

26th March, 1992

MINUTES OF SPECIAL CONVOCATION

Thursday, 26th March, 1992
9:30 a.m.

PRESENT:

The Treasurer (James M. Spence), Arnup, Bastedo, Bragagnolo, Brennan, Campbell, Cullity, Elliott, Finkelstein, Graham, Hickey, Lamek, Lamont, McKinnon, Murray, D. O'Connor, Palmer, Peters, Rock, Scott, Somerville, Strosberg, Thom, Topp and Weaver.

.....

.....

IN PUBLIC

.....

DISCIPLINE COMMITTEE

Re: DAVID ARTHUR STEVENS, Dundas

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Norm Perrier requested an adjournment on consent to the next Special Convocation.

It was moved by Alan Rock, seconded by Paul Lamek that the adjournment be granted.

Carried

Counsel retired.

.....

Re: HERMAN JULIUS MELNITZER, London

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Messrs. Strosberg, Campbell, Topp, and O'Connor and Ms. Peters withdrew.

Mr. Gavin MacKenzie appeared for the Society and Mr. Donald Jack appeared for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 12th March, 1992, together with an Affidavit of Service sworn 20th March, 1992, by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 19th March, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

26th March, 1992

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Paul Copeland, Chair
Colin Campbell, Q.C.
Robert J. Carter, Q.C.

in the matter of
The Law Society Act

Gavin MacKenzie
for the Society

and in the matter of
HERMAN JULIUS MELNITZER
of the City
of London
a barrister and solicitor

Donald H. Jack
for the solicitor

Heard: March 3, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 16, 1991, Complaint D134/91 was issued against Herman Julius Melnitzer alleging that he was guilty of conduct unbecoming and on October 29, 1991, Complaint D164/91 was issued against Herman Julius Melnitzer alleging that he was guilty of conduct unbecoming. These complaints were withdrawn on March 3, 1992 and replaced with Complaint D21/92 which was issued on February 25, 1992, alleging that Herman Julius Melnitzer was guilty of conduct unbecoming.

The matter was heard in public on March 3, 1992, before this Committee composed of Paul Copeland, Chair, Robert J. Carter, Q.C. and Colin Campbell, Q.C. Mr. Melnitzer was not in attendance at the hearing but was represented by Donald H. Jack. Gavin MacKenzie appeared on behalf of the Law Society.

DECISION

The following particular of conduct unbecoming was admitted and found to have been established.

Complaint D21/92

- 2(a) On or about the 10th day of February, 1992, at London, Ontario, he pleaded guilty to and was convicted by the Honourable Justice Maloney of the Ontario Court of Justice (General Division) of 43 counts of knowingly making false documents and defrauding persons by deceit, falsehood or other fraudulent means contrary to the Criminal Code of Canada, at which time and place he was sentenced to nine years' imprisonment and ordered to pay \$20 million as compensation to victims of his fraudulent acts.

Evidence

The evidence before the Committee contained an Agreed Statement of Facts and a Statement of Fact put before the Honourable Justice Maloney in the Ontario Court of Justice (General Division) and attached to this report as Appendix "A".

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D21/92 and is prepared to proceed with a hearing of this matter on March 3, 1992.

II. ADMISSIONS

2. The Solicitor admits the particular set forth in Complaint D21/92.

III. BACKGROUND FACTS

3. The Solicitor was called to the bar in 1973. Until August 5, 1991, he was a senior partner in the London firm Cohen Melnitzer, a firm of which he was a co-founder in 1973. Until August 6, 1991, the Solicitor also acted as counsel to Torkin, Manes, Cohen & Arbus of Toronto. He has not practised law since August 6, 1991, and has provided to the Society his written undertaking that he will not practise law pending the completion of this discipline proceeding or until further order of the discipline committee.

IV. FACTS RELEVANT TO COMPLAINT D21/92

4. On February 10, 1992, the Solicitor pleaded guilty in the Ontario Court of Justice (General Division) at London, Ontario, to 43 counts of knowingly making false documents and defrauding persons by deceit, falsehood, or other fraudulent means, contrary to the Criminal Code of Canada. He was convicted by the Honourable Justice Maloney, who sentenced him to nine years' imprisonment and ordered him to pay compensation in the amount of \$20 million to victims of his fraudulent acts.

5. The facts on which the Court convicted the Solicitor and imposed sentence are fully set forth in a written statement of facts which was filed with the Court by the Crown on the basis of the Solicitor's agreement that the facts set forth therein are substantially correct. That statement of fact is filed herewith. The parties agree that the facts set out therein may be accepted as correct and that it is appropriate that the discipline committee and Convocation act upon those facts in determining whether the Solicitor is guilty of conduct unbecoming a barrister and solicitor and, if so, in recommending and imposing penalty.

6. The parties agree that the Solicitor has co-operated fully with the Society in its investigation; that the Solicitor has also co-operated fully with the police, the Crown, and the receiver appointed by the Court; and that the Solicitor's co-operation has saved the Society and other authorities a considerable amount of time, effort, and money which would otherwise have had to be expended to deal properly with this matter.

7. The parties agree that the Solicitor may introduce into evidence at the hearing of this matter character evidence in letter form concerning the Solicitor's work as a lawyer and his contributions to the legal profession.

26th March, 1992

8. The Solicitor acknowledges having reviewed this agreed statement of facts and having taken the advice of his counsel, D.H. Jack, before signing it.

DATED at this day of , 1992."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Herman Julius Melnitzer be disbarred.

