. and Mrs. Zufelt. On July 13, 1994, the Solicitor paid Mr. and Mrs. Zufelt, \$521.77, leaving a balance of \$2303 in trust funds for the Zufelts. The fees and disbursements for the purchase of 354 McEwen Drive, Kingston and the sale of the client's former property totalled \$2303. The Solicitor issued a cheque for \$2401.29 from the trust account to the general account to pay for the fees and disbursements, misapplying \$98.29 in trust funds. The payment to the client came from his mixed pool of client funds, thereby constituting a misapplication.

2(e) Failure to maintain sufficient funds in the mixed trust account to meet client obligations

76. The following clients trust ledgers were overdrawn in the following amounts at the time of the Law Society's attendance at the Solicitor's office:

Ball	\$577.76
Cassidy	\$107.00
Bank of Montreal	\$99.65

2(f) Borrowing from a Client and failing to disclose

Ron Fahey

77. The Solicitor reported, on the Law Society audit questionnaire completed December 5, 1994, that he had not borrowed money or otherwise become indebted to a client or former client, excluding financial institutions (Document Book - Tab 4).

78. On June 30, 1994, the Solicitor acted for Dr. Fahey on the sale of 79 Earl Street, Kingston, Ontario to Gordon/Rudder. On June 30, 1994, the Solicitor issued a cheque to Dr. Fahey for \$47,990.63 representing the sale proceeds. A cheque in the amount of \$15,000 was deposited into the Solicitor's general bank account at the Bank of Montreal on July 11, 1994. The Solicitor told the auditor that this deposit was a loan from Dr. Fahey and that the loan was secured by a promissory note due on demand. A 9% interest rate applied to the loan.

79. Marlene Chapman, the Law Society examiner, in her letter to Dr. Fahey dated January 5, 1996 requested that he confirm the terms of the loan and provide details of the circumstances leading to the loan (Document Book - Tab 5).

80. In his letter to Ms. Chapman, dated January 25, 1996, Dr. Fahey confirmed that the terms of the loan were as the Solicitor had described them to the examiner. He wrote that the Solicitor had approached him about the loan and that they had been personal friends for several years. Dr. Fahey had extra capital from the sale of his house and was moving to the United States from Kingston. The Solicitor never mentioned to him that it was "improper" for solicitors to borrow from clients. The Solicitor suggested to Dr. Fahey that if he wanted to he should have someone else look at the promissory note, however, Dr. Fahey chose not to (Document Book - Tab 6).

81. The Solicitor told Ms. Chapman that he had forgotten about the loan when he responded to the Law Society audit questionnaire, only five months after borrowing from Dr. Fahey.

2(g) Practising While Under Suspension

82. The Department of Audit and Investigation of the Law Society sent the Solicitor a notice on December 7, 1993 advising him that his annual filing for 1992 was in default (Document Book - Tab 7).

83. The Department sent a second notice to the Solicitor dated January 12, 1994 by way of registered mail advising for the second time that his annual filing for 1992 was in default. The Solicitor signed the acknowledgement of receipt card for this notice on January 20, 1994 (Document Book - Tab 8).

84. The Department sent a third notice to the Solicitor dated May 20, 1994 via registered mail. The Solicitor signed the acknowledgement of receipt card on June 10, 1994 (Document Book - Tab 9).

85. The Department notified the Solicitor that he was suspended for failure to pay the late filing fee by letter dated June 24, 1994 delivered by registered mail. The letter was returned unclaimed. The Law Society did not reinstate the Solicitor until November 29, 1994 when he had paid the late filing fee (Document Book - Tab 10). From June 24, 1994 to November 29, 1994 the Solicitor was suspended.

Zufelt:

86. The Solicitor closed a transaction for his clients, the Zufelts, on June 30, 1994 and reported to them on the closing of their mortgage and sale on July 12, 1994 (Document Book - Tab 11).

Eix/Reid:

87. The Solicitor closed a purchase transaction for his clients Eix and Reid and received a letter and cheque from the Toronto-Dominion Bank regarding his clients' mortgage on July 29, 1994 (Document Book - Tab 12). He received a letter from the city of Kingston on August 18, 1994 regarding the zoning of the clients' property (Document Book - Tab 13). On October 31, 1994, the Solicitor reported to the clients on the closing of the transaction (Document Book - Tab 14).

Tyrrell:

88. On July 25, 1994, the Solicitor closed a purchase transaction for his client, Tyrrell and on August 26, 1994, he reported on the closing (Document Book - Tab 15).

Martineau:

89. On August 26, 1994 the Solicitor received a letter from Household Trust concerning his client's mortgage (Document Book - Tab 16). He closed the client's purchase transaction on August 31, 1994 and reported on the closing to the client on November 22, 1994 (Document Book - Tab 17). On November 23, 1994 he sent a letter to Household Trust providing documentation of the transaction (Document Book - Tab 18).

Henriksen:

90. On September 30, 1994 the Solicitor closed a purchase transaction for his client Henriksen. On the same day he received a letter from the vendor's lawyer, Peter Radley, Q.C., confirming the mortgage arrangement between Henriksen and Mr. Radley's client. The Solicitor responded, on September 30, 1994, accepting the terms and conditions of the mortgage on behalf of his client (Document Book - Tab 19 and 20). On November 15, 1994, the Solicitor reported to National Trust, the mortgagor in the transaction (Document Book - Tab 21).

Amey:

91. On July 25, 1994, the Solicitor closed a purchase transaction for his client, Amey and reported on the closing on November 18, 1994 (Document Book - Tab 22).

Zavadiuk:

92. The Solicitor closed a purchase transaction for his client Zavadiuk on July 29, 1994 and reported on the closing on November 18, 1994 (Document Book - Tab 23).

93. The Solicitor admitted to the auditor that he had practised while under suspension. A colleague had advised him that he had seen the Solicitor's name published as a suspended member. The Solicitor then attempted to look up the Rules of Professional Conduct regarding suspended members.

94. The Solicitor did not intend to flaunt the Law Society's authority by practising while under suspension. He spent most of his time dealing with personal problems rather than practising law. He explained that he was experiencing a marriage breakdown at the time. The Solicitor also admitted to the auditor that he had a drinking problem which he suggested might account for his conduct.

95. The Solicitor recalled receiving several registered letters and other correspondence which he bundled up and put away without reading.

VI. PRIOR DISCIPLINE

96. On September 27, 1995 the Solicitor was suspended for one month and month to month thereafter until he had complied with the terms and conditions made by order of Convocation as a result of failing to file and failing to reply to the Law Society. He has not yet complied.

97. On November 30, 1994 the Solicitor was Reprimanded in Committee and ordered to pay \$450 in costs for failing to file and failing to reply to the Law Society.

98. The Solicitor also has a history of administrative suspensions.

DATED at Toronto this 15th day of September, 1997."

In addition to the Agreed Statement of Facts signed by the Solicitor, in which he admits the professional misconduct alleged, the Committee received the following material:

1. Submissions of the Solicitor, a copy of which is attached to these Reasons.
2. Letters of reference from Ms. Lin Good and from L.H. Tepper, Q.C.
3. Letter from Lanny Kamin, a solicitor in Kingston. Mr. Kamin acted for Mr. Bruce in his matrimonial matters. His letter provides some background explanation concerning that and contains a character reference for Mr. Bruce.
4. Bank statements outlining the time period when the Revenue Canada demand was received and when the bank called the Solicitor's line of credit.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Kenneth Ross Bruce be disbarred.

REASONS FOR RECOMMENDATION

Ms Budweth urges us to disbar the Solicitor. She argued that the misconduct was serious and over a period of time. The misappropriation under paragraph 2(a) was \$3,827.97 in 19 separate transactions. The loss from the misappropriation under particular 2(b) was approximately \$1,500.00 in 12 separate transactions over six months. Ms. Budweth pointed out that the delayed registration of deeds placed the clients at significant risk (even though no problems arose in this case from delayed registration). Ms. Budweth regarded the misappropriation of five separate \$50 amounts provided for registration of discharges of mortgages as a hallmark of the tragedy that had befallen this Solicitor.

27th November, 1997

Ms. Budweth argued that although there was no medical evidence she was prepared to acknowledge that the Solicitor was an alcoholic during the time frame of the misappropriations. The Solicitor had a marginal practice with a modest line of credit and the problems arose after the line of credit was called. She regarded the misappropriation as a sign of desperation rather than greed. Ms. Budweth characterized the character letters as positive for the Solicitor, and recognized that Mr. Tepper and Ms. Good were very prominent well-regarded people in Kingston. It was however Ms. Budweth's position that there was not sufficient evidence before the Committee to warrant a departure from the usual rule that disbarment will result from misappropriation.

Mr. Bishop, who was appearing for the Solicitor as an act of compassion and support, urged us to grant the Solicitor permission to resign and allow the Solicitor to maintain whatever dignity he has left by refraining from disbarring him. He pointed out that the Solicitor has had 22 good years at the Bar before his personal circumstances and financial circumstances overwhelmed him. He indicated that the misconduct was a result of matrimonial difficulties, alcoholism and depression. He indicated that the Solicitor is now in a new relationship, and has obtained modest employment working as a clerk in a hardware store.

The Committee was concerned about the virtual absence of evidence concerning the Solicitor's depression and alcohol abuse. We were however prepared to accept those factors when reaching our decision on penalty.

Notwithstanding our sympathy for the Solicitor as a result of the misfortunes that have overtaken him, we are not persuaded that the facts of this case bring it within the ambit of the decisions in *Steponaitis* and *McDonald* where solicitors who had misappropriated funds were granted permission to resign. Both *Steponaitis* and *McDonald* suffered very serious mental problems that significantly contributed to their misappropriations. The allegations against the Solicitor in this case are very similar to the case of *Moynihan* (1989) 778 P 2d.521. That decision involved a Washington State lawyer who was disbarred for misappropriating approximately \$5,100.00 while the lawyer was suffering from alcoholism. The *Moynihan* decision is frequently cited on readmission applications. *Monyhan* was successful in being readmitted to the Bar after he had recovered from his alcoholism.

The temptation to use trust accounts as a form of personal petty cash is very real for lawyers with marginal practices. But this petty dabbling into trust accounts is every bit as damaging to the integrity of the profession as the misappropriation of large amounts to satisfy greed.

Solicitors must be aware that if they misappropriate funds, as a general rule, they will be subject to disbarment. The fact that your practice is in economic difficulty, that your personal life is in disarray, and that you have succumbed to the abuse of alcohol, will not be a basis on which a solicitor is likely to be successful in obtaining permission to resign.

Kenneth Ross Bruce was called to the Bar on March 24, 1972.

ALL OF WHICH is respectfully submitted

DATED this 20th day of October, 1997

Paul D. Copeland, Chair

A letter from Mr. Bishop, counsel for the solicitor dated November 12th, 1997 was filed as Exhibit 3.

27th November, 1997

It was moved by Ms. Ross, seconded by Mr. Crowe that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Ms. Budweth read to Convocation the letter from Mr. Bishop indicating that the solicitor requested permission to resign. Ms. Budweth was opposed.

It was moved by Ms. Ross, seconded by Mr. Adams that the solicitor be disbarred.

Counsel, the reporter and the public withdrew.

The Ross/Adams motion that the solicitor be disbarred was voted on and lost.

It was moved by Ms. Puccini, seconded by Mr. Carey that the solicitor be granted permission to resign failing which he be disbarred.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be granted permission to resign failing which he would be disbarred.

Re: Christopher Marc CLOUTIER - Orleans

The Secretary placed the matter before Convocation.

Messrs. Millar and Ortved and Ms. Stomp and Ms. Cronk withdrew for this matter.

Ms. Rhonda Cohen appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before the Report of the Discipline Committee dated 23rd October, 1997, together with an Affidavit of Service sworn 27th October, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 24th October, 1997 (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 P. Armstrong, Q.C., Chair
Niels Ortved
Tamara K. Stomp

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

Rhonda Cohen
for the Society

27th November, 1997

CHRISTOPHER MARC CLOUTIER
of the City
of Orleans
a barrister and solicitor

Not Represented
for the solicitor

Heard: August 6, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 9, 1997 Complaint D148/97 was issued against Christopher Marc Cloutier alleging that he was guilty of professional misconduct.

The matter was heard in public on August 6, 1997 before this Committee composed of Robert P. Armstrong, Q.C., Chair, Niels Ortved and Tamara Stomp. The Solicitor did not attend the hearing, nor was he represented. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D148/97

2. a) He failed to produce his books and records for the purposes of an investigation under section 18 of Regulation 708 under the *Law Society Act*.

Finding of the Committee

The Solicitor did not attend in person or by representative. Exhibit 2 consisted of a Service Brief setting out contact, efforts of contact and documentary proof of same with the Solicitor relative to the Complaint and this Hearing date. That Brief plus the Affidavit of Service of Ronald Hoppie sworn April 21, 1997, which is attached to the Complaint, satisfy the Panel of service upon the Solicitor.

Evidence was heard from Margot Devlin, the manager of Examiner Programmes and Forms' Services of the Law Society of Upper Canada. She testified that an audit was authorized on January 3, 1995. Efforts made by members of the Audit Department to have the Solicitor produce his books and records are detailed in Exhibit 3 of the Document Book. No records have been produced.

A finding of professional misconduct is made.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Christopher Marc Cloutier be disbarred.

REASONS FOR RECOMMENDATION

It has been more than one year since the request to produce and the Solicitor has failed to comply. He has made no effort to cooperate. Although duly notified of the Hearing and that disbarment may be urged as a penalty, the Solicitor has made no attempts to participate in this Hearing.

This Committee recommends disbarment because we are persuaded that the Solicitor is ungovernable.

Although this single count of professional misconduct may not ordinarily attract the severest of penalties, the facts here are aggravated by the failure to cooperate and the history of the Solicitor which includes the following:

1. Presently, and since November 1, 1994, the Solicitor has been under administrative suspension for failure to pay the annual fee.
2. On March 23, 1995, Convocation ordered the Solicitor suspended for eight months for practising under suspension in 1992 (to take effect after any administrative suspension and therefore, has not yet been served).
3. On November 23, 1995, Convocation suspended the Solicitor for one month definite and indefinitely thereafter until filings were complete, for failing to file for the year ending January 31, 1994. (This suspension was also to take effect after any administrative suspension and therefore, has not yet been served.) Costs of \$400.00 were ordered but have not been paid yet.

The cumulative result is that the Solicitor has failed to meet the requirements of a member of the Law Society of Upper Canada since 1992. These requirements exist to protect the public. Without compliance, the Law Society is unable to fulfil its role of protecting the public. For reasons of both specific deterrence and general deterrence, disbarment is recommended.