REASONS FOR RECOMMENDATION

Based on the Agreed Statement of Facts, Mr. Melnitzer, through his counsel, agreed that he should be found guilty of conduct unbecoming a barrister and solicitor on the basis of his conviction on 43 counts of making false documents and defrauding persons by deceit, falsehood or other fraudulent means.

We agree with Mr. MacKenzie, counsel for the Law Society, that disbarment is required in this case, having regard to the seriousness of the offences, the number of the offences, and the relevance of the status of the stature of the Solicitor in London to his ability to have committed these offences. The Committee had before it the Statement of Fact (attached as Appendix "A") used as the basis for the guilty plea before Mr. Justice Maloney which outlined a long series of fraudulent acts committed over six years involving staggering quantities of money. The nine year sentence imposed was at the very high end of the range of sentences for fraud, and included a \$20,000,000.00 compensation order. The offences fell into three general categories:

1. Stock Certificate Transactions:

The Solicitor persuaded a printing company to prepare a series of false stock certificates. On the basis of those, the Solicitor obtained a \$43,000,000.00 line of credit and was caught when he was attempting to get a further \$21,000,000.00 line of credit.

2. Fraudulent Bank Loans:

Over six years the Solicitor got loans and lines of credit to the extent of \$18,000,000.00 using false financial statements for various corporations controlled by the Solicitor.

3. Individual Investor Frauds

The Solicitor obtained the sum of \$3,725,000.00 from individual investors based on fictitious land deals in Singapore. The investors included his partners and friends. Also included in this category of offences was the defrauding of Allan Richman, and two of his companies to the extent of \$10,950,000.00. Mr. Richman had been a long time friend of the Solicitor. It should be noted that the victims of the fraud were to a large extent not clients of the Solicitor.

For each category of offence the Solicitor exploited his reputation not only in London, but in the Province of Ontario as a prominent and competent lawyer. The printing of the share certificates was done by a printing company that was a long time client of the Solicitor's firm Cohen, Melnitzer. Representations were made to the printing company by the Solicitor that he needed the false share certificates for the purposes of litigation he was conducting. A letter to that effect was prepared on the stationery of the Solicitor's firm. As well, the Solicitor provided a legal opinion on his firm letterhead that the

26th March, 1992

printing company would incur no civil or criminal liability as a result of preparing the false share certificates. The personal loans were induced in part by the letter that the Solicitor forged on the letterhead of a London, England law firm that he had dealt with.

Mr. MacKenzie indicated to the Committee, and we agree with him, that the actions of the Solicitor and the widespread publicity connected to his actions have had an impact on the general reputation of lawyers in the province and that disbarment is required in this case in part to repair that damage done by the Solicitor's criminal activities.

Mr. Jack, on behalf of the Solicitor, indicated that once the criminal activities were discovered, the Solicitor cooperated fully with everyone, including the police, the trustee in bankruptcy and the Law Society. Mr. Jack indicated that the Solicitor has been seeing a psychiatrist and that the sentencing Judge had recommended psychiatric treatment continue. Mr. Jack, on behalf of the Solicitor, stated that he was unable to oppose the disbarment penalty sought by the Society.

Notwithstanding acknowledgement that disbarment was the inevitable result, Mr. Jack led the Committee through a volume of character evidence material consisting of a curriculum vitae and 20 letters of reference. The Solicitor is now 44 years of age, and has had an extremely distinguished career at the Bar since his call in 1973. The letters of reference, all written after the guilty pleas entered by the Solicitor, are extremely impressive. Included are letters from former Treasurers of the Law Society, one of whom is a former Judge of the Court of Appeal, members of the legal profession and many other prominent people. We note, with amazement, that two of the letters were written by men who were defrauded by the Solicitor, one to the extent of \$25,000.00, the other to the extent of \$200,000.00.

Taking the facts of the offences before us, the background of the Solicitor and the character evidence, it is apparent that a very bright, competent, personable and well-liked man has committed very serious offences, over a long period of time, for reasons that this Committee finds hard to comprehend. For the Solicitor and his family, his public fall from grace is a significant personal tragedy. For the Society the Solicitor is a convicted criminal, guilty of most significant property offences. In our view, no penalty short of disbarment would be appropriate.

Herman Julius Melnitzer was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 23rd day of March, 1973.

ALL OF WHICH is respectfully submitted

DATED this 12th day of March, 1992

"Paul Copeland"
Paul Copeland, Chair

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

There were no submissions.

The Report was adopted.

26th March, 1992

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

There were no submissions and the Recommendation was adopted.

The solicitor was disbarred.

Counsel retired.

.....

Re: JAMES DOUGLAS LEITH ROSS, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Palmer withdrew.

Mr. Gavin MacKenzie appeared for the Society. No one appeared for the solicitor who was present.

Mr. Rock pointed out a typographical error in the Report on page 2, paragraph 6 that the word "adequacies should be "inadequacies".

Convocation had before it the Report of the Discipline Committee dated 25th February, 1992 together with an Affidavit of Service sworn 20th March, 1992 by Louis Katholos hat he had effected service on the solicitor by registered mail and by courier on 9th March, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Karen Julaine Palmer, Chair
Susan E. Elliott
Paul Copeland

In the matter of
The Law Society Act

Christina Budweth
for the Society

and in the matter of
JAMES DOUGLAS LEITH ROSS
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 14, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 19, 1991, Complaint D144/91 was issued against James Douglas Leith Ross, alleging that he was guilty of professional misconduct.