Christopher Marc Cloutier was called to the Bar on the 6th day of April, 1984.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1997

Robert P. Armstrong, Q.C., Chair

There were no submissions.

It was moved by Mr. Carey, seconded by Mr. Swaye that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be disbarred.

Ms. Cohen made submissions in support of the recommended penalty.

Counsel, the reporter and the public withdrew.

It was moved by Ms. Sealy, seconded by Ms. Ross that the solicitor be disbarred.

Carried

It was moved by Ms. Puccini, seconded by Mr. Gottlieb that the solicitor be suspended indefinitely until the solicitor's books and records and other outstanding obligations to the Law Society are fulfilled.

Not Put

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

Re: Michael TAKATSCH - Toronto

The Secretary placed the matter before Convocation.

Messrs. Millar, Wilson, Swaye and Chahbar and Ms. Cronk withdrew for this matter.

Ms. Cohen appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 21st October, 1997, together with an Affidavit of Service sworn 27th October, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd October, 1997 (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

THE REPORT AND DECISION

Gerald A. Swaye, Q.C., Chair
Kim Carpenter-Gunn
Abdul A. Chahbar

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

Rhonda Cohen
for the Society

MICHAEL TAKATSCH
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 29, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 21, 1997 Complaint D157/97 was issued against Michael Takatsch alleging that he was guilty of professional misconduct.

The matter was heard in public on July 29, 1997 before this Committee composed of Gerald A. Swaye, Q.C., Chair, Kim Carpenter-Gunn and Abdul A. Chahbar. The Solicitor did not attend the hearing, nor was he represented. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D157/97

2. a) He failed to reply to communications from the Law Society regarding the investigation of a complaint by a client, Tom Gale.
- b) He failed to release a client file to his client, Tom Gale, despite a request that he do so.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D157/97 and is prepared to proceed with a hearing of this matter on July 29 & 30, 1997.

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 D157/97 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1980. He practises as an employee.

Particular 2a) He failed to reply to communications from the Law Society regarding the investigation of a complaint by a client, Tom Gale.

Particular 2b) He failed to release a client file to his client, Tom Gale, despite a request that he do so.

27th November, 1997

5. In or about August, 1990, Tom Gale retained the Solicitor on a Legal Aid Certificate to represent him with respect to a wrongful dismissal claim against his former employer. The Solicitor was instructed to reach a settlement with the employer, if possible, failing which to commence a claim. After some time, the Solicitor advised Mr. Gale that a claim had been commenced as no offer to settle was forthcoming from the employer. Thereafter, Mr. Gale made several requests of the Solicitor to allow him to review the file and obtain file documents. The Solicitor would not comply with his client's requests.

6. By letter dated October 8, 1996 (Tab 1, Document Book), Mr. Gale made a complaint to the Law Society:

This letter is in reference to the above Lawyer, Mr. Mike Takatsch. I retained Mr. Takatsch through Legal Aid back in August 1990 to pursue a Wrongful Dismissal of employment.

I was employed with Gift Craft located at 373 Front Street, Toronto, from July 31, 1986 to March 19, 1990. As of that date I was put on sick benefits, which I am still presently collecting. Details can be provided if required.

Since I retained Mr. Takatsch back in 1990, he had advised that every thing was being looked after. (Although he would not provide me any documentation) He advised that he was setting a court date and has dealt with Gift Craft on several occasions and they refused to offer any kind of settlement. On numerous occasions I have tried to get in touch with Mr. Takatsch and have been told that he's either unavailable, in court, or out of the office. He would never return my phone calls, and I have even visited his office on several occasions and he refused to show me my file or any pertinent documents pertaining to the case. I feel that I have been stonewalled by Mr. Takatsch and as a result he could very well have damaged my case against Gift Craft.

To this date, I do not believe Mr. Takatsch has done anything regarding this matter, and I would appreciate retaining a new lawyer. I would like to request copies of my file including all document if any, and have them forwarded to me immediately.

I would appreciate anything you could do to help me solve this situation, I believe I have been patient and fair to have given Mr. Takatsch 6 years to resolve this matter for me.

I look forward to hearing from your office at your earliest convenience, and please do not hesitate to contact me should you require any additional information.

7. By letter dated October 28, 1996 (Tab 4, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Gale's letter dated October 8, 1996. The Solicitor was asked to confirm the status of Mr. Gale's file and advise of the steps taken to protect Mr. Gale's interests in the matter. The Law Society reminded the Solicitor of his professional obligation to respond promptly to communications from the Law Society and requested his comments within two weeks. The Solicitor did not respond.

8. On each of November 18, 20 and 26, 1996, the Law Society called the Solicitor and left a message for him to return the call (Tab 5 of the Document Book). The Solicitor did not return the calls.

9. By registered mail dated December 2, 1996 (Tab 7, Document Book), the Law Society reminded the Solicitor of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if his response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was returned "unclaimed".

27th November, 1997

10. To date, the Solicitor has not responded to either Mr. Gale or the Law Society regarding the investigation of Mr. Gale's complaint. The Solicitor has not released the client file to Mr. Gale.

DATED at Toronto, this 30th day of April, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that if Michael Takatsch satisfactorily replies to the Law Society regarding an investigation of a complaint by his client Tom Gale, prior to this matter reaching Convocation, the Solicitor shall be reprimanded in Committee, failing which he is to be suspended for a fixed period of one month and thereafter indefinitely, on a month to month basis, until such time as a reply has been made to the satisfaction of the Law Society, in regard to his client Tom Gale.

REASONS FOR RECOMMENDATION

This matter came before the Committee on July 29, 1997. The Solicitor was not present, although he had signed an Agreed Statement of Facts. Apparently he attended on the morning of the hearing but did not wait until his hearing commenced on the same day.

The Solicitor indicated that he would not be challenging the submissions of the Law Society in regard to the submissions on penalty.

The complainant was in attendance for the hearing.

Pursuant to Paragraph 3 of the Agreed Statement of Facts, the Solicitor has reviewed this Complaint and admits the particulars contained therein. The Solicitor further admitted that the said particulars constitute professional misconduct.

The Solicitor has no discipline history. However, in a previous Complaint, D179-96 for failing to promptly reply to communications from the Law Society regarding another complainant, the Solicitor undertook on October 16, 1996, in consideration of such other complaint, to reply to written communication from the Law Society within seven days of receipt, and to reply to telephone communication from the Law Society within two business days. He also acknowledged that any breach of that acknowledgement and undertaking could lead to further discipline proceedings.

Notwithstanding that he had a complaint on this earlier occasion, some 12 days later, namely October 28, 1996, Mr. Gale made a complaint to the Law Society and the same was ignored by the Solicitor. The Law Society attempted to contact the Solicitor but had difficulty in communicating with him. Ultimately, the Solicitor co-operated with the Law Society in entering into an Agreed Statement of Facts.

It was submitted by Counsel on behalf of the Law Society as follows:

1. The Solicitor signed an Agreed Statement of Facts.
2. The Solicitor attended for his hearing in the morning, but did not wait until his hearing was called.
3. The Solicitor indicated to the Law Society that he would not challenge the Law Society submissions in regard to penalty.
4. The Solicitor still has not replied to the Law Society.

27th November, 1997

5. The client has the bulk of the file which is the subject of the present Complaint.
6. The Solicitor knows he is remiss in his obligations.
7. The Solicitor has no discipline history.
8. The Solicitor agreed to reply to any communications, from the Law Society, 12 days prior to the within complaint of Mr. Gale. He has breached this undertaking. One can only come to the conclusion that his undertaking left something to be desired.

The Committee is of the view that if the Solicitor replies and co-operates with the Law Society in regard to the file of Tom Gale, prior to arriving in Convocation, then Convocation should reprimand him in Committee. However, if he fails to co-operate, he should be suspended for a fixed period of one month, and thereafter indefinitely on a month to month basis until such time as he has satisfactorily replied to the concerns of the Law Society.

Michael Takatsch was called to the Bar on the 10th day of April, 1980.

ALL OF WHICH is respectfully submitted

DATED this 21st day of October, 1997

Gerald A. Swaye, Q.C., Chair

There were no submissions.

It was moved by Mr. Topp, seconded by Ms. Ross that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if he satisfactorily replies to the Law Society regarding an investigation of a complaint by a client, failing which he is to be suspended for a fixed period of 1 month and thereafter indefinitely, on a month to month basis until a reply has been made to the satisfaction of the Law Society.

Ms. Cohen made submissions in support of the recommended penalty of suspension.

It was moved by Ms. Sealy, seconded by Mr. Cole that the solicitor be suspended for a fixed period of 1 month and thereafter indefinitely, on a month to month basis until a reply has been made to the satisfaction of the Law Society.

Carried

Re: Shayna Bella KRAVETZ - Toronto

The Secretary placed the matter before Convocation.

Messrs. Marrocco, Millar, Wilson, Carey and Gottlieb and Ms. Cronk withdrew for this matter.

Mr. Glenn Stuart appeared for the Society. The solicitor appeared on her own behalf.

27th November, 1997

Convocation had before it the Report of the Discipline Committee dated 21st May, 1997, together with an Affidavit of Service sworn 28th May, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd May, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th September, 1997 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas J. P. Carey, Chair
Gordon Z. Bobesich
Gary L. Gottlieb, Q.C.

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

Glenn Stuart
for the Society

SHAYNA BELLA KRAVETZ
of the City
of Toronto
a barrister and solicitor

Karen L. Crozier
for the solicitor

Heard: March 18, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 26, 1996 Complaint D226/96 was issued, on October 16, 1996 Complaint D249/96 was issued, and on December 16, 1996 Complaint D343/96 was issued against Shayna Bella Kravetz alleging that she was guilty of professional misconduct.

The matter was heard in public on March 18, 1997 before this Committee composed of Thomas J.P. Carey, Chair, Gordon Z. Bobesich and Gary L. Gottlieb, Q.C. The Solicitor attended the hearing and was represented by Karen L. Crozier. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D226/96

2. a) In representing her client George Gouvis in connection with a motor vehicle accident:

27th November, 1997

- i) On January 20, 1993 and again on January 29, 1993, the Solicitor breached the terms of an escrow agreement between herself and Stan Raphael, solicitor for the defendant Patel, by disbursing to herself a portion of the settlement funds sent to her by Mr. Raphael in escrow, without having fulfilled the escrow conditions;
 - ii) On January 20, 1993 and again on January 29, 1993, the Solicitor breached the provisions of section 14(8) of Regulation 708 under the *Law Society Act* by withdrawing money from her trust account for payment of her fees, without having delivered a fee billing or other written notification; and
 - iii) On or about April 1, 1993, the Solicitor breached the provisions of section 14(12) of Regulation 708 under the *Law Society Act* by issuing a trust cheque to return the settlement funds to Mr. Raphael without replacing the funds which she had earlier paid to herself, thus creating a trust shortage.
- b) The Solicitor breached an Order of Convocation that she suspend her practice for failure to pay her Errors & Omissions Insurance Levy, by continuing to practise during the period December 2, 1994 to April 7, 1995.

Complaint D249/96

2. a) She failed to produce the books and records of her practice for examination pursuant to section 18 of Regulation 708 under the *Law Society Act* by failing to reply to the Law Society's requests that she so produce as follows:
- i) a visit of May 8, 1996;
 - ii) letters of May 14, 1996, June 3, 1996, June 14, 1996 and June 28, 1996: and
 - iii) a telephone call of May 13, 1996.

Complaint D343/96

2. a) She failed to file with the Society within six months of the termination of her fiscal year ending December 31, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 pursuant to the *Law Society Act*.

EVIDENCE

Part of the evidence before the Committee consisted of the following Agreed Statements of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D226/96 and is prepared to proceed with a hearing of this matter on March 4 & 5, 1997.

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 D226/96 and admits the particulars contained therein. The Solicitor further admits that the said particulars, supported by the facts hereinafter set out, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 9, 1981 and carries on practice as a sole practitioner in Toronto, Ontario, practising in the areas of civil and criminal litigation and refugee law.

Particular 2(a) In representing her client George Gouvis in connection with a motor vehicle accident:

- (i) On January 20, 1993 and again on January 29, 1993, the Solicitor breached the terms of an escrow agreement between herself and Stan Raphael, solicitor for the defendant Patel, by disbursing to herself a portion of the settlement funds sent to her by Mr. Raphael in escrow, without having fulfilled the escrow conditions;
- (ii) On January 20, 1993 and again on January 29, 1993, the Solicitor breached the provision of section 14(8) of Regulation 708 under the *Law Society Act* by withdrawing money from her trust account for payment of her fees, without having delivered a fee billing or other written notification; and
- (iii) On or about April 1, 1993, the Solicitor breached the provisions of section 14(12) of Regulation 708 under the *Law Society Act* by issuing a trust cheque to return the settlement funds to Mr. Raphael without replacing the funds which she had earlier paid to herself, thus creating a trust shortage.

5. On or about September 6, 1989, the Solicitor was retained by George Gouvis with respect to two separate motor vehicle accidents. Mr. Gouvis provided the Solicitor with a retainer of \$1,000.00 which was deposited into the Solicitor's mixed trust account. A copy of the trust ledger is attached hereto as Exhibit 1 to this Agreed Statement of Facts.

6. As a result of ongoing negotiations, the defendants in the two motor vehicle actions made an offer to settle to the Solicitor in the amount of \$30,000.00. Mr. Stan Raphael, acting for one of the defendants, confirmed the offer by letter dated January 7, 1993, and a cheque in the amount of \$15,000.00. With respect to the cheque, he instructed the Solicitor as follows: "I am therefore enclosing my principal's cheque in the amount of \$15,000.00 which I would ask you to hold in escrow pending receipt of Mr. Gouvis' Full and Final Release." A copy of this letter is attached hereto as Exhibit 2 to this Agreed Statement of Facts. It is the Solicitor's position that she received verbal instructions from her client to accept the settlement offer.

7. On January 8, 1993, the Solicitor deposited the cheque for \$15,000.00 to her mixed trust account, as evidenced by her bank deposit book, a copy of which is attached hereto as Exhibit 3 to this Agreed Statement of Facts and by the client trust ledger card, a copy of which is attached hereto as Exhibit 1 to this Agreed Statement of Facts.

8. On January 20, 1993, the Solicitor met with her client, George Gouvis, at which time Mr. Gouvis rejected the settlement offer and so instructed the Solicitor in writing. A copy of those instructions is attached hereto as Exhibit 4 to this Agreed Statement of Facts.

9. On January 20, 1993, the Solicitor disbursed \$3,300.00 from the Gouvis trust account to her general account for estimated fees. No fee billing had been prepared or rendered. A copy of the cheque is attached hereto as Exhibit 5 to this Agreed Statement of Facts.

10. According to the trust ledger (Exhibit 1), as of January 20, 1993, none of Gouvis' original \$1,000.00 retainer remained in trust and he had not provided any further retainer to the Solicitor.

11. On January 25, 1993, the Solicitor notified the solicitors for the other parties of her client's instructions. A copy of this notification is attached hereto as Exhibit 6 to this Agreed Statement of Facts.

12. By letter dated January 28, 1993, Stan Raphael rejected the Solicitor's counter-offer and required the return of the escrow cheque in the amount of \$15,000.00. A copy of this letter is attached hereto as Exhibit 7 to this Agreed Statement of Facts. It is the Solicitor's position that she did not receive this letter until some days later.

13. On January 29, 1993, the Solicitor disbursed a further \$850.00 from the Gouvis trust account to her general account, again for estimated fees. No fee billing had been prepared or rendered, and no further funds had been received from Gouvis. A copy of the cheque is attached hereto as Exhibit 8 to this Agreed Statement of Facts.

14. By letter dated February 12, 1993, Stan Raphael again wrote to the Solicitor demanding the return of the escrow cheque in the amount of \$15,000.00. A copy of this letter is attached hereto as Exhibit 9 to this Agreed Statement of Facts.

15. By letter dated March 19, 1993, Stan Raphael again wrote to the Solicitor requiring the return of the \$15,000.00. A copy of this letter is attached hereto as Exhibit 10 to this Agreed Statement of Facts.

16. By letter dated March 31, 1993, the Solicitor returned a trust cheque in the amount of \$15,000.00 to Stan Raphael. A copy of this letter is attached hereto as Exhibit 11 to this Agreed Statement of Facts and a copy of the cheque is attached hereto as Exhibit 12 to this Agreed Statement of Facts.

17. As of March 31, 1993, the Solicitor had not reimbursed the funds she had disbursed from the Gouvis trust account, and therefore the return of the settlement money caused the trust ledger account to be overdrawn by the amount of \$4,150.00. On July 2, 1993, the trust shortage was corrected when further settlement funds were received.

18. On July 6, 1993, the Solicitor disbursed a further \$850.00 from the trust account for estimated fees and disbursements. No fee billing had been prepared or rendered. A copy of this cheque is attached hereto as Exhibit 13 to this Agreed Statement of Facts.

19. On February 20, 1994, the Solicitor prepared and rendered an accounting to George Gouvis for fees and disbursements in the amount of \$5,345.58. A copy of this fee billing is attached hereto as Exhibit 14 to this Agreed Statement of Facts.

27th November, 1997

20. On September 16, 1994, the Solicitor wrote to the Law Society, admitting to disbursing funds from trust without preparing a fee billing and to placing the trust account in overdraft for three months. A copy of this letter is attached hereto as Exhibit 15 to this Agreed Statement of Facts.

Particular 2(c) The Solicitor breached an Order of Convocation that she suspend her practice for failure to pay her Errors & Omissions Insurance Levy, by continuing to practise during the period December 2, 1994 to April 7, 1995.

21. On July 1, 1994, the Solicitor was sent a Notice informing her that her Errors & Omissions Insurance Levy for the period July 1, 1994 to December 31, 1994 was due. A sample of this Notice is attached hereto as Exhibit 16 to this Agreed Statement of Facts.

22. On October 24, 1994, the Solicitor was sent a Second and Final Notice again indicating her Errors & Omissions Insurance Levy was due before December 1, 1994. A sample of this Notice is attached hereto as Exhibit 17 to this Agreed Statement of Facts.

23. By letter dated December 2, 1994, the Solicitor wrote to the Society indicating that she was unable to pay the Levy in one sum. She enclosed a certified cheque dated December 1, 1994 in the amount of \$1,251.25 and a further post-dated cheque in the amount of \$1,250.00, dated December 28, 1994. A copy of this letter and cheques is attached hereto as Exhibit 18 to this Agreed Statement of Facts.

24. By registered letter dated December 5, 1994, the Society wrote to the Solicitor informing her that her rights and privileges as a member of the Society had been suspended effective December 2, 1994. According to the registration receipt, this notice was received by the Solicitor on December 6, 1994. A copy of this letter and registration receipt are attached hereto as Exhibit 19 to this Agreed Statement of Facts.

25. On December 15, 1994, the Solicitor spoke with Debbie Mosehab of the Society's Membership Department. Ms. Mosehab informed the Solicitor that her cheques were being returned to her and that her membership would not be reinstated until full payment was made and her annual filings, which were in arrears to December 31, 1992, were brought up to date. A copy of the notes of this telephone conversation are attached hereto as Exhibit 20 to this Agreed Statement of Facts.

26. On January 21, 1995, the Solicitor forwarded two certified cheques with respect to the Errors & Omissions Insurance Levy. That same date, Salma Andani of the Society's Membership Department, spoke to the Solicitor and informed her her membership could not be reinstated until she brought her annual filings up to date and paid the late filing fee of \$1,500.00. A copy of the notes of that telephone conversation are attached hereto as Exhibit 21 to this Agreed Statement of Facts.

27. On January 25, 1995, Salma Andani wrote to the Solicitor, confirming that she could not be reinstated until she had satisfied her filing obligations. A copy of this letter is attached hereto as Exhibit 22 to this Agreed Statement of Facts.

28. By letter dated March 19, 1995, the Solicitor wrote to the Society enclosing three post-dated cheques for payment of the late filing fee. A copy of this letter is attached hereto as Exhibit 23 to this Agreed Statement of Facts.

29. On March 24, 1995, an Examiner for the Law Society attended at the Solicitor's office with respect to an audit. The Examiner asked the Solicitor if she was aware that she was currently under suspension. The Solicitor replied that she thought she had been reinstated as she had paid the Errors & Omissions Insurance Levy and had sent post-dated cheques to the Society with respect to the late filing fee. A copy of the notes of this conversation are attached hereto as Exhibit 24 to this Agreed Statement of Facts.

30. On March 28, 1995, the Examiner, after discussions with a number of Law Society personnel, advised the Solicitor that, upon payment of the reinstatement fee, her membership would be reinstated despite the fact that none of the post-dated cheques for the late filing fee had yet become due. A copy of the notes of this conversation are attached hereto as Exhibit 25 to this Agreed Statement of Facts.

31. On April 7, 1995, the Solicitor sent to the Society a certified cheque for the reinstatement fee, and her membership was reinstated on that date. A copy of the Solicitor's letter and cheque is attached hereto as Exhibit 26 to this Agreed Statement of Facts.

32. During the period December 6, 1994 to April 7, 1995, the Solicitor practised law as follows:

- (a) On December 12, 1994 and January 16, 1995, the Solicitor attended on examinations for discovery with respect to her client, Ron Whitehead. Attached hereto as Exhibit 27 to this Agreed Statement of Facts are copies of the notes made by the Solicitor during those examinations.
- (b) On December 22, 1994, the Solicitor prepared and notarized a Statutory Declaration for her client, Randy Rosales. A copy of the Statutory Declaration is attached hereto as Exhibit 28 to this Agreed Statement of Facts and a copy of the fee billing dated December 22, 1994, prepared by the Solicitor, is attached hereto as Exhibit 29 to this Agreed Statement of Facts.
- (c) On December 20, 1994 and January 10, 1995, the Solicitor attended at Youth Court on behalf of her client, Chantal W. Attached hereto as Exhibit 30 to this Agreed Statement of Facts are copies of the notes the Solicitor made during those appearances. The Solicitor made further Court appearances on behalf of this client in February and March, 1995. Attached hereto as Exhibit 31 to this Agreed Statement of Facts are copies of her reporting letter to the client and fee billing to Legal Aid confirming those appearances.
- (d) On February 10, 1995, the Solicitor met with her client, Jose Pimentel, and on February 13, 1995, she represented him on a criminal trial in Collingwood. Attached hereto as Exhibit 32 to this Agreed Statement of Facts is a copy of her reporting letter, dated February 14, 1995, to the client.
- (e) On February 8 and February 14, 1995, the Solicitor met with her client, Edward Garness, to discuss assault charges which he had laid against his ex-wife's boyfriend. Attached hereto as Exhibit 33 to this Agreed Statement of Facts are copies of the notes of the Solicitor written during these discussions.
- (f) During the period January 13, 1995 to March 6, 1995, inclusive, the Solicitor represented her client, Ian Keough, with respect to a criminal charge of assault. Attached hereto as Exhibit 34 to this Agreed Statement of Facts are copies of the notes made by the Solicitor with respect to that client during this time period.

V. DISCIPLINE HISTORY

33. The Solicitor was found guilty of professional misconduct on September 14, 1993 with respect to failing to file her Forms 2/3 for the fiscal year ended December 31, 1991, for failing to reply to the Law Society regarding a complaint, and failing to reply to the Law Society regarding inadequacies discovered in her books and records. She was reprimanded in Committee and ordered to pay costs in the amount of \$500.00, which have been paid in full.

34. The Solicitor was found guilty of professional misconduct on June 7, 1995 with respect to failing to file her Forms 2/3 and practising under suspension. She was reprimanded in Committee and executed an Undertaking to perform 20 consecutive days of volunteer unpaid legal services; to report in writing to the Law Society within 10 days of completion; and not to practise during these 20 days.

35. The Solicitor was found guilty of professional misconduct on June 12, 1996 with respect to failing to reply to the Law Society and for failing to honour a financial obligation. She was reprimanded in Committee and ordered to pay costs in the amount of \$300.00, which remain outstanding.

DATED at Toronto this 28th day of February, 1997."

Re: Complaint D249/96

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

36. The Solicitor admits service of Complaint D249/96 and is prepared to proceed with a hearing of this matter on March 4 & 5, 1997.

II. IN PUBLIC/IN CAMERA

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

II. ADMISSIONS

38. The Solicitor has reviewed Complaint D249/96 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

39. The Solicitor was called to the Bar on April 9, 1981 and carries on practice as a sole practitioner in Toronto, Ontario, practising in the areas of civil and criminal litigation and refugee law. She has been suspended for non-payment of her annual fees since December 31, 1995.

40. An audit of the Solicitor's books and records was instructed to determine whether or not the Solicitor engaged in the practice of law since her suspension on December 31, 1995. On May 8, 1996, Examiners with the Audit and Investigation Department of the Law Society attended at the Solicitor's office unannounced. The Solicitor was not in the office. The Examiners each left their business cards with the receptionist and requested that the Solicitor call either Examiner that afternoon or the following day. A copy of the notes of the Examiners' attendance is attached hereto as Exhibit 1 to this Agreed Statement of Facts.

41. On May 13, 1996, the Examiner called the Solicitor's office and was advised by the receptionist that the Solicitor would be in that afternoon. The Examiner called the Solicitor's office that afternoon and left a message on her voice mail to return his calls. The Solicitor did not return the calls. A copy of the notes of the telephone messages is attached hereto as exhibit 2 to this Agreed Statement of Facts.

42. By letter dated May 14, 1996, the Examiner advised the Solicitor that he had been instructed to conduct an examination of the Solicitor's books and records and requested the Solicitor to produce the same. The Solicitor was asked to contact the Examiner by May 28, 1996 to arrange an appointment to review the books and records. The Solicitor did not respond. A copy of this letter is attached hereto as Exhibit 3 to this Agreed Statement of Facts.

43. On May 29, 1996, the Examiner called the Solicitor and left a message with her secretary to call. On May 30, 1996, the Examiner again called the Solicitor's office and left a message requesting her to call by the following day. The Solicitor did not return the calls. A copy of the notes of the telephone messages is attached hereto as Exhibit 4 to this Agreed Statement of Facts.

44. By letters dated June 3 and June 14, 1996, the Examiner asked the Solicitor to reply to his earlier correspondence. The Solicitor did not respond. Copies of the letters are attached hereto as Exhibits 5 and 6 to this Agreed Statement of Facts.

45. On June 24, 1996, Pia from the Solicitor's office called the Examiner and advised him that the Solicitor would be contacting him in the next couple of days. A copy of the notes of the telephone conversation is attached hereto as Exhibit 7 to this Agreed Statement of Facts.

46. The Solicitor did not contact the Examiner at that time. By registered letter dated June 28, 1996, the Examiner provided the Solicitor with copies of his previous letters to her. The Solicitor was advised that if the matter was not resolved within two weeks, the matter would be referred to the Discipline Committee. The Law Society's letter was delivered and signed for on July 5, 1996. The Solicitor did not respond. Copies of this letter and the signed acknowledgement of receipt card are attached hereto as Exhibit 8 to this Agreed Statement of Facts.

47. To date, the Solicitor has not provided a meaningful response to the Law Society and has not produced the books and records of her practice.

V. PRIOR DISCIPLINE

48. On September 14, 1993, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$500.00 for failing to file her forms 2/3 for the fiscal year ended December 31, 1991 and failing to reply to the Law Society.

49. On June 7, 1995, the Solicitor was reprimanded in Committee and undertook to perform 20 consecutive days of volunteer legal services as a result of her failing to file her forms 2/3 for the fiscal year ended December 31, 1993 and practising under suspension. The Solicitor was not to practise during this 20 day period. The Solicitor complied with her undertaking.

50. On June 12, 1996, the Solicitor was reprimanded in Committee and ordered to pay costs in the amount of \$300.00 by September 12, 1996 for failing to reply to the Law Society and failing to honour a financial obligation. The costs remain outstanding.

DATED at Toronto, this 28th day of February, 1997."

Finding of the Committee

Based on the Agreed Statement of Facts there were findings of professional misconduct on each of Complaints D226/96, D249/96 and D343/96.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Shayna Bella Kravetz be suspended for a period of five months, commencing at the conclusion of the current administrative suspension, and continuing indefinitely until the outstanding filings in relation to Complaint D343/96 are made.

REASONS FOR RECOMMENDATION

As to penalty, in viewing all of the conduct together, the Committee is of the view that the appropriate penalty is that the Solicitor be suspended for a period of five months. The period of suspension should follow the completion of the present administrative suspension that the Solicitor is serving. In addition, she is to be suspended from month to month until the filings that are outstanding in relation to Complaint D343/96 are made.

It is not the first time before a Committee of the Law Society for the Solicitor. However, it should be noted that some of these Complaints arose prior to the discipline that is noted on June 7, 1995 and June 12, 1996 and in those circumstances, these prior discipline matters are not prior for the purpose of sentencing the Solicitor.

We have heard submissions as to the Solicitor's practice. The Solicitor has not made a lot of money at the practice of law and has been particularly hard hit by the change in the tariff in the Legal Aid Plan and by the concurrent raising of the Errors and Omissions premiums that happened at about the same time.