The hearing was heard in public on January 14, 1992, before this Committee comprised of K. Julaine Palmer, Chair, Susan E. Elliott and Paul Copeland. The Solicitor attended the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D144/91

- 2(a) The Solicitor failed to reply to communications from the Law Society despite letters dated April 11, 1991, May 13, 1991, June 11, 1991, July 11, 1991 and August 6, 1991.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D144/91 and is prepared to proceed with a hearing of this matter on January 14, 1992.

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 D144/91 and admits the particulars contained in the complaint. The Solicitor also admits that the particulars in the complaint together with the facts as set out herein constitute professional misconduct.

IV. FACTS

4. The Solicitor is a practitioner practising in partnership under the firm name Ross & Ross in Toronto. He was called to the bar on June 27, 1957.
5. The Solicitor has a prior discipline history which is detailed below.

26th March, 1992

6. On April 11, 1991, the audit department of the Society wrote to the Solicitor following an examination of his books and records. Certain inadequacies had been disclosed during the examination and the Society requested that the Solicitor respond concerning a number of matters. A copy of the Society's April 11 letter is attached as Exhibit 1. No response was received.

7. Follow-up letters from the Society dated May 13, June 11 and July 11, 1991 attached as Exhibits 2, 3 and 4 respectively were sent. No reply to those letters has been received to date.

8. The Solicitor was found guilty of professional misconduct on June 25, 1991 for failing to reply to the Society and failing to comply with an Order of Convocation, the penalty portion of the hearing was adjourned pending receipt of reports from Professional Standards and Link. The endorsement of the Complaint made on June 25 included a notation that the Solicitor reply promptly to all correspondence from the Law Society in the interim.

9. Discipline Counsel of the Society wrote to the Solicitor by letter dated August 6, 1991 requesting a reply to the letters sent by the audit department, a copy of the August 6 letter is attached as Exhibit 5.

10. The Solicitor has not yet provided a reply to the Society's correspondence.

V. CURRENT OR PRIOR DISCIPLINE

11. On July 15, 1986 the Solicitor was reprimanded in committee for his failure to honour an undertaking to a fellow solicitor, for misleading a fellow solicitor and for his failure to maintain books, records and accounts.

12. On April 21, 1987 the Solicitor was reprimanded in committee for his failure to serve a client in a conscientious, diligent and efficient manner and for his failure to co-operate with the Society in an investigation.

13. On April 26, 1990 the Solicitor appeared in Convocation as a result of his failure to reply to communications from the Society and misleading a client regarding the status of an action. The Solicitor was ordered suspended for a period of 1 month and was ordered to consult and co-operate with the Practice Advisory Service of the Law Society, to consult with the LINK program and to undertake to co-operate with the Professional Standards Program.

14. On June 25, 1991, as disclosed in paragraph 8 above, a finding of professional misconduct was made against the Solicitor concerning his failure to reply to communications from the Law Society and his failure to comply with the order of Convocation made on April 26, 1990.

15. On November 12, 1991 the Solicitor appeared before the Discipline Committee for completion of the penalty portion of his hearing adjourned from June 25, 1991. The Solicitor was reprimanded in committee and gave an undertaking to the Society respecting his attendance at Alcoholics Anonymous and cooperation in the Practice Advisory Professional Standards program. A copy of the decisions of the committee and the solicitor's undertaking to the Society are attached as Exhibits 6 and 7, respectively,

DATED at Toronto this 14th day of January, 1992."

26th March, 1992

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said James Douglas Leith Ross be suspended for a period of one month, such suspension to remain in effect until the following three items have been fulfilled:

- (1) Mr. Ross to file a reply to the Law Society correspondence of April 11, 1991 and complies with the directives of the Audit Department,
- (2) Mr. Ross to obtain a psychological or psychiatric assessment which addresses the question of his fitness to practise law and provide a copy of the report to the Law Society, and
- (3) Mr. Ross to engage in such counselling as may be recommended by the assessment.

REASONS FOR RECOMMENDATION

The Solicitor has a lengthy record of discipline between 1986 and November 1991, which has resulted in three reprimands in Committee and one suspension of one month.

The Solicitor has cooperated with Practice Standards, which reviewed his practice in October 1991. At that time the Solicitor's practice consisted of 25 active files. The Solicitor has no full-time staff.

The Solicitor admitted to the Committee that he has been an alcoholic for many years. On January 14, 1992, he gave evidence before the Committee that he had been sober for seven (7) months and was noticing a very gradual improvement in his health. The Solicitor admitted to the Committee that he had a problem with procrastination and became depressed when he received communications from the Law Society. The Solicitor is married; his spouse works; he earns a small income. He attends four meetings per week at Alcoholics Anonymous.

The Solicitor asked the Committee to impose some penalty upon him which would motivate him to seek further outside assistance.

The Solicitor is still bound by his undertaking to the Society (Exhibit 7).

The Committee is of the view that Mr. Ross must be induced to respond to the Law Society's Audit Department's concerns, and, accordingly, in view of his discipline history, that he must be suspended for one month, or for such longer period, until he responds.

The Committee believes with psychiatric or psychological assistance, coupled with continued sobriety, that Mr. Ross may resume the practice of law in a manner that is acceptable to the Society. In the alternative, the Committee notes that an assessment may urge Mr. Ross to seek an alternate occupation.

James Douglas Leith Ross was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 27th day of June, 1957.

ALL OF WHICH is respectfully submitted

DATED this 25th day of February, 1992

"K.J. Palmer"
K. Julaine Palmer, Chair

26th March, 1992

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

There were no submissions.

The Report was adopted.

Mr. MacKenzie with the consent of the solicitor asked Convocation to accept an amendment to the Recommendation as to Penalty as set out in his written submission which read:

"The Society respectfully submits that the Solicitor should be suspended for one month from today's date and thereafter indefinitely until a committee of Convocation finds that he is capable of practising law."