The matter in paragraph 2(a) of Complaint D226/96 is a serious matter, although the Committee accepts that there may have been some confusion on the part of the Solicitor and there may have been financial difficulties that led her to remove funds without the rendering of an account. At the time of settlement, funds should have remained in escrow as there had not been a release signed by her client. The matter was not dealt with appropriately by the Solicitor and it should have been apparent to her that she was acting in a way not consistent with her obligations as a solicitor in the handling of her trust funds.

Paragraph 2(b) as amended on Complaint D226/96 deals with the Solicitor practising under suspension for a period from December 2, 1994 to April 7, 1995. There was some argument as to whether this period of time was inclusive or whether the Solicitor should be deemed as only practising on the dates as set out in the Agreed Statement of Facts.

The Committee has concluded that the Solicitor was substantially practising throughout this period of time. We are mindful, however, that the rule of thumb as set out in MacGregor is not meant to be slavishly followed and therefore, the period of suspension is not one exactly parallel to the period of time when she was practising under suspension, but is a reduced one to reflect the mitigating circumstances of her financial situation and the medical information (attached to this Report), such as it was, that we have heard as it relates to her present situation.

27th November, 1997

It is also clear that some of what she did at the time of the alleged practising under suspension was in an attempt to comply with the directions sent by the Law Society at the time of the notification of her suspension. It is also clear that she was attempting to reinstate herself and at one point, a cheque was sent back from the Law Society. Although it was a certified cheque it was sent back because it was not in full and she later incurred late penalty fees. It appears to be an unfortunate inflexibility on the part of the Law Society that, in this particular case, may have compounded a financial situation or financial hardship and it's somewhat difficult to understand why a certified cheque would be sent back to a solicitor as opposed to being applied to an account.

This is a matter that points out the difficulty with payments being required in a lump sum fashion without any recognition of the financial hardship that the profession is experiencing at this time and certainly, this Committee is not unsympathetic to the Solicitor's situation.

The count relating to the failing to file, we are told is directly related to inability to financially afford the services of an accountant. However, the requirements of the regulations are there for a reason and do require adherence. We accept, in part, the mitigating factors here.

In relation to Complaint D249/96, it was submitted to us that the Solicitor had no ulterior motive not to produce these records, but was rather concerned about the complete nature of her records. It's not a submission that is very convincing to us. However, there is a lack of an aggravating circumstance here in terms of any serious irregularities. It is, however, another indication of a less than ideal practice on the part of the Solicitor.

We're mindful in assessing the appropriate penalty of the need for a penalty to reflect the seriousness of the offenses, to protect the public but not to be so harsh a penalty to the Solicitor as to prevent her from getting back into practice and being a useful member of the Law Society. In our view, the penalty of five months' suspension, in addition to the other suspensions that must be served, will accomplish this. We are of the view that the Solicitor has not made the pursuit of money and profits a major goal of her practice, but rather has practised in areas of law very important to the public and has apparently done so in a generally competent fashion, earning income well below the average for lawyers, and certainly well below the level of remuneration for many non-professionals. All of this is mitigating in her case.

We do not want to send out the message to the profession that the practice of law in marginal areas should be abandoned and apparently much of the work of this Solicitor has been worthwhile work. We have in our possession her resume which indicates a considerable contribution to her community, to her church, to women's groups and to the Legal Aid Plan. None of these contributions would appear to be the type of contributions that would be made for self-aggrandisement, but rather contributions that are made out of a real dedication to the areas where these contributions have been made.

We're very mindful of this public spiritedness in assessing the appropriate penalty. We're mindful that the counsel for the Law Society has sought a penalty in the range of seven to nine months. Were it not for the mitigating circumstances and the personal background of this Solicitor, we would be inclined to agree with a higher penalty than we have assessed. I thank counsel for their contributions.

We have before us a request for costs. In all of the financial circumstances, we are not inclined to put a further financial burden on the Solicitor by ordering costs, although it might otherwise be appropriate. We feel that the hurdles that the Solicitor must deal with to get back into practice are going to be substantial as they are.

27th November, 1997

Shayna Bella Kravetz was called to the Bar on April 9, 1981.

ALL OF WHICH is respectfully submitted

DATED this 21st day of May, 1997

Thomas J.P. Carey, Chair

Mr. Stuart requested that the following correction be made to the Report:

- page 8, paragraph 29, 5th line - replace "resect" with the word "respect" so it then read: ".....with respect to the late filing fee."

It was moved by Mr. Topp, seconded by Mr. MacKenzie that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 5 months, commencing at the conclusion of the current administrative suspension, and continuing indefinitely until the outstanding filings in relation to Complaint D343/96 are made.

Mr. Stuart made submissions in support of the recommended penalty but that the recommendation be amended to provide that the solicitor produce her books and records.

The solicitor agreed to the amendment.

It was moved by Ms. Ross, seconded by Mr. MacKenzie that the solicitor be suspended for a period of 5 months, commencing at the conclusion of the current administrative suspension and continuing indefinitely until the outstanding filings are made and the books and records are produced.

Carried

Re: David Gerard CASEY - Ottawa

The Secretary placed the matter before Convocation.

Messrs. Millar, Wilson, Ruby, Gottlieb and Chahbar and Ms. Cronk withdrew for this matter.

Mr. Stuart appeared on behalf of the Society and Mr. John Rosen, duty counsel, appeared on behalf of the solicitor who was present.

Mr. Rosen on behalf of the solicitor requested an adjournment.

The Society opposed the adjournment.

The following corrections were made to the Report:

- (1) page 13, paragraph 54, 6th line - the word "defendant" should be changed to "plaintiff"
- (2) page 23, paragraph 1. should be clarified by adding at the end of the sentence the words "of withdrawal" so it then read: ".....unless his physician approves of withdrawal".

There were questions from the Bench.

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

It was moved by Mr. Topp, seconded by Mr. Swaye that the adjournment be granted to the next Discipline Convocation in January.

Carried

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the matter proceed but give the solicitor the right to request an adjournment should the issue of a higher penalty arises.

Not Put

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision to grant the adjournment to the Discipline Convocation in January.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:20 P.M.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

Acting Treasurer (Ron Manes, Q.C.), Adams, Angeles, Arnup, Backhouse, Carey, Carter, Chahbar, Crowe, DelZotto, Gottlieb, MacKenzie, Marrocco, Millar, Ortved, Puccini, Ross, Ruby, Sealy, Stomp, Swaye, Topp and Wilson.

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IN PUBLIC

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Re: Yaroslav MIKITCHOOK - Toronto

The Secretary placed the matter before Convocation.

Messrs. Gottlieb and Carey and Ms. Stomp withdrew for this matter.

Ms. Elizabeth Cowie appeared for the Society and Mr. Rosen appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 3rd October, 1997, together with an Affidavit of Service sworn 27th October, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd October, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th November, 1997 (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

Tamara Stomp, Chair
Vern Krishna, Q.C.
Gary Gottlieb, Q.C.

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

Neil Perrier
for the Society

YAROSLAV MIKITCHOOK
of the City
of Toronto
a barrister and solicitor

Morris Singer
for the solicitor

Heard: August 13, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 14, 1996 Complaint D87/96 was issued against Yaroslav Mikitchook alleging that he was guilty of professional misconduct.

The matter was heard in public on August 13, 1996 before this Committee composed of Tamara Stomp, Chair, Vern Krishna, Q.C. and Gary Gottlieb, Q.C. The Solicitor attended the hearing and was represented by Morris Singer. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D87/96

2. a) He misappropriated trust funds in the total amount of \$10,102.00; and
- b) He misapplied trust funds in the total amount of \$5,810.67 in circumstances where monies were paid from the mixed pool of trust funds to or on behalf of clients who had no funds or insufficient funds on deposit.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D87/96 and is prepared to proceed with a hearing of this matter on August 13 and 14, 1996.

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 D87/96 and admits the particulars but does not admit that the particulars contained in paragraph 2(a) constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in March, 1975. He currently practises as a sole practitioner in Toronto with an emphasis on litigation law.

V. BACKGROUND

5. An audit was authorized under Section 18 of Regulation 708 as the annual statutory declaration and forms filed by the Solicitor's accountant for the fiscal year ending March 31, 1992 revealed overdrawn trust ledger accounts.

6. The Solicitor's bookkeeper, Mr. Gord Navis, informed the Examiner that the Solicitor's prior bookkeeper quit in May of 1993 and that he was retained in February of 1994 at which time the books and records were in arrears from May 31, 1992.

7. On May 10, 1994, Mr. Navis experienced health (heart) problems and was told by his cardiologist to reduce his workload. Consequently, the Solicitor's bookkeeping arrears did not receive any attention from him until July 29, 1994.

8. When the Examiner commenced her audit in October, 1994, the most current trust comparison was at June 30, 1994, which showed overdrawn trust ledger balances of approximately \$24,294.62. In or about August of 1994, the accountant informed the Solicitor that there was a trust shortage, but an exact amount was not mentioned.

9. As the Solicitor was out of town on business an appointment was scheduled for October 19, 1994 at which time Mr. Navis undertook to provide trust comparisons for the months of July, August and September, 1994.

10. On October 21, 1994, Mr. Navis delivered the trust comparisons to the Society; the actual shortage as of September 30, 1994 was \$16,738.47.

11. Mr. Navis advised the Society that the trust shortage was reduced by approximately \$8,000 between June and September, 1994 from funds received on account of fees being injected into the trust account.

12. Co-signing controls were not placed against the trust account as the shortage of \$16,738.47 was replaced by the Solicitor on October 24, 1994 by:

1. transferring \$11,478.06 of earned and billed fees from his trust account to his general account;

- 2. depositing \$11,038.47 from his general account to his trust account; and
- 3. depositing a further \$5,700.00 of his personal funds to his trust account.

Particular 2(a) He misappropriated trust funds in the total amount of \$10,102.00

13. The client ledger accounts summarized at Appendix "A" relating to withdrawal from his trust account which resulted in trust shortages in the ScotiaBank trust account which the Solicitor transferred into his general account.

Particular 2(b) He misapplied trust funds in the total amount of \$5,810.67 in circumstances where monies were paid from the mixed pool of trust funds to or on behalf of clients who had no funds or insufficient funds on deposit.

14. The client ledger accounts summarized at Appendix "B" relating to withdrawal from his trust account which resulted in trust shortages in the ScotiaBank trust account which the Solicitor transferred to third parties or clients.

15. Although there was a shortage of approximately \$16,738.47 as of September 30th 1994 in the mixed trust account, it appears from Appendix "C" that there were funds in the amount of \$11,478.06 being held in the mixed trust account representing earned and billed fees.

16. Taking into account the amount of earned and billed fees remaining in the trust account as of September 30th 1994, the actual shortage in the mixed trust account as of this date is \$5,260.41.

Appendix `A'	\$ 10,102.00
Appendix `B'	\$ 5,810.67
Bank Charges	<u>\$ 825.80</u>
Total Shortage	\$ 16,738.47
Earned Fees	<u>\$ 11,478.06</u>
Actual Shortage	<u>\$ 5,260.41</u>

VI. PRIOR DISCIPLINE

17. The Solicitor was found guilty of professional misconduct on January 28, 1993, in regard to failing to reply to the Law Society; breaching his Undertaking to the Law Society; failing to serve a client and misleading a client. The Solicitor was reprimanded publicly in Convocation and ordered to pay \$3,000 in costs.

18. The Solicitor was found guilty of professional misconduct on June 23, 1994 in regard to failing to reply to the Law Society and failing to comply with his Undertaking to the Law Society. The Solicitor was reprimanded publicly in Convocation and ordered to pay \$500 in costs and perform 40 hours of community service work at the Toronto Food Bank.

27th November, 1997

19. The Solicitor was found guilty of professional misconduct on February 22, 1996 in regard to failing to file his Forms 2/3; failing to reply to the Law Society and another solicitor; failing to serve his clients; and failing to comply with his Undertaking to the Law Society. Convocation ordered that the Solicitor be suspended for a period of three months, commencing March 14, 1996, and that he pay costs in the amount of \$1,000.

DATED at Toronto, this 13th day of August, 1996."

REASONS FOR FINDING

The facts contained in the Agreed Statement of Facts are not in dispute. In summary they are as follows.

The Member filed annual forms which revealed overdrawn trust ledger accounts. This triggered an audit by the Law Society. The Member had a bookkeeper who quit and the next bookkeeper fell ill for some time. When the audit was finally complete, a shortage was confirmed. As of September 30, 1994, that shortage was \$16,738.47. Within two or three days of discovering that shortage, the Member corrected it. He did so by transferring \$11,478.06 in earned and billed fees and disbursements out of trust to general and with \$11,038.47 of that, plus with a further \$5,700.00 of the Member's personal funds transferred back into trust, the shortage was replaced.

The shortage came about by:

1. The Member paying incurred expenses when funds were not available in trust on twelve occasions.
2. A client cheque returning NSF on one occasion.
3. Refunds made to seven clients in excess of the balance available in trust.
4. Fifteen occasions when the Member paid himself fees and disbursements when funds were not in trust.

The Member testified this happened when he was without the services of a bookkeeper who ordinarily opened a ledger card for each file. He admitted he "could not keep the ledger card current" and that "errors occurred because there were no entries on the card". When paying out of trust the Member "thought I had funds in trust to cover it". He testified "one knew what came in" and he would "keep within the limit" and if concerned he would "sit down and go through the deposit books". The Member knew the purpose of the trust account was to keep his money separate from that of the clients. The Member testified that he was becoming increasingly reluctant to withdraw money from trust as it became increasingly difficult to know how much money was in there.

The issue to determine is whether the trust money that was transferred improperly to the Member under paragraph 2(a) of the Complaint is misappropriation or something less, perhaps misapplication or failure to keep proper books and records. That it constitutes professional misconduct is admitted by counsel for the Member. Particular 2(b) was admitted from the outset.

Having reviewed the authorities we were referred to, this Committee finds that misappropriation is the proper characterization. Monies in particular 2(a) were put to the Member's personal use. The Member's actions were deliberate and purposeful and he did transfer the money out, notwithstanding his uncertainty of entitlement to it. At the least, he was wilfully blind. He received a financial advantage on the fifteen occasions that the fees and disbursements were paid from trust.

As well as considering previous decisions of Convocation that we were referred to, we noted the case of Nebraska State Bar Association v. Veith, 470 N.W. 2d 549 (Neb. 1991) wherein it said:

"Misappropriation is `any unauthorized use ... of clients' funds entrusted to [a lawyer], including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom"...(an attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation.) Misappropriation caused by serious, inexcusable violation of a duty to oversee entrusted funds is deemed willful, even in the absence of a deliberate wrongdoing."