The solicitor concurred with the written submission provided by the Law Society's counsel.

It was moved by Mr. Rock, seconded by Mr. Lamek that the Recommendation as to Penalty as amended by counsel's submission, be adopted.

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

It was moved by Mr. Strosberg, seconded by Mr. Scott that the matter be adjourned for one month to the next Discipline Convocation and that Mr. Ross be urged to obtain counsel to appear for him on an undertaking not to practice law.

Lost

The Recommendation as to Penalty as amended was adopted.

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

Counsel and the solicitor retired.

.....

Re: PAUL HUBERT WATSON, Ottawa-Carleton

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

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

Mr. Rock advised Convocation that the Report was incomplete in that a part of a sentence did not appear under the Reasons for Recommendation. The last sentence on page 3 should read:

"The Solicitor has also indicated to the Law Society that he is an employee of the firm Watson, Ness and Boivin, whereas the Law Society's records indicate that he is a sole practitioner in association with that firm and that matter has not been resolved."

Convocation had before it the Report of the Discipline Committee dated 22nd January, 1992, together with an Affidavit of Service sworn 20th March, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 21st February, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

26th March, 1992

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

J. James Wardlaw, Q.C., Chair
Daniel J. Murphy, Q.C.
E. Susan Elliott

In the matter of
The Law Society Act

Christina Budweth
for the Society

and in the matter of
PAUL HUBERT WATSON
of the Regional Municipality
of Ottawa-Carleton
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 11, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 23, 1991, Complaint D145/91 was issued against Paul Hubert Watson, alleging that he was guilty of professional misconduct.

The hearing was heard in public on December 11, 1991 before this Committee composed of J. James Wardlaw, Q.C., Chair, Daniel J. Murphy, Q.C. and E. Susan Elliott. The Solicitor did not appear at the hearing, nor was he represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D145/91

- 2.(a) He failed to provide a reply to the Society regarding its inquiries respecting the status of the filing of his Form 2/3 for January 1990, despite letters dated March 26, 1991, April 26, 1991, May 27, 1991, June 26, 1991 and July 26, 1991; and
- (b) He failed to file with the Society within six (6) months of the termination of his fiscal year ending January 31, 1990, a statutory declaration in the form prescribed by the Rules and a report duly completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening section 16(2) of the Regulation made pursuant to the Law Society Act.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

The Solicitor did not attend at the hearing. The Committee reviewed the affidavit of service attached to the complaint and determined that service was sufficient. In addition, counsel for the Law Society has reported to the Committee that she has left messages with the receptionist at the office where Mr. Watson has his practice on several occasions to advise him of this hearing. Based upon this, the Committee determined that it had jurisdiction and proceeded to hear the evidence that was submitted to it by two employees of the Law Society, Audit Department, Miss Lorraine Campbell and Miss Irene Andrighetti.

On the evidence, it appears that Mr. Watson filed his Form 2/3 for January 1990, but the forms were not properly completed. Form 3 was not properly completed in that the report of the public accountant was not attached to it. Form 2 was returned to the Solicitor along with Form 3.

The accountant indicated certain things that he had not been able to examine and these were paragraph 4(f), transfer between client trust ledger accounts are not made. 4(g), cash receipts book for the general fund was not seen. 4(i), copies only of the bank statements were available. Cancelled cheques and duplicate deposit slips were not present. 4 (h), all months were available except for January, 1990. There was also an indication of a problem in the trust account amounting to twelve dollars.

In addition, it appears that Form 3 did not have the year end of the fiscal period shown, although presumably it is January 31st, 1990.

The Society wrote many letters to the Solicitor, the letters being those indicated in the complaint, and he has not responded to the Law Society despite many telephone calls with respect to this hearing. Because of the Solicitor's failure to reply and failure to complete his filings, Form 2/3 for the year ended January 1990, a finding of professional misconduct is made.

RECOMMENDATION AS TO PENALTY

The Committee recommends to Convocation that there be a suspension for one month definite and thereafter until such time as all of the filings are in order.

REASONS FOR RECOMMENDATION

With respect to penalty, it appears that the Solicitor has a prior record of similar events and events dealing with client complaints, although this particular one does not involve client complaints. The previous discipline record involves the following:

- 1) August 30, 1988, failure to respond and failure to serve a client in a conscientious, diligent and efficient manner which resulted in a Reprimand in Committee.
- 2) A finding of professional misconduct on February 27, 1990, for failing to reply to the Society and failing to report to a client in a timely fashion which resulted in a Reprimand in Committee with an Undertaking being given by the Solicitor to reply to correspondence and telephone calls from the Audit and Investigation Departments of the Law Society in a timely fashion.

26th March, 1992

3) A finding of professional misconduct was made on June 20, 1991, with respect to the complaint of failing to file, breach of an Undertaking and failing to reply which were discipline complaints D107a/90 and D235/90. The disposition in that case was a Reprimand in Convocation.

The Solicitor has also indicated to the Law Society that he is an employee of the firm Watson, Ness and Boivin, whereas the Law Society's records indicate that he is a sole practitioner in association with that firm and that matter has not been resolved.

Paul Hubert Watson was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 10th day of April, 1964.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of January, 1991

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

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

There were no submissions.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Bragagnolo that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for one month definite and thereafter until filings are in order, be adopted.

Mr. MacKenzie made submissions in support of the Recommendation.

The Recommendation as to Penalty was adopted.

Counsel retired.

.....