Findings of professional misconduct are made with respect to particulars 2(a) and 2(b) as set out in the Complaint.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Yaroslav Mikitchook be suspended for a period of one month and pay Law Society costs in the amount of \$2,000.00.

REASONS FOR RECOMMENDATION

As noted earlier, professional misconduct was admitted. The hearing of this matter was concerned with the characterization of the facts. Notwithstanding our characterization as misappropriation, we find an absence of any evidence showing mala fides on behalf of the Member. We find that the Member actually believed he was entitled to the money and was trying to get by without proper bookkeeping services and accounting records to confirm same. The fact that he was entitled to more than \$11,000.00 in billed fees and disbursements that was ultimately transferred out and that he replaced the shortage promptly upon determination of same are mitigating factors.

Counsel for the Society requests a minimum six month suspension plus \$2,000.00 in costs. The Member's counsel seeks a reprimand in Convocation or short suspension and does not contest the figure of \$2,000.00 in costs if we are so disposed.

This Committee recommends a suspension of one month and costs of \$2,000.00 be paid by the Member. We have been influenced in our recommendations by the following:

1. The finding of fact of "misappropriation";
2. The lack of mala fides but deliberate wilful blindness;
3. The numerous individual instances of shortages against clients and the overall size of the shortage;
4. The prompt restitution;
5. The admission of professional misconduct;
6. The letters of reference filed in support;
7. The prior discipline record of the Member;
8. The advice that the Member has hired another bookkeeper and put in a computerized program for assistance;
9. The advice from counsel for the Member that the Member has had no difficulties with his books and records in compliance with Law Society Regulations for the past three years;
10. The Member is seeing a psychologist.

27th November, 1997

Yaroslav Mikitchook was called to the Bar on March 20, 1975.

ALL OF WHICH is respectfully submitted

DATED this 3rd day of October, 1997

Tamara Stomp, Chair

DISSENT

Re: Yaroslav Mikitchook

I was not satisfied that the evidence at the hearing showed the professional misconduct to be misappropriation. I was not satisfied that there was fraudulent intention or wilful blindness on the part of the solicitor. I was satisfied, however, that there was misapplication.

My recommendation as to penalty is the same as the majority's namely, a one month suspension and costs of \$2,000.00 to be paid by the solicitor to the Society.

I was particularly impressed by the character letters tendered on behalf of the solicitor. The letter of Alexander Jozefacki, Barrister and Solicitor, stated that the solicitor was a responsible and conscientious individual who has never hesitated to offer his assistance generously and promptly when requested. The letter of Jeffrey Stone, Barrister and Solicitor, stated that the solicitor was an ethical and forceful advocate. The letter of Paul Milbourn, Barrister and Solicitor, stated that the solicitor was candid, honest and helpful.

Dated at Toronto, September 14, 1997

Gary Lloyd Gottlieb, Q.C.

There were no submissions.

A correction was made to the Report by changing the date the matter was heard by the Discipline Committee to "August 13, 1996" not 1997.

It was moved by Ms. Sealy, seconded by Mr. Carter that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month and pay the Society's costs in the amount of \$2,000.

Ms. Cowie made submissions in support of the recommended penalty.

Mr. Rosen made submissions in support of the recommended penalty and requested that the commencement of the suspension be February 25th, 1998 in order that the solicitor could deal with the problems in his practice.

Ms. Cowie opposed the commencement date.

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

It was moved by Mr. Millar, seconded by Mr. Carter that the adoption of the Report be set aside and the matter be adjourned to the Discipline Convocation in January.

Carried

It was moved by Mr. Topp, seconded by Ms. Ross that the solicitor be given permission to resign.

Not Put

It was moved by Mr. MacKenzie, seconded by Ms. Sealy that the matter be sent back for a re-hearing.

Not Put

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the adoption of the Report had been set aside and the matter adjourned to the Discipline Convocation in January 1998.

Re: Richard Alexander SUTTON - Toronto

The Secretary placed the matter before Convocation.

Messrs. Ruby and Marrocco and Ms. Sealy withdrew for this matter.

Ms. Cowie appeared on behalf of the Society and Mr. Rosen appeared on behalf of the solicitor who was present.

Mr. Rosen, on behalf of the solicitor requested an adjournment to the January Discipline Convocation in order to obtain a psychiatric report. He advised that the solicitor had given an undertaking not to practice and that the solicitor wished to resign.

Ms. Cowie opposed the adjournment.

There was a reply by Mr. Rosen.

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

It was moved by Ms. Ross, seconded by Mr. Carter that the adjournment be granted to January peremptory to the solicitor.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the matter be adjourned to the January Discipline Convocation peremptory to the solicitor.

Re: Kenneth Leo CLARKE - Toronto

The Secretary placed the matter before Convocation.

Messrs. Millar, Wilson, Swaye and Chahbar withdrew for this matter.

Mr. Stuart appeared for the Society. Mr. Rosen, duty counsel, appeared for the solicitor. The solicitor was not present.

Mr. Rosen requested an adjournment on behalf of the solicitor in order to obtain psychiatric evidence. Mr. Rosen referred to a letter faxed to Mr. Stuart from the solicitor.

Counsel for the Society opposed the adjournment.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Topp, seconded by Mr. MacKenzie that the adjournment not be granted.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the adjournment not be granted.

Convocation had before it the Report of the Discipline Committee dated 21st October, 1997, together with an Affidavit of Service sworn 27th October, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 22nd October, 1997 (marked Exhibit 1), together with the faxed Acknowledgement, Declaration and Consent signed by the solicitor on 27th November 1997 (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

Gerald A. Swaye, Q.C., Chair
Kim Carpenter-Gunn
Abdul A. Chahbar

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

Dayna Simon (Articling Student)
for the Society

KENNETH LEO CLARKE
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 29, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 10, 1997 Complaint D71/97 was issued against Kenneth Leo Clarke alleging that he was guilty of professional misconduct.

27th November, 1997

The matter was heard in public on July 29, 1997 before this Committee composed of Gerald A. Swaye, Q.C., Chair, Kim Carpenter-Gunn and Abdul A. Chahbar. The Solicitor did not attend the hearing, nor was he represented. Dayna Simon appeared on behalf of the Law Society.

DECISION

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

Complaint D71/97

2. a) The Solicitor failed to produce all of his books and records, including his entire file for the Estate of Nevana Demitrijivic, which were requested for the purpose of an audit by a Law Society representative, thereby breaching section 18 of Regulation 708 pursuant to the *Law Society Act*.

RECOMMENDATION AS TO PENALTY

The Committee recommends that if the Solicitor produces the required documents requested by the Law Society, by the time this matter reaches Convocation, then he be reprimanded in Convocation.

In the event that the Solicitor does not produce the required documents by the time this matter reaches Convocation, then he be suspended for one month, the suspension to commence at the conclusion of any administrative suspension, and continue indefinitely until the Solicitor produces the necessary documents in regard to the estate of Navena Dimitrijevic.

The Committee further recommends that the Solicitor pay the Law Society costs in the sum of \$3,050.00.

REASONS FOR RECOMMENDATION

Complaint D71/97 came before the Committee on July 29, 1997. The Law Society requested that the Committee proceed in the Solicitor's absence.

Previously, this matter was scheduled to be heard by a Discipline Committee on June 4, 1997. At the outset of that hearing the Committee was advised that the Solicitor had requested an adjournment of the hearing to the end of July, and the Law Society, at that time, in support of the Solicitor's request, provided the Committee with a copy of a fax which was sent to the Law Society the morning of June 4, 1997. At that time, the Law Society wished to proceed but the Committee rejected the Society's position and adjourned the matter to proceed on July 29-30, 1997, peremptory as against the Solicitor. At that time, the Committee indicated that it was granting the adjournment on the basis of the Solicitor's representations that he would be providing the material to the Law Society by June 15, 1997, and that he would be signing an Agreed Statement of Facts.

It is obvious, when this matter came before a previous Committee on June 4, 1997, of which the Chair was a member, the adjournment was granted so that the Solicitor would have an opportunity to produce various records.

27th November, 1997

We were advised that representatives of the Law Society in fact had met with the Solicitor in their office until 6:30 p.m. the previous day, namely July 28, 1997, and he indicated that he was aware the proceedings on July 29, 1997 were to commence at 9:30 a.m. He did not appear for the hearing.

The Committee heard evidence that a letter of complaint was received by the Law Society on or about February 8, 1996. It appeared that the new estate solicitor, Mr. Cecil Rotenberg, was filing the complaint with the Law Society against the Solicitor because he had not provided Mr. Rotenberg with an accounting of all trust monies regarding the matter, despite two written requests for the same. A representative of the estate requested that Mr. Rotenberg investigate what happened to her mother's estate (Exhibit 3, Tab 1).

By letter dated March 18, 1996, Mr. Rotenberg again wrote to the Law Society and indicated that it was difficult to believe that anyone would keep a file in the fashion that he received the same. Among other things, the new solicitor queried the following:

1. The Solicitor was retained to protect the interest of the estate. The Solicitor received \$29,269.50 in legal fees while the apparent sole beneficiary received \$11,000.00. He assessed the value of the deceased's estate at \$120,000.00.
2. There were inadequate receipts to justify disbursements of \$13,130.91.
3. There were no original dockets to justify how much time was spent on the file.
4. There was no trust ledger to indicate when the monies were taken out of the deceased's account.
5. A representative of the estate received an incomplete reporting letter, dated October 26, 1995, from the Solicitor. The letter was missing Page 8, and stopped in mid sentence at Page 21, with no closure to the letter.
6. He could not find a comprehensive inventory of the deceased's estate in the file.
7. The deceased owned a condominium in Spain, of which Mr. Rotenberg had no particulars in the file or the reporting letter. He did not know what happened to this property.

Mr. Douglas Weber, an investigator and auditor with the Law Society gave evidence at the hearing. He is a certified general accountant, and since December of 1995 was certified as a fraud examiner. He attested to the above complaint from Mr. Rotenberg and arising out of the same, he did the following:

1. On May 5, 1996, he left a message on the Solicitor's answering machine about the complaint and failure to do an accounting and he wished to attend upon him.
2. He received a voice mail message from the Solicitor on Sunday, May 26, 1996 and retrieved the same on Monday, May 27, 1996. The message indicated the Solicitor could not meet in regard to the complaint on May 30, 1996 as the investigator suggested.

27th November, 1997

3. On May 27, 1996, he left a message on the Solicitor's answering machine indicating that when the Solicitor returned from Switzerland he should call him and arrange a review of the file. As well, the Solicitor should prepare an accounting of the estate funds and arrange a time for the review by Mr. Weber.
4. By letter, dated June 13, 1996, to the Solicitor, Mr. Weber requested the accounting for the estate prior to his attending to review the file. He further indicated that should no accounting exist, he requested the Solicitor to prepare an accounting forthwith of all estate funds which were handled through his trust account, or through the estate bank account (Exhibit 3, Tab 6).
5. The previous year, the Solicitor complained about one of his partners in storing a will, arising out of this estate. Mr. Weber confirmed that he had received a 19 page fax in the previous year. However, in reviewing this fax, there were 19 pages of explanation, but the fax transmission indicates that there was to be 23 pages.
6. Mr. Weber left a voice mail on July 2, 1996, that he would like to review the file on Monday, July 8, 1996 in regard to the estate.
7. On July 8, 1996, Mr. Weber called his office and the secretary indicated that he would not be in the office until later that day, and that was not definite, and he then left a message for the Solicitor to communicate with him.
8. Between July 8 and July 31, 1996, there were at least a half dozen phone calls back and forth leaving various messages.
9. On July 31, 1996, Mr. Weber attended at the Solicitor's office and met with him. Mr. Weber testified that the Solicitor would not produce the file to Mr. Weber for review. The Solicitor had sent the original file to Mr. Rotenberg's office and he should go to that office to review the same. He only kept a copy of the file. He did not trust me and he wished judicial review of the way I had investigated he and his ex-partner. He felt I was biased. He stated that he lacked signing authority on any estate bank account.

Various information supplied by the Solicitor did not answer the queries as raised by Mr. Rotenberg. Mr. Weber testified further that he noted the Solicitor's file was in a state of disarray. He indicated to the Solicitor that he should recognize his file as it appeared to be in a state of disarray. All correspondence should be placed in a chronological order, and all documents placed together.

We were advised that the Solicitor forwarded to Mr. Weber an application for Judicial Review.

As a result of the application for Judicial Review, and considering that the Solicitor was of the view that Mr. Weber was biased in his investigation of this and a previous matter, a new investigator was assigned to this file.

The Committee received an Affidavit of Vivian Kanargelidis, sworn on the 3rd day of June, 1997. The said Affidavit was received pursuant to Subsection 33(9) of the *Law Society Act*. The Affidavit indicated the following:

1. Vivian Kanargelidis was an investigation officer in the Audit and Investigation Department of the Law Society. She is a chartered accountant.

27th November, 1997

2. In early August, 1996, she received carriage of this matter in regard to the estate of Navena Dimitrijevic from Douglas Weber.
3. On August 19, 1996, the Solicitor indicated that he was still organizing his file, and would bring it to her that afternoon. He indicated that he would provide the trust reconciliation, and the trust account only had \$83.00 in it.
4. The Solicitor delivered approximately one half inch thick of documents on August 19, 1996, but no further materials were delivered in the weeks following.
5. She wrote to the Solicitor on September 10, 1996, and indicated that the materials provided did not include the following:
 1. A list of original assets.
 2. A complete and accurate fee bill.
 3. A complete accounting of the estates' assets.
 4. Time docketts.
 5. Documents filed or to be filed with the court (the Surrogate Court having no records of any letters of administration for the Dimitrijevic estate).
 6. His last trust listing.

She spoke with the Solicitor on October 2, 1996, and indicated she would allow him until October 30, 1996, to produce the necessary material. The Solicitor indicated that he was winding up his practice and indicated various challenges he was facing.

She did not receive production of the estate file by October 30, 1996. She called the Solicitor on at least three occasions and left messages.

On November 6, 1996, the Solicitor returned her call and indicated that he would provide the estate file and response by November 8, 1996, but failed to do so.

On November 18, 1996, the Solicitor left a voice mail indicating that he did not have time to deal with her requests.

On November 27, 1996, a letter was sent by regular and registered mail that recounted the history of the requests for production of the estate file. The Acknowledgement of Receipt Card indicated that the registered letter was picked up on December 2, 1996.

As of the date that the Affidavit was sworn, June 3, 1997, the Solicitor had not delivered the entire estate file to her, and did not respond to her specific queries in her letter dated September 10, 1996.