Re: ALAN STANLEY FRANKLIN, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Christina Budweth appeared for the Society. No one appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 28th February, 1992, together with an Affidavit of Service sworn 20th March 1992 by Louis Katholos that he had effected service on the solicitor by registered mail on 9th March, 1992 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 26th March, 1992 (marked Exhibit 2). Copies

26th March, 1992

of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

J. James Wardlaw, Q.C., Chair
Rino C. Bragagnolo, Q.C.
Fatima Mohideen

In the matter of
The Law Society Act

Christina Budweth
for the Society

and in the matter of
ALAN STANLEY FRANKLIN
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: January 8, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 6, 1991, Complaint D119/91 was issued against Alan Stanley Franklin, alleging that he was guilty of professional misconduct.

The hearing was heard in public before this Committee composed of J. James Wardlaw, Q.C., Chair, Rino C. Bragagnolo, Q.C. and Fatima Mohideen.

The Solicitor appeared before the Discipline Committee and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D119/91

2(a) he guaranteed personally a document securing indebtedness, in which his client was involved as a borrower.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D119/91 and is prepared to proceed with a hearing of this matter on January 8, 1992.

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 D119/91 with his counsel, Larry Banack, and admits the particulars of the allegations of misconduct contained therein. The Solicitor admits that those particulars and the facts set out in the agreed statement of facts constitute professional misconduct.

IV. FACTS

4. The Solicitor is a sole practitioner practising in Downsview, Ontario. He was called to the bar on April 13, 1978.

5. The Solicitor's client, Terry Jones a real estate developer whose background includes a term as speaker of the Ontario Legislature, contacted Harvey Hacker a 71 year old chartered accountant and requested that Hacker participate in a real estate syndication as a joint venturer by advancing funds for the development. Hacker had, on one previous occasion lent Jones \$40,000 on a short term basis.

6. Initially, Hacker was reluctant to advance the funds to Jones because of difficulty in receiving repayment on the first transaction, and he communicated that reluctance to Jones. Shortly thereafter, Jones contacted Hacker again and requested that Hacker provide a loan of \$50,000 for the same transaction. Hacker remained sceptical.

7. A real estate agent, Donald Woodward, known to both Hacker and Jones suggested to Hacker that Jones' solicitor, the Solicitor, might be prepared to guarantee the loan because the Solicitor had an interest in the project. The Society can neither confirm or deny that the Solicitor had a financial interest in Jones' project. The information in this paragraph is presented only to explain Hacker's state of mind.

8. Hacker spoke to the Solicitor and expressed his concerns about advancing the funds. He asked the Solicitor to guarantee the loan. The Solicitor agreed to do so knowing that Hacker would not advance the funds without his, the Solicitor's guarantee. The Solicitor believed Hacker's investment was a good one.

9. On or about May 1, 1990 Hacker attended at the Solicitor's office. The Solicitor took an unexecuted copy of the promissory note already executed by Terry Jones, stroked out Jones' name and replaced it with his own. The Solicitor then added a paragraph to the Note and executed it. A copy of the Note bearing the Solicitor's signature is attached as Exhibit 1.

10. The promissory note between Hacker and Jones, dated May 1, 1990 is attached as Exhibit 2. The note evidenced an advance of \$50,000 made on May 1, 1990 and evidenced a promise to make repayment by way of a \$60,000 payment on May 15, 1990.

26th March, 1992

11. The face of the Note indicates a rate of interest of 520% per annum.
12. The Solicitor has taken the position that the rate of interest on the face of the note violates the provisions of section 547 of the Criminal Code of Canada.
13. In a letter dated October 10, 1990 counsel for Hacker, Mr. Grossman, corresponded with the Solicitor requesting formal security be provided to Hacker in support of the Note. A copy of that correspondence is attached as Exhibit 3.
14. By letter dated October 15, 1990, the Solicitor refused to do so. Further, he denied that he had an obligation to recommend that Mr. Hacker seek independent legal advice with respect to the transaction. Finally the Solicitor drew Mr. Grossman's attention to the fact that the rate of interest on the Note was usurious and in breach of the provisions of the criminal code. A copy of that correspondence is attached as Exhibit 4.

DATED at Toronto this 10th day of December, 1991."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Alan Stanley Franklin be Reprimanded in Convocation.

REASONS FOR RECOMMENDATION

The Solicitor knew that Harvey Hacker would not provide the funds unless he, the Solicitor, personally guaranteed the loan to his client. That, in itself, is not sufficient for a Reprimand in Convocation.

The Solicitor, however, did much more. When there was default on the loan, he took the position that he was not required to honour the guarantee because the rate of interest was a criminal rate of interest. This was a fact that he knew, or should have known at the time.

The Committee makes no finding as to whether or not that will be a valid defence. It does, however, take the view that for a lawyer to induce someone to lend money based on a personal guarantee and then seek to avoid the consequences of that inducement, when he knew or ought to have known that the inducement might have no value, is reprehensible.

Alan Stanley Franklin was called to the bar and admitted as a Solicitor of the Supreme Court of Ontario on the 13th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

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

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

There were no submissions.

The Report was adopted.

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

There were brief submissions by Society's counsel and the solicitor in support of the Recommendation.

The Recommendation was adopted.

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

.....

Re: JOHN KENNETH HENRY STIFF, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Neil Perrier appeared for the Society and Mr. Ted Laan appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 2nd March, 1992, together with an Affidavit of Service sworn 20th March, 1992 by Frances Galati that she had effected service on the solicitor by registered mail on 9th March, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Brendan O'Brien, Q.C., Chair
Carole Curtis
Ross W. Murray

In the matter of
The Law Society Act

Neil Perrier
for the Society

and in the matter of
JOHN KENNETH HENRY STIFF
of the City
of Toronto
a barrister and solicitor

Ted R. Laan
for the solicitor

Heard: February 4, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 13, 1991, Complaint D131/91 was issued against John Kenneth Henry Stiff, alleging that he was guilty of professional misconduct.