Andrew Cawse, an auditor with the Law Society gave evidence at the hearing that he met with the Solicitor for the first time on the evening before this hearing in order to take inventory of what he was producing.

Mr Cawse indicated that no fresh documents were produced the evening before this hearing, and once again it was requested that trust listings, trust reconciliation, and related bank documents be produced. The Solicitor produced a one page trust reconciliation up to June of 1995, which was totally unsatisfactory. He did not produce any trust listings.

The Committee was advised that the Solicitor produced a list of original assets in the Estate but it was in Serbian. The Solicitor had made no effort to translate the same.

27th November, 1997

The Committee was satisfied that professional misconduct on Complaint D71-97 was made out and we so found.

The Committee was advised that the Solicitor still has an open trust account as of June of 1995 in the sum of \$22,000.00. This trust account is more recent than his most recent filings. He has no discipline history. His last filing made was for the year ended December 31, 1994. On June 28, 1996, he was administratively suspended.

In summary, the Solicitor has handled this estate in an unsatisfactory manner. There are various questions to be answered in some crucial areas. In the event that the Solicitor satisfies the Law Society in regard to the various questions and productions they require, then the Committee's view is he should be reprimanded in Convocation. In the event that he does not produce the necessary documents, with the necessary explanations, by the time this matter reaches Convocation, then he be suspended for one month, and the suspension to continue indefinitely until he produces the various documentation. This suspension is to be in addition to any other administrative suspension.

Under the circumstances of this matter, the Committee was satisfied that costs should be allowed in the sum of \$3,050.00, to the Law Society, particularly given that there was a great amount of time and effort spent in investigating and prosecuting this matter.

Kenneth Leo Clarke was called to the Bar on the 19th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED this 21st day of October, 1997

Gerald A. Swaye, Q.C., Chair

The following corrections were made to the Report:

- (1) page 5, paragraph 9, end of 4th line - delete the word "me" and replace with "Mr. Weber".
- (2) page 5, last paragraph, 3rd line - delete the word "recognize" and replace with the word "reorganize"
- (3) page 6, subparagraph 1. - should read that "Vivian Kanargelidis was as "investigative auditor" not investigation officer.

It was moved by Ms. Backhouse, seconded by Mr. Crowe that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded if he produced the required documents failing which he be suspended for a period of 1 month, the suspension to commence at the conclusion of any administrative suspension and continue indefinitely until the solicitor produces the necessary documents in regard to the estate of Navena Dimitrijevic. The Committee further recommends the solicitor pay costs in the amount of \$3,050.

Mr. Stuart advised that the documents had not been produced and made submissions in support of the 1 month suspension.

27th November, 1997

It was moved by Ms. Backhouse, seconded by Mr. Crowe that the recommended penalty be adopted.

Carried

Re: Roland William PASKAR - Mississauga

The Secretary placed the matter before Convocation.

Messrs. Millar, Wilson, Backhouse, Swaye and Chahbar withdrew for this matter.

Mr. Stuart appeared for the Society. Mr. Joseph Schwartz appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 23rd October, 1997, together with an Affidavit of Service sworn 27th October, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 24th October, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 10th November, 1997 (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

Nancy L. Backhouse, Chair
Gerald A. Swaye, Q.C.
Abdul A. Chahbar

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

Glenn Stuart
for the Society

ROLAND WILLIAM PASKAR
of the City
of Mississauga
a barrister and solicitor

Joseph Schwartz
for the solicitor

Heard: September 3, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 4, 1997 Complaint D72/97 was issued against Roland William Paskar alleging that he was guilty of professional misconduct.

The matter was heard in public on September 3, 1997 before this Committee composed of Nancy Backhouse, Chair, Gerald A. Swaye, Q.C. and Abdul A. Chahbar. The Solicitor attended the hearing and was represented by Joseph Schwartz. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D72/97

2. a) The Solicitor submitted a certified account for fees to the Ontario Legal Aid Plan for services provided to a legally aided client, Mr. Donald Masters, between January and August 1992, which sought payment of fees which were not properly payable in that:
 - i) he billed for certain services at his Solicitor's tariff rate when the services had been provided by a law student; and
 - ii) he billed for travel fees to attend court even though he was not entitled to such fees;
- b) he breached an agreement with the Ontario Legal Aid Plan to accept no new Legal Aid Certificates from January 5, 1994 to April 5, 1994, by performing work on the following Legal Aid files which had not been in his possession on January 5, 1994.
 - i) E. Rogachevsky - Certificate No. 53-030836, and
 - ii) J. Spichkin - Certificate No. 52-050545; and
- c) He breached the terms of a suspension imposed on him by the Ontario Legal Aid Plan, whereby he was prohibited from performing work on any new or existing Legal Aid files during the period from April 1, 1996 to October 1, 1996, by providing services to two legally aided clients, S. Singh and J. Sidhu, between April 3, 1996 and April 18, 1996, inclusive.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D72/97 and is prepared to proceed with a hearing of this matter on September 3, 1997.

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 D72/97 and this agreed statement of facts with his counsel, Joseph Schwartz, and admits the particulars and facts contained therein. The Solicitor also admits that the particulars alleged in Complaint D72/97 as supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 11, 1986, and is currently 49 years of age. At all relevant times, he practised as a sole practitioner in Mississauga.

Particular 2(a) the Solicitor submitted a certified account for fees to the Ontario Legal Aid Plan for services provided to a legally aided client, Mr. Donald Masters, between January and August 1992, which sought payment of fees which were not properly payable in that:

- i) he billed for certain services at his Solicitor's tariff rate when the services had been provided by a law student; and
- ii) he billed for travel fees to attend at court even though he was not entitled to such fees;

5. The Ontario Legal Aid Plan ("OLAP") issued Legal Aid Certificate # 33-161878 to Mr. Donald Masters ("Masters") on January 20, 1992 (Tab 2, Document Book), to enable Masters to obtain a legal opinion as to the viability of an application to vary a support and access order. The Certificate was issued on the basis of a payment agreement between Masters and OLAP. Masters was considering a variation application to accommodate a change of his circumstances resulting from the transfer of his place of employment to the United States.

6. On January 22, 1992, Masters retained the Solicitor to provide the services covered by Certificate # 33-161878. On that date, Masters attended at the Solicitor's office at 5:00 p.m. to meet with the Solicitor. Masters remained at the Solicitor's office for approximately two hours. The Solicitor was occasionally interrupted by short telephone calls of an apparently urgent nature and, the Solicitor did not believe that Masters was concerned by this. The Solicitor's time docket for this work was correct.

7. As Masters' relocation to California was scheduled to occur imminently, the Solicitor prepared an affidavit on behalf of Masters on his word processor during his meeting with Masters. Masters attempted to correct a number of spelling or typographical errors in the document, but the Solicitor assured him that it was only a rough draft which could be corrected later. Nonetheless, the Solicitor had Masters swear a number of copies of the affidavit.

8. Masters did not meet with the Solicitor after his attendance on January 22, 1992.

9. By letter dated January 24, 1992 (Tab 3, Document Book), the Solicitor provided the Area Legal Aid Director with an opinion on the variation application and requested authorization from OLAP for the commencement of such an application, along with a motion for interim relief.

10. Over the following months, Masters made repeated attempts to contact the Solicitor. The Solicitor did not personally return his calls but had his secretary advise Masters that he was attempting to obtain a court date for him. Masters suggested that he retain other counsel who had the time to deal with his file, but the Solicitor did not respond to that suggestion.

11. In or about April 1992, the Solicitor advised Masters that the Solicitor's articling student, Ms. Jacqueline Shaw ("Shaw"), would prepare his file for hearing and advised him of the scheduled date for the hearing of the application, namely June 16, 1992. The Solicitor assured Masters that he would appear in court, however, at the hearing of the application. After this time, Masters had no dealings with the Solicitor and communicated only with Shaw.
12. At the first return date of the application on behalf of Masters on June 16, 1992, the application was dismissed as neither the Solicitor nor anyone on his behalf attended at 9:30 a.m., as Shaw, the Solicitor's student, was speaking to a matter in another court. The application was renewed by Shaw subsequently with a new return date on June 23, 1992. On that date, the issues of visitation and access were adjudicated by the court and the other issues were adjourned. The balance of the issues were determined by the court on July 21, 1992.
13. The Solicitor did not attend personally at any of the court appearances on behalf of Masters, and, after assigning the file to Shaw, he had no involvement in the carriage of the file other than periodic informal discussions with Shaw. Shaw appeared on behalf of Masters on June 23 and July 21, 1992.
14. Masters ultimately became dissatisfied with the services provided by the Solicitor and retained a new solicitor, Mr. Tim Garvey, in August 1992. By Notice of Cancellation, dated August 6, 1992 (Tab 4, Document Book), OLAP cancelled Certificate 33-161878, under which the Solicitor had been providing services.
15. Under cover of his letter, dated October 8, 1992, the Solicitor submitted his account to OLAP with respect to Legal Aid Certificate # 33-161878 (Tab 5, Document Book). This was the only account submitted by the Solicitor in relation to this Certificate. OLAP paid the Solicitor \$2,600.44 in satisfaction of this account on November 26, 1992 (as confirmed by OLAP's account analysis sheet at Tab 6 of the Document Book).
16. Subsequently, OLAP sought contribution from Masters for the services billed by the Solicitor under Certificate # 33-161878. Between August 1993 and January 1994, Masters asked the Solicitor to provide him a copy of this account, but the account was not provided.
17. Masters obtained a copy of the Solicitor's account from OLAP in January 1994. Masters subsequently complained to OLAP regarding the Solicitor by letter, dated February 1, 1994 (Tab 1, Document Book).
18. In response to correspondence from OLAP's investigator in relation to his complaint, Masters reviewed each item in the Solicitor's account to OLAP and identified a large number of inaccuracies. A copy of Masters' letter, dated May 24, 1994, is contained at Tab 7 of the Document Book. As reflected in Masters' letter, a significant number of the services itemized in the Solicitor's account to OLAP were not provided and the related meetings or discussions did not occur. For example, the Solicitor himself did not meet with Masters on either of February 10 or April 22, 1992, although they are billed as meetings he participated in.

19. By letter dated April 16, 1995 (Tab 8, Document Book), the Solicitor responded to the Law Society and OLAP with respect to the Masters complaint and provided copies of the dockets which he claimed supported his account. In his response, the Solicitor reiterated that the items in his account were accurate, except that he did not attend the discoveries on June 24, 1992, but prepared for it before sending Shaw at the last minute. The Solicitor did not acknowledge that the discoveries did not occur; however, in fact, the time expended on that day was spent in court on the hearing of a motion.

20. The accounts provided to OLAP by the Solicitor are summarized at Tab 9 of the Document Book. The events and services reflected in the dockets do not correspond to the events and services described in the account provided by the Solicitor to OLAP in October 1992. The Solicitor has stated that these do not correspond because he used his discretion in preparing the account so that only 36.8 of the 44 docketed hours were billed; however, the Solicitor has offered no explanation as to why certain services were billed for more time than reflected on the account and why certain services not reflected in the dockets were billed.

21. The following are specific examples of the discrepancies between the Solicitor's dockets and his accounts, although not an exhaustive list of same:

- although the Solicitor was not retained in this matter until January 1992, the Solicitor billed OLAP for 7.9 hours of services rendered prior to January 1992; his dockets showed 1.8 hours during this period;
- the Solicitor docketed 2.8 hours in February 1992 for meeting with this client and preparing the application; however, in his account he bills for 3.9 hours spent on these same matters;
- the Solicitor billed OLAP for 3.4 hours in April 1992, based on dockets showing 3.5 hours; however, the descriptions in the dockets do not correspond to the itemized services in the account; and,
- similarly, in June 1992, the services itemized in the account are markedly different from the descriptions recorded in the dockets.

22. In addition, many of the services for which the Solicitor billed OLAP at his solicitor's rate, based on the representation that he had performed the services, were actually performed by his articling student, Shaw, and therefore ought to have been billed at a lesser rate. In particular, the following services, billed to OLAP and presented by the Solicitor in his dockets as services he provided were provided by Shaw:

- attendances in court on June 23 and July 21, 1992, for hearing of application (the time for the June 23 appearance being incorrectly identified as discoveries on June 24 in the account) (13.5 hours, by dockets, but billed as 9.2 hours);
- preparation on June 15 for court appearance (not specifically identified in account but parallels items on June 4 and 10 in account) (1.0 hours);
- telephone call re resolution of issues related to application (not specifically identified in account but forms part of larger item only dated "July" in account) (0.4 hours);
- fax and telephone call to opposing solicitor on June 26 (0.3 hours, by dockets, but billed as 0.2 hours);
- telephone calls on June 25 (0.4 hours, by dockets, but billed in separate items for 0.6 hours);
- telephone call with client on June 22 (billed for June 23) (0.1 hours);
- issuance of order obtained in appearance on June 23, 1992 (0.5 hours, by dockets, but billed as 0.7 hours); and,
- discussion of financial statement with Masters on May 7, 1992 (billed as May 6) (0.2 hours).

27th November, 1997

23. In addition, the dockets provided by the Solicitor include the following services which were provided by Shaw but which are not expressly itemized in his account to OLAP:

- court attendance on June 16, 1992 (2.5 hours);
- preparation of new application on June 17, 1992 (2.0 hours); and,
- preparation on June 22, 1992, for argument of motion following day (1.3 hours).

The hours outlined in this and the preceding paragraph, as docketed, constituted 22.6 of the 44 hours docketed on this file and, in turn, constituted a substantial portion of the 36.8 hours which the Solicitor billed to OLAP.

24. The Solicitor also billed OLAP in his account, dated October 8, 1992, for one hour of travel time to and from court in Brampton on July 21, 1992. The round trip distance was stated to be 52 km round trip, or 26 km one way. No disbursements were charged in relation to this travel. This time was improperly billed at the Solicitor's rate (as the Solicitor's travel) since Shaw actually appeared on this motion.

25. The Regulations under the *Legal Aid Act* only permit a solicitor to charge travel time to OLAP when the distance between a solicitor's office and the court is more than 25 km. The mileage had been travelled by Shaw, and the Solicitor states that the billed distance represented the distance from her home to the court. The distance from his office to the court in Brampton is 16 km each way; consequently, the Solicitor improperly billed this time, even if it were billed at Shaw's rate, to OLAP.

26. As a result of the improprieties in the Solicitor's account to OLAP in this matter, a hearing was scheduled before the Provincial Director of OLAP pursuant to section 31(2) of the Regulations of the *Legal Aid Act*, to be held on March 19, 1996. A copy of the Notice of Hearing, dated February 14, 1996, to the Solicitor is contained at Tab 10 of the Document Book.

27. The Solicitor and OLAP agreed to a disposition of the proceedings before the Provincial Director at the hearing on March 19, 1996. A transcript of the proceedings is contained at Tab 11 of the Document Book. The terms of the disposition were summarized by counsel to OLAP in her letter, dated March 19, 1996, to the Solicitor (Tab 11, Document Book). As part of this resolution, the Solicitor agreed to repay OLAP \$1,685.40 as an adjustment to his account with respect to Masters. The Solicitor voluntarily agreed to this disposition.

Particular 2(b) he breached an agreement with the Ontario Legal Aid Plan to accept no new Legal Aid Certificates from January 5, 1994, to April 5, 1994, by performing work on the following Legal Aid files which had not been in his possession on January 5, 1994:

- i) E. Rogachevsky - Certificate No. 53-030836, and
- ii) J. Spichkin - Certificate No. 52-050545; and,

28. In October 1993, OLAP required that a hearing be held pursuant to the Regulations under the *Legal Aid Act* with respect to complaints against the Solicitor arising from services provided to two legally aided clients. By Notice of Hearing, dated October 8, 1993 (Tab 13, Document Book), OLAP advised the Solicitor that the hearing would be held on November 24, 1993.

27th November, 1997

29. The hearing into those allegations was eventually held, on an informal basis, on January 5, 1994. At that time, the matter was resolved by an agreement between the Solicitor and OLAP. Pursuant to that agreement, the terms of which were confirmed by a letter, dated January 18, 1994, from the Deputy Director of OLAP to the Solicitor (Tab 14, Document Book), the Solicitor was suspended from all Legal Aid panels for three months from January 5, 1994, to April 5, 1994. During that period, the Solicitor was permitted to work on Legal Aid files already in his possession, but he could not accept any new Legal Aid certificates or perform any work under any new Legal Aid certificates.

30. During the period from January 5, 1994, to April 5, 1994, the Solicitor provided services to two legally aided clients, Evgeny Rogachevsky ("Rogachevsky") and Jakov Spichkin ("Spichkin"), who had not retained the Solicitor prior to January 5, 1994. The Solicitor states that he believed that he was complying with the letter of the agreement, although perhaps not the spirit. It is the Law Society's position that the intention of the agreement was clear on its face and disputes the Solicitor's contention in this regard.

31. Rogachevsky first consulted the Solicitor on January 12, 1994, regarding the matter for which he later obtained Legal Aid. Rogachevsky thereafter applied for Legal Aid on January 18, 1994 (Tab 15, Document Book); Legal Aid Certificate # 53-030836 (Tab 16, Document Book) was issued to him on March 1, 1994.

32. Although the Solicitor did not acknowledge Certificate #53-030836 until April 14, 1994, he provided 1.1 hours of services to Rogachevsky during the period of the Solicitor's suspension. Further services, totalling 10.1 hours of time, were provided by the Solicitor's paralegal assistant during the same period. The Solicitor billed all of these services to OLAP, under Certificate # 53-030836, in his account, dated May 2, 1994 (Tab 17, Document Book).

33. Spichkin first consulted the Solicitor on February 14, 1994, regarding the matter for which he later obtained Legal Aid. Spichkin applied for Legal Aid on February 21, 1994 (Tab 18, Document Book); Legal Aid Certificate # 52-050545 (Tab 19, Document Book) was issued to him on March 3, 1994.

34. Although the Solicitor did not acknowledge Certificate #52-050545 until April 20, 1994, he provided 3.3 hours of services to Spichkin during the period of the Solicitor's suspension. Further services, totalling 21.5 hours of time, were provided by the Solicitor's paralegal assistant during the same period. The Solicitor billed all of these services to OLAP, under Certificate # 52-050545, in his account, dated May 30, 1994 (Tab 20, Document Book).

35. The Solicitor rendered no services on or before January 5, 1994, to either Spichkin or Rogachevsky. A summary, prepared by Legal Aid, of the time billed on these two files during the period of the Solicitor's suspension is contained at Tab 21 of the Document Book.

36. The Solicitor's breaches of the suspension agreement were also part of the subject of the hearing which was held before the Provincial Director of OLAP on March 19, 1996. As part of the sanction imposed at the hearing, the Solicitor agreed that he would not be paid for either the services he rendered to Rogachevsky and Spichkin during the period of his suspension or the disbursements he incurred during the period, including the paralegal's services (pp. 7-8, Tab 11, Document Book).

Particular 2(c) he breached the terms of a suspension imposed on him by the Ontario Legal Aid Plan, whereby he was prohibited from performing work on any new or existing Legal Aid files during the period from April 1, 1996 to October 1, 1996, by providing services to two legally aided clients, S. Singh and J. Sidhu, between April 3, 1996 and April 18, 1996, inclusive.

37. As a result of the matters identified in particulars 2(a) and (b) of Complaint D72/97 and the preceding paragraphs of this Agreed Statement of Facts, a hearing was scheduled before the Provincial Director of OLAP pursuant to section 31(2) of the Regulations under the *Legal Aid Act*, to be held on March 19, 1996. A copy of the Notice of Hearing, dated February 14, 1996, to the Solicitor is contained at Tab 10 of the Document Book.

38. The hearing proceeded on March 19, 1996, before the Provincial Director of OLAP. A transcript of these proceedings is contained at Tab 11 of the Document Book. The Solicitor and OLAP agreed to a disposition of the proceedings whereby, in addition to other terms, the Solicitor would be suspended from all Legal Aid panels for a period of six months, from April 1, 1996, to October 1, 1996. During that period, the Solicitor was to provide no services to any legally aided clients, including old, current and new files. The terms of the disposition were summarized by counsel to OLAP in her letter, dated March 19, 1996, to the Solicitor (Tab 12, Document Book).

39. During the period from April 1, 1996, to October 1, 1996, the Solicitor provided services to two legally aided clients, Swinder Singh ("Singh") and Jasbir Sidhu ("Sidhu"), contrary to the terms of his suspension agreement. The Solicitor states that he provided these services so as not to prejudice his clients, but he admits that he should not have billed OLAP for these services. He states that he inadvertently billed OLAP for the services rendered after April 1, 1996.

40. The Solicitor provided 3.0 hours of services to Singh during the period of the Solicitor's suspension. In addition, approximately \$430.00 in disbursements were incurred by the Solicitor on this matter, including services provided by the Solicitor's paralegal assistant, during the same period. The Solicitor billed all of these services to OLAP, under Certificate # 31-236986, in his account, dated May 2, 1996 (Tab 22, Document Book). The services provided and disbursements incurred during the term of the Solicitor's suspension constituted the entirety of this account.

41. The Solicitor provided 2.4 hours of services to Sidhu during the period of the Solicitor's suspension. In addition, approximately \$430 in disbursements were incurred by the Solicitor on this matter, including services provided by the Solicitor's paralegal assistant, during the same period. The Solicitor billed all of these services to OLAP, under Certificate # 31-227915, in his account, dated May 3, 1996 (Tab 23, Document Book). The services provided and disbursements incurred during the term of the Solicitor's suspension constituted the entirety of this account.

V. DISCIPLINE HISTORY

42. On April 30, 1997, the Solicitor was found guilty of professional misconduct for failing to accurately and comprehensively present the evidence in an affidavit which he tendered on an *ex parte* motion and failing to meaningfully reply to the Law Society. He was reprimanded in Committee for that misconduct. A copy of Complaint D227a/96 is contained at Tab 24 of the Document Book.

27th November, 1997

43. On August 20, 1996, the Solicitor was found guilty of professional misconduct for improperly obtaining and misapplying trust funds to his own use and the use of a client, misleading another solicitor in a real estate transaction, failing to honour financial obligations, failing to deposit client funds to his trust account, and failing to maintain books and records, among other matters. On October 24, 1996, the Solicitor was reprimanded in Convocation upon his signing a detailed undertaking with respect to the future operation of his practice. Copies of the Order of Convocation and the Report and Decision of the Discipline Committee are contained at Tab 25 of the Document Book.

DATED at Mississauga, this 2nd day of September, 1997."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Roland William Paskar be suspended for a period of one and a half months definite, and indefinitely thereafter until he provides a medical report confirming that he is fit to practise law, and further that the Solicitor pay Law Society costs in the amount of \$750.00.

REASONS FOR RECOMMENDATION

The Committee views the misconduct as serious and is particularly concerned in view of the Solicitor's prior disciplinary record. It must be very clear to the profession that a breach of Legal Aid's rules cannot be tolerated. The misconduct was admitted. The recommended penalty was based on the joint submission of Counsel for the Law Society and Counsel for the Solicitor. The Committee was of the view that the joint submission was within the appropriate range and ought to be accepted.

Roland William Paskar was called to the Bar on April 11, 1986.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of October, 1997

Nancy Backhouse, Chair

There were no submissions.

The Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 1/2 months definite, and indefinitely thereafter until he provides a medical report confirming that he is fit to practise law, and further pay the Society's costs in the amount of \$750.

Both counsel made submissions in support of the joint submissions made at the hearing.

It was moved by Mr. DelZotto, seconded by Mr. Topp that the recommended penalty be adopted.

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

It was moved by Mr. Topp, seconded by Mr. DelZotto that the motion on the recommended penalty be amended by adding "that the medical report be satisfactory to the Law Society".

Carried

The DelZotto/Topp motion as amended was voted on and adopted.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 1 1/2 months definite, and indefinitely thereafter until he provides a medical report satisfactory to the Law Society confirming that he is fit to practise and further to pay the Society's costs of \$750.

Convocation granted that the suspension commence December 1st, 1997 and that costs be paid within 4 months.

Re: Gordon Bruce CLARK - Toronto

The Secretary placed the matter before Convocation.

Mr. Gottlieb and Ms. Stomp withdrew for this matter.

Mr. Stuart appeared on behalf of the Society. Mr. Ian Mang appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 27th June, 1997, together with an Affidavit of Service sworn 21st July, 1997 by Ron Hoppie that he had effected service on the solicitor by registered mail on 11th July, 1997 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th November, 1997 (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

Tamara K. Stomp, Chair
Gary Lloyd Gottlieb, Q.C.
Vern Krishna, Q.C.

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

Neil Perrier
for the Society

GORDON BRUCE CLARK
of the City
of Toronto
a barrister and solicitor

Ian R. Mang
for the solicitor

Heard: August 13, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Complaint D40/96 was issued on February 13, 1996 and Complaint D138/96 was issued on May 13, 1996 against Gordon Bruce Clark alleging that he was guilty of professional misconduct.

The matter was heard in public on August 13, 1996, before this Committee composed of Tamara K. Stomp, Chair, Gary L. Gottlieb, Q.C., and Vern C. Krishna, Q.C. The Solicitor attended the hearing and was represented by Ian R. Mang. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D40/96

- 2.a) He failed to comply with his written Undertaking to the Law Society dated August 2, 1995, by failing to enter into and co-operate with the Practice Review Program.

Complaint D138/96

- 2.a) He failed to reply to the Law Society regarding a complaint by Allan Rowsell despite letters dated August 14, 1995 and September 21, 1995 and telephone messages left on September 1, 1995 and September 6, 1995;
- b) He failed to serve his client in a conscientious, diligent and efficient manner in that he:
- i) failed to proceed with a trial of issues in a Family Law Act matter, despite a court Order dated February 24, 1994, to that effect;
 - ii) failed to keep his client reasonably informed about the status of her divorce and support matters; and
 - iii) failed to inform Allan Rowsell, his client's new counsel, of an upcoming motion brought by the opposing party to have his client's application dismissed.
- c) He failed to account to his client for \$5,000.00 paid to him, in trust, for future legal services.

EVIDENCE

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

Complaint D40/96

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D40/96 and is prepared to proceed with a hearing of this matter on June 4 and 5, 1996.

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 D40/96 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 9, 1976. He practises as a sole practitioner in association with others under the firm name Clark, Farb, Fiksel & Tobin.

Particular 1

He failed to comply with his written Undertaking to the Law Society dated August 2, 1995, by failing to enter into and co-operate with the Practice Review Program.

5. On March 27, 1995 Complaint D500/94 was issued against the Solicitor with respect to his failure to file and his failure to reply to the Law Society's request that he provide a response to inadequacies discovered during an examination of his books and records.

6. On August 2, 1995 the Solicitor was found guilty of professional misconduct and reprimanded in Committee. In consideration of the reprimand in Committee, the Solicitor executed an Undertaking in which he agreed to enter into and co-operate with the Practice Review Program and co-operate in the implementation of any recommendations arising out of the review of his practice. A copy of the Undertaking is located at Tab 1, Document Book.

7. By letter dated September 26, 1995 (Tab 2, Document Book), the Law Society advised the Solicitor that further to his undertaking of August 2, 1995 he had been identified as a potential candidate for the Practice Review Programme. The Solicitor was advised that the Law Society's records indicated he had primarily a general practice. The Solicitor was requested to confirm whether that information was correct. He was requested to confirm, in writing, by October 13, 1995 as to whether or not he agreed to participate in the Program. No response was received.

8. By letter dated October 16, 1995 (Tab 3, Document Book) the Solicitor was requested to respond to the Law Society's September 26, 1995 letter no later than November 1, 1995. No response was received.

9. By letter dated November 1, 1995 (Tab 4, Document Book) the Solicitor was advised that should he not respond to the Law Society's September 26, 1995 and October 16, 1995 letters by November 16, 1995 the matter would be referred to the Professional Standards Committee with a recommendation that the file be closed on the basis of his failure to co-operate, and the Law Society would consider whether alternative action should be taken, including the possibility of disciplinary action. No response was received.

10. By letter dated November 27, 1995 (Tab 5, Document Book) the Chair of the Professional Standards Committee of the Law Society forwarded to the Solicitor a copy of his Undertaking dated August 2, 1995, and requested the Solicitor contact the Practice Review Program in writing by December 14, 1995. No response was received.

27th November, 1997

11. By letter dated December 18, 1995 (Tab 6, Document Book) the Law Society advised the Solicitor that his Practice Review Program file was now closed based on his failure to participate in the program.

12. To date, the Solicitor has not requested an extension to reply nor has he provided the Law Society with an explanation for his failure to reply.

V. PRIOR DISCIPLINE

13. The Solicitor was found guilty of professional misconduct, reprimanded in committee and ordered to pay costs of \$1,000.00 within 30 days on May 31, 1994 with respect to his failure to file for the fiscal year ended January 31, 1993, his failure to reply to communications from a client and his failure to reply from communications from the Law Society.

14. The Solicitor was found guilty of professional misconduct on August 2, 1995, reprimanded in Committee and ordered to pay costs of \$200.00 with respect to his failure to reply to the Law Society's request that he provide a response to inadequacies discovered in his books and records.