The matter was heard in public on February 4, 1992, before this Committee composed of Brendan O'Brien, Q.C., Chair, Carole Curtis and Ross W. Murray.

The Solicitor attended at the hearing and was represented by Ted R. Laan. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D131/91

- 2(a) He breached an Undertaking given to Melanie Manchee, a fellow solicitor, by releasing monies held in his trust account without first obtaining mortgage discharges;
- (b) He failed to take reasonable steps to obtain mortgage discharges relating to a real estate transaction which closed on November 16, 1988.

The Committee was furnished with an Agreed Statement of Facts and in addition, during the hearing, counsel for the Solicitor conceded that the complaint as set forth in subparagraphs (a) and (b) had been established, but pleaded extenuating circumstances.

In order to understand the recommendations of the Committee as to penalty, it will be necessary to give a brief summary of the facts disclosed in the Agreed Statement of Facts and in the admissions that were made during the hearing. The essential facts were as follows:

In the summer of 1987, the Solicitor acted for a client, Helen Hillman, in the purchase of a property at 37 Moberly Avenue, Toronto.

The vendor was represented by Peter Krawec of the firm of Tobias, Krawec. When the purchase was closed on July 29, 1987 there were some undischarged mortgages on title with respect to which Krawec gave an undertaking to obtain and register discharges. The Solicitor failed to follow up on this Undertaking. In the following year, the client Hillman, entered into an agreement to sell the property. The sale was to be closed in November of 1988. The Solicitor was again retained in connection with this transaction and then realized that he had not followed up on the Undertaking given in July of 1987. Before closing the sale of the property, the Solicitor tried to reach Krawec without success but spoke to his secretary from whom he learned that the "records indicated all loans to Cygrus (the mortgagee) had probably been paid". On the strength of this information, the Solicitor closed the sale of the property and gave to the Solicitor for the purchaser, Miss Manchee, an Undertaking which read in part as follows:

"in consideration of the closing of the above transaction and notwithstanding the closing of the same, I hereby personally undertake as follows:

26th March, 1992

1. to hold \$20,900.00 + \$5,000.00 in trust from balance due on closing pending the registration of discharges of mortgages numbered as C334503 and C388731 registered in favour of Cygrus Financial Inc., said discharges to be registered within 30 days of the above date and the purchasers' solicitor to be notified of registration particulars."

Because there had been a couple of days delay in closing the sale of the property and because the client Hillman was angry at the delay, the Solicitor (who had told the client nothing about the title problem) paid over the purchase price to her in violation of the Undertaking that he had given.

From this point on, the Agreed Statement of Facts reveals many letters and records of telephone calls, but no real progress in getting the mortgages discharged and to complicate matters, Krawec got into trouble professionally and was disbarred, although not in relation to this transaction.

After Krawec's disbarment, the Solicitor dealt with Mr. Krawec's former partner, Mr. Tobias, who while co-operative, was unable to give him discharges for a variety of reasons, although he believed the mortgages had probably been paid off but it now appeared that several people had furnished the money that had been invested under the name of Cygrus. Without going into detail of the frustrating but useless steps taken by the Solicitor, nothing effective was done until December of 1991 when a solicitor employed by the Errors & Omissions Insurers (Mr. Ronald Carr) brought a motion to have the mortgages discharged and it appears that this motion which will be heard in April, will probably succeed.

The long delay appears to have been compounded in part by the fact that the complainant, Ms. Manchee, reported the matter to the Law Society on October 3, 1989, but the Law Society did not bring this complaint to the attention of the Solicitor until March 25, 1991. This delay was not explained.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said John Kenneth Henry Stiff be Reprimanded in Convocation.

REASONS FOR RECOMMENDATION

It is apparent that there was an unwarranted delay in coming to grips with the problem which had its origin in July of 1987. Counsel for the Solicitor quite fairly conceded that the delay constituted professional misconduct, but because of the rather unusual background, that is to say, the breach of the Undertaking given by Krawec and the difficulty in getting particulars to bring a motion to have the mortgages discharged, the endless frustration led to paralysis and that was the only reason the Solicitor could give for not acting much sooner than he did to resolve the matter. On this branch of the complaint, the Committee would have been prepared to deal with the matter by way of a reprimand in Committee but since the second part of the charge is linked with the first, the two could not be dealt with separately and in view of the Committee, the first charge, that is the breach of the Undertaking, was a much more serious matter that called for a reprimand in Convocation. During the argument, much was said about the importance of Undertakings in closing real estate transactions and the need for strict compliance with Undertakings when given, but at the same time there seemed to be, as revealed in the correspondence, a lack of appreciation on the part of the Solicitor of the fact that an Undertaking could not be ignored no matter how strong the evidence might be that the discharges of the mortgages would be forthcoming.

26th March, 1992

The Law Society has in previous discipline cases stressed the importance of strict compliance with any Undertaking given and judging from what happened in this case it would seem appropriate to again remind the profession that any breach of an Undertaking will be dealt with as a most serious matter.

In this case, there seems to be no doubt that the Solicitor believed until it was too late, that Krawec would live up to his Undertaking and that the production of discharges would be little more than a formality, but such belief is irrelevant except as to the penalty.