DATED at Toronto, this 5th day of June, 1996."

Complaint D138/96

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D138/96 and is prepared to proceed with a hearing of this matter on June 4 and 5, 1996.

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 D138/96 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 9, 1976. He practises as a sole practitioner in association with others under the firm name Clark, Farb, Fiksel & Tobin.

Particular 2(b)

He failed to serve his client in a conscientious, diligent and efficient manner in that he:

- (i) failed to proceed with a trial of issues in a Family Law Act matter, despite a Court Order dated February 24, 1994, to that effect;
 - (ii) failed to keep his client reasonably informed about the status of her divorce and support matters;
- and

- (iii) failed to inform Allan Rowsell, his client's new counsel, of an upcoming motion brought by the opposing party to have his client's application dismissed.

Particular 2(c)

He failed to account to his client for \$5,000.00 paid to him, in trust, for future legal services.

5. In 1987, Mary Diana Clark retained the services of the Solicitor with regard to her separation from her husband and consequent matrimonial proceedings.

6. In December, 1992 the sale of the Mrs. Clark's matrimonial home closed. The proceeds of sale in the amount of \$240,946.92 were held by Ms. Katherine Parkinson, a real estate lawyer. A partial release of the proceeds was ordered by Mr. Justice Potts on July 13, 1993, by which Mrs. Clark and her husband each received \$100,000, with the balance to be held in trust until all matters were settled. (See letter from Mrs. Clark to the Law Society located at Tab 13, Document Book.

7. By statement of account dated July 14, 1993 (Tab 1, Document Book), the Solicitor billed Mrs. Clark for the total amount of \$5,632.25, regarding a matrimonial file.

8. By cheque dated July 19, 1993 payable to G. Bruce Clark in the sum of \$5,632.25, Mrs. Clark paid the Solicitor's outstanding account. In addition, Mrs. Clark provided a cash retainer by cheque dated July 19, 1993, payable to G. Bruce Clark in trust, in the sum of \$5,000.00. Copies of these cheques can be found at Tab 2 of the Document Book. A copy of Mrs. Clark's bank book showing payment of these cheques can be found at Tab 3 of the Document Book.

9. In a motion brought by Mrs. Clark in the matrimonial proceedings, an Order was granted on February 24, 1994 by Mr. Justice Walsh (Tab 4, Document Book) that there be a trial of an issue as to equalization of net family properties, quantum of child support, occupation rent and a claim for damages. Mrs. Clark was named the plaintiff in the action, and her husband was the defendant.

10. On June 10, 1994, the balance of proceeds from the matrimonial home, in the sum of \$42,905.00 was paid by Canada Trust to Katherine Parkinson, a real estate lawyer. Mrs. Clark was not made aware of this payment, nor did she receive an accounting of the funds following that date by the Solicitor. (See letter from Mrs. Clark to the Law Society, located at Tab 13, Document Book.

11. By letter dated March 1, 1995 (Tab 5, Document Book) Mrs. Clark reminded the Solicitor she had requested him to provide the balance of her account with him, and requested the Solicitor provide her with a reporting letter answering her questions as to the status of her divorce and accounting of the funds from the sale of the matrimonial home. The Solicitor was requested to provide a response by March 22, 1995. No response was given.

12. By written Direction dated May 18, 1995 (Tab 6, Document Book), Mrs. Clark directed the Solicitor to release the entire contents of her file to new her lawyers, the firm of Walker Head.

13. By letter dated June 6, 1995 (Tab 7, Document Book), Mrs. Clark's new lawyer, Allan Rowsell of the firm Walker Head advised the Solicitor he had been retained by Mrs. Clark for the matrimonial proceedings. He requested the Solicitor arrange for transfer of Mrs. Clark's file to him. The Solicitor was also asked to provide information as to the location of the proceeds from the sale of the matrimonial home. No response was received.

27th November, 1997

14. By letter dated June 23, 1995 (Tab 8, Document Book), Mr. Rowsell requested the Solicitor provide notification as to when Mrs. Clark's file would be ready for transfer. No response was received.

15. By letter dated June 30, 1995 (Tab 9, Document Book), Mr. Rowsell advised the Solicitor that if Mrs. Clark's file was not transferred to him by July 14, 1995, he would seek assistance from the Law Society. No response was received.

16. By letter dated July 26, 1995 (Tab 10, Document Book), Allan Rowsell advised the Law Society he was having difficulty obtaining the transfer of Mrs. Clark's file from the Solicitor, despite many telephone and written requests. He requested assistance from the Law Society to obtain the transfer of Mrs. Clark's file, and to determine the location of the proceeds from the sale of the matrimonial home.

17. On September 21, 1995, Mrs. Clark informed the Law Society by telephone that Mr. Rowsell received her file from the Solicitor, but had still not received accounting of the \$5,000.00 cash retainer (Tab 15 and 16 Document Book).

18. By letter dated September 20, 1995 (Tab 17, Document Book), Allan Rowsell advised the Law Society that although he had now received his client's file from the Solicitor, he did not receive the correspondence from the file. He wrote directly to the Solicitor requesting the correspondence.

19. A motion in the matrimonial proceedings was brought on behalf of Mrs. Clark's husband on September 21, 1995, requesting the Court to dismiss Mrs. Clark's case and for release of the balance of the proceeds of the sale of the matrimonial home in equal shares, on the basis that Mrs. Clark had taken no steps to pursue her application in a timely fashion. The motion was addressed to the Solicitor, on behalf of Mrs. Clark. A copy of this motion and supporting materials is found at Tab 18 of the Document Book. Neither Mrs. Clark nor her new counsel were informed of this Motion by the Solicitor.

20. Allan Rowsell was advised by counsel for Mrs. Clark's husband in a letter dated October 30, 1995 (Tab 20, Document Book) that on the return date of the Motion, the Solicitor attended Motions Court on behalf of Mrs. Clark and requested the Court to adjourn the motion. In response to the request, Madame Justice Speigel scheduled a case conference for November 8, 1995.

21. By letters dated November 6, 1995 and November 13, 1995 (Tabs 22 and 23, Document Book), Allan Rowsell advised the Law Society that the Solicitor had provided no information pertaining to the Motion brought by Mrs. Clark's husband, nor to the scheduled case conference, to either Mrs. Clark or him.

22. In a telephone communication on November 1, 1995 (Tab 21, Document Book), Allan Rowsell advised a staff member of the Law Society that he had received the correspondence portion of Mrs. Clark's file from the Solicitor. He also advised the Law Society that on review of the file received from the Solicitor, it appeared the Solicitor stopped working on the file and stopped communicating with Mrs. Clark after July, 1994.

23. By letter dated October 17, 1995 (Tab 19, Document Book), Allan Rowsell advised the Law Society that the Solicitor had not provided an accounting of the \$5,000.00 cash retainer.

24. By letter dated January 5, 1996 (Tab 24, Document Book), Allan Rowsell requested the Solicitor return to Mrs. Clark, through Mr. Rowsell's office, the entire \$5,000.00 cash retainer which Mrs. Clark had provided to him in July, 1993. No response was received.

27th November, 1997

25. To date, the Solicitor has not provided an accounting of the \$5000 cash retainer to either Mrs. Clark or her new counsel. Mrs. Clark's counsel has been able to obtain an accounting of the proceeds from the sale of the matrimonial home from the husband's counsel, but has not to date obtained an accounting from the Solicitor pertaining to same.

Particular 2(a)

He failed to reply to the Law Society regarding a complaint by Allan Rowsell despite letters dated August 14, 1995 and September 21, 1995, and telephone messages left on September 1, 1995 and September 6, 1995.

26. By letter dated August 14, 1995 (Tab 11, Document Book), the Law Society forwarded to the Solicitor a copy of Mr. Rowsell's July 26, 1995 and August 9, 1995 letters and requested he provide his comments to the same within two weeks.

27. On September 1, 1995 a Law Society staff employee left a telephone message on the Solicitor's voice mail requesting the Solicitor return the call (Tab 12, Document Book). The call was not returned.

28. On September 6, 1995 a Law Society staff employee left a telephone message on the Solicitor's voice mail requesting the Solicitor return the call that same day (Tab 12, Document Book). The call was not returned.

29. By registered mail dated September 21, 1995 (Tab 14, Document Book), the Law Society reminded the Solicitor of his obligation to promptly respond to communications from the Law Society, The Solicitor was advised that should she failed to provide a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's September 21, 1995 letter was signed for and delivered on September 25, 1995. No reply was received.

V. PRIOR DISCIPLINE

30. The Solicitor was found guilty of professional misconduct, reprimanded in committee and ordered to pay costs of \$1,000.00 within 30 days on May 31, 1994 with respect to his failure to file for the fiscal year ended January 31, 1993, his failure to reply to communications from a client and his failure to reply from communications from the Law Society.

31. The Solicitor was found guilty of professional misconduct on August 2, 1995, reprimanded in Committee and ordered to pay costs of \$200.00 with respect to his failure to reply to the Law Society's request that he provide a response to inadequacies discovered in his books and records.

DATED at Toronto, this 5th day of June, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Gordon Bruce Clark be reprimanded in Convocation with the following conditions:

1. that he pay Law Society costs in the amount of \$1,000.00 by December 1, 1996;
2. that he provide copies of all correspondence between he and the Law Society to his Solicitor, Ian R. Mang, for a period of two years from the date that this matter is dealt with in Convocation;

3. that he comply with the Practice Review Program;
4. that he seek psychological or psychiatric assistance and participate in whatever therapy is recommended.

REASONS FOR RECOMMENDATION

Based upon the Member's admissions through the Agreed Statements of Fact and through counsel who represented him before the Panel, we have made findings of professional misconduct against the Member on two different complaints which set out three areas of misconduct.

1. The Member had provided a written Undertaking to the Law Society on August 2, 1995 that he would enter into and cooperate with the Practice Review Program. He did not. This undertaking was given after a finding of professional misconduct was made for failing to reply to the Law Society's request to provide a response to inadequacies in his books and records.

2. The Member acted on a family law file representing Mary Diana Clark in a divorce. After the matrimonial home was sold he failed to keep Ms. Clark informed regarding the matter, including failing to tell her new lawyer that he was served as counsel of record with a motion to dismiss for failure to proceed with the application. He had taken \$5,000 from Ms. Clark as a retainer for future services and failed to account to her for same despite requests by Allan Rowsell, the new lawyer for Ms. Clark and the Law Society. By the time of the hearing, the Member had paid back to Ms. Clark the \$5,000 despite the fact that he eventually produced accounts showing that he had performed services for that retainer. The Member failed to hand over Ms. Clark's file to her new Solicitor when requested and when he eventually did, it was without the correspondence therein. It took from approximately mid-May until November 1, 1995 for the complete file to be received by the new solicitor.

3. When the Law Society was engaged and requested a response from the Member regarding Ms. Clark's matters, the Member failed to respond.

At the hearing we heard testimony from Mary Clark. Although the Member produced accounts for services on her behalf, she gave evidence that she never got those accounts. In any event, the Member has cashed in his RRSP to pay Mary Clark back the \$5,000. There is no doubt that the Member's actions were inappropriate and that he caused Ms. Clark great inconvenience, personal upset and prejudice in her family law action.

The issue for determination was penalty. Although there are many aggravating factors in this situation, the least of which is that the Member was previously disciplined on two prior occasions (both times receiving a reprimand in Committee with other terms), we have taken into account the following mitigating factors:

1. The Member paid back the \$5,000 without arguing that he should have kept some or all of it for services rendered. He did so by cashing in an RRSP. His counsel said he felt guilty for what had occurred and considered it a rebate to Ms. Clark for the subsequent events of failing to service her matter.

2. The Member finally acknowledged that he had to address the "bury-my-head-in-the-sand" syndrome he suffers from by seeking professional help. Although there are two other discipline findings against him, and there are two complaints before us, they are all of the same type i.e. failing to address concerns or difficulties.

27th November, 1997

3. The Member has had some personal difficulties. In or around 1991 he had some bad advice to invest in tax shelters and he suffered a loss that required he work harder to make up the difference. That cost his marriage which ended in September 1994 when his daughter was aged four. He then became an active parent, caring for his daughter from Friday until Monday a.m. and Tuesdays overnight. This increased to include Thursdays overnight. His estranged wife was not working and he paid support as well as covering car expenses, house insurance and private school. He lived in rented premises five minutes walk from the matrimonial home where his former partner lived with her new partner and he still did not have his equity out of the home. Finances were tight and his work and leisure schedule were strict. It is noted that all disciplinary misconduct occurred at the time of these personal difficulties.

4. The Member states that he "just shut down". He had some contact with the LINK programme and will continue with other counselling. He says he now knows what his problem is and is committed to addressing it.

5. The Member completed his first seventeen years of practice without problems. He is a sole practitioner associated with three other lawyers and is the only family law lawyer. Up to two years ago he had a large volume of legal aid clients and not many of his clients could be considered wealthy and there was always a struggle to get paid.

Taking all into consideration, this Committee recommends a reprimand in Convocation with the conditions set out above.

Gordon Bruce Clark was called to the Bar on the 9th day of April, 1976.

ALL OF WHICH is respectfully submitted

DATED this 27th day of June, 1997

Tamara Stomp, Chair

There were no submissions.

It was moved by Ms. Ross, seconded by Mr. DelZotto that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation together with the conditions set out in the Report.

It was moved by Mr. Wilson, seconded by Mr. Miller that the Affidavit of the solicitor be received as new evidence.

Carried

Mr. Stuart made submissions in support of an increased penalty of a suspension period of 1 month definite and indefinitely thereafter until he pays the Society's costs in the amount of \$1,000 together with the conditions set out in the Society's Factum.

Mr. Mang made submissions in support of the recommended penalty.

There were questions from the Bench.

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

27th November, 1997

It was moved by Mr. Wilson, seconded by Mr. Crowe that the solicitor be suspended for a period of 1 month definite and indefinitely thereafter until he pays the Society's costs together with the conditions set out in the Society's Factum.

Carried

It was moved by Mr. Swaye, seconded by Mr. Cole that the recommended penalty be adopted.

Not Put

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 1 month definite and indefinitely thereafter until he pays the Law Society's costs, provide copies of all correspondence between him and the Society to his solicitor Mr. Mang for a period of 2 years, upon reinstatement to enrol in and co-operate with the Practice Review Program and seek psychological or psychiatric assistance and participate in whatever therapy is recommended.

CONVOCATION ROSE AT 5:05 P.M.

Confirmed in Convocation this 23 day of January, 1997⁸

Hawy T. Stushny

Treasurer