For the foregoing reasons, the Committee recommends that on subparagraph (a) of the Complaint, the penalty be a reprimand in Convocation, and that the reprimand include the matters dealt with in subparagraph (b), although had that been the only complaint, it could have been dealt with in Committee.

John Kenneth Henry Stiff was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 9th day of April, 1976.

ALL OF WHICH is respectfully submitted

DATED this 2nd day of March, 1992

"B. O'Brien"
Brendan O'Brien, Q.C., Chair

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

There were submissions by both counsel. The Society's counsel advised that the Report omitted the solicitor's past discipline record wherein the solicitor was reprimanded in Committee in 1989.

The Report was adopted.

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

There were brief submissions made by both counsel in support of the Recommendation.

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

It was moved by Mr. Wardlaw, seconded by Mr. Hickey that the solicitor be reprimanded in Committee.

Lost

The Recommendation was adopted.

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

Counsel, the reporter and the public withdrew.

The Treasurer administered the reprimand.

The solicitor retired.

.....

Re: ERNEST ARTHUR DYCK, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Neil Perrier appeared for the Society and Mr. Elliot Berlin appeared for the solicitor who was present.

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

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

In the matter of
The Law Society Act

Neil Perrier
for the Society

and in the matter of
ERNEST ARTHUR DYCK
of the City
of Toronto

Not Represented
for the solicitor

a barrister and solicitor

Heard: November 5, 1991 and
December 6, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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

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

DECISION

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

Complaint D95/91

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

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

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

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

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

IV. FACTS

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

Particular 2a) - Wayne L. Magee, Complainant

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

Particular 2b) - Peter Chamberlain, Complainant

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

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

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

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

Particular 2c) - Gloria Morris, Complainant

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

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

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

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

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

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

Particular 2d) - Undertaking

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

26th March, 1992

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

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

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

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

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

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

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

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

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

V. DISCIPLINE HISTORY

39. The Solicitor has no previous discipline history.

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

RECOMMENDATION AS TO PENALTY

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

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

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

REASONS FOR RECOMMENDATION

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

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

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

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1992

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

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

There were no submissions by either counsel.

The Report was adopted.

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

There were submissions made by Mr. Perrier as to whether certain conditions had been met and recommended that the Recommendation contained in the Report be amended to provide "if the solicitor has not contacted the Professional Standards Programme by January 15th, 1992 that the solicitor be suspended until he had done so.

Counsel took questions from the Bench relating to the material filed in Convocation and whether the matter should be adjourned so that counsel could discuss with each other the issues raised in Convocation.

It was moved by Mr. Somerville, seconded by Mr. Topp that the matter be adjourned for one month.

Neither Society's counsel nor counsel for the solicitor objected to the adjournment.

The motion for adjournment was adopted.

.....

CONVOCATION ADJOURNED FOR A BRIEF RECESS
.....

.....

CONVOCATION RESUMED IN PUBLIC
.....

Re: LEE EDWARD WARD, Carleton-Place

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Ms. Christina Budweth appeared for the Society and Mr. J. Kirkland appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 20th November, 1991, together with an Affidavit of Service sworn 3rd December, 1991 by Renzo Foppiano that he had effected service on the solicitor by registered mail and by courier on 20th November, 1991 (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

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

In the matter of
The Law Society Act

Christina Budweth
for the Society

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

Not Represented
for the solicitor

Heard: November 13, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 22, 1991, Complaint D101/91 was issued against Lee Edward Ward, alleging that he was guilty of professional misconduct.

The hearing was heard in public on November 13, 1991, before this Committee composed of James J. Wardlaw, Q.C., Chairman, Mary P. Weaver, Q.C. and Mrs. Netty Graham. The Solicitor appeared at the hearing and was not represented. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

2. (a) He failed to provide a reply to the Society regarding a complaint by Christine Carisse, despite letters dated May 10, 1991, June 18, 1991 and June 26, 1991, and telephone requests on May 28, 1991, June 7, 1991 and June 24, 1991.
- (b) He failed to provide a reply to the Society regarding a complaint by Warren L. Creates, despite letters dated May 31, 1991 and June 26, 1991, as well as his verbal promise of a response made June 24, 1991.

EVIDENCE

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

The Solicitor admits service of Complaint D101/91 and is prepared to proceed with a hearing of this matter on November 13, 1991.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

The Solicitor has reviewed Complaint D101/91 and admits the particulars of the allegations of professional misconduct contained therein. The Solicitor admits that the particulars supported by the facts as stated herein constitute professional misconduct.

IV. FACTS

The Solicitor was called to the bar on April 19, 1978. He is a sole practitioner practising in the Town of Carleton Place. The Solicitor has a previous discipline record which is detailed below.

Christine Carisse

5. Christine Carisse retained the Solicitor in 1983 to act on an insurance matter.

26th March, 1992

6. On May 2, 1991, the Society received a formal complaint from Ms. Carisse detailing her dissatisfaction with the Solicitor's failure to respond to numerous telephone inquiries from her respecting the status of her file.

7. On May 10, 1991, correspondence from the Society was forwarded to the Solicitor by facsimile transmission attaching a copy of the client's complaint. The Solicitor was requested to respond within two weeks.

8. On May 28, 1991, the Solicitor spoke to a member of staff at the Society and advised he would prepare and send the response "by the end of the week".

9. On June 5, 1991 an additional call was placed to the Solicitor respecting the status of the file. The Solicitor did not respond to this call.

10. On June 18, 1991, the Society again wrote to the Solicitor requesting a response to the client's complaint. The Solicitor did not respond to this letter.

11. On June 24, 1991, a secretary with the Society spoke with the Solicitor who advised that he had prepared the material in reply to the complaint and that it had been transmitted by courier. The Solicitor declined to fax a copy of the material to the Society.

12. On June 26, 1991, the Society again corresponded with the Solicitor by way of registered mail requesting a response to its initial inquiry of May 10, 1991. The Solicitor was advised that his failure to respond to the complaint within seven days would result in a referral of the matter to the chair of the discipline committee. A copy of the June 26, 1991 letter as well as the registered mail card are attached as Exhibit 1 to this agreed statement of facts.

13. On Tuesday, September 24, 1991, Stanley Jenkins, counsel with the Society's audit and investigation department attended at the Solicitor's office on an unrelated matter. While in the Solicitor's office, Mr. Jenkins had an opportunity to review Ms. Carisse's file. Mr. Jenkins reminded the Solicitor of his obligation to respond to Ms. Carisse's formal complaint.

14. On Thursday, September 26, 1991, the Solicitor was scheduled to appear before Convocation. On that day, Mr. Jenkins again had occasion to speak to the Solicitor. Mr. Jenkins reminded the Solicitor of his obligation to provide written responses to the complaint lodged by Ms. Carisse.

15. On September 30, 1991, Mr. Jenkins wrote to the Solicitor respecting a number of matters including his obligation to provide a written response to the complaint made by Ms. Carisse.

16. On October 25, 1991, Mr. Jenkins again wrote to the Solicitor urging him to provide a written response to the complaint by Ms. Carisse. A copy of Mr. Jenkins' October 25 letter is attached as Exhibit 2 to this agreed statement of facts.

17. During the telephone conversation with the Solicitor on October 25, 1991, the Solicitor undertook to Mr. Jenkins that his reply would be forwarded to the Society by Monday, October 28, 1991.

18. Mr. Jenkins wrote to the Solicitor again on November 5, 1991, a copy of Mr. Jenkins' letter is attached as Exhibit 3 to this agreed statement of facts. Mr. Jenkins' November 5 letter accurately reports the conversations and course of events recorded therein.

26th March, 1992

19. The Society received a response to its correspondence of May 10 on November 5, 1991. In that correspondence the Solicitor advised that Ms. Carisse's file had been forwarded to her new solicitor on October 29, 1991. A copy of the Solicitor's November 5 letter is attached as Exhibit 4 to this agreed statement of facts.

Warren L. Creates

20. On March 28, 1991, the complainant, Warren Creates, a solicitor, corresponded with the Solicitor, enclosing a signed direction executed the Solicitor's client, Ghassan Saad, requesting transfer of the file to Mr. Creates. Mr. Creates received no response to this correspondence. Further telephone and written communications from Mr. Creates to the Solicitor were also unanswered.

21. Mr. Creates wrote to the Solicitor again on April 25, 1991 detailing his attempts to contact the Solicitor without success. A copy of that letter is attached as Exhibit 5 to this agreed statement of facts.

22. Mr. Creates made a formal complaint to the law Society on May 14, 1991.

23. The Society corresponded with the Solicitor on May 31, 1991 enclosing a copy of the complaint and requesting a written reply within two weeks.

24. During a telephone conversation with staff of the Society on June 24, 1991, the Solicitor advised that he would prepare a reply to the Society's correspondence of May 31 immediately and deliver same by courier on June 25, 1991.

25. On June 26, 1991 the Society again corresponded with the Solicitor by registered mail requesting a response to its correspondence of May 31, 1991 and advising the Solicitor that his failure to respond would result in referral of the matter to discipline.

26. On Tuesday, September 24, 1991, Stanley Jenkins, counsel with the Society's audit and investigation department attended at the Solicitor's office and reviewed his file in relation to this matter. Mr. Jenkins confirmed that the Solicitor was aware that Mr. Saad had retained new counsel and wished to recover the file from him, the Solicitor.

27. The Solicitor stated that he had not yet prepared an account for outstanding fees owing to him or services rendered on behalf of Mr. Saad. Mr. Jenkins requested that the Solicitor produce an account by September 30, 1991. The Solicitor was agreeable to this deadline.

28. Also on September 24 Mr. Jenkins advised the Solicitor of his obligation to reply to the Society.

29. On Thursday, September 26, 1991, the Solicitor was scheduled to appear before Convocation. On that day, Mr. Jenkins again had occasion to speak to the Solicitor. Mr. Jenkins reminded the Solicitor of his obligation to provide written responses to the complaint lodged by Mr. Creates.

30. On September 30, 1991, Mr. Jenkins wrote to the Solicitor by fax and regular mail and reminded him of his obligation to provide a written response to the complaint lodged by Mr. Creates.

31. On October 25, 1991, Mr. Jenkins again wrote to the Solicitor urging him to provide a written response to the complaint by Mr. Creates. A copy of Mr. Jenkins' October 25 letter is attached as Exhibit 2.

26th March, 1992

32. Mr. Jenkins wrote to the Solicitor again on November 5, 1991, a copy of Mr. Jenkins' letter is attached as Exhibit 3. Mr. Jenkins' November 5 letter accurately reports the conversations and course of events recorded therein.

33. During the telephone conversation with the Solicitor on October 25, 1991, the Solicitor undertook to Mr. Jenkins that his reply would be forwarded to the Society by Monday, October 28, 1991.

34. The Society received a response to its letter of May 31, 1991 on November 5, 1991, a copy of the response is attached to this agreed statement of facts as Exhibit 4. The Solicitor transferred the client's files to Mr. Creates on October 29, 1991.

V. PREVIOUS DISCIPLINE

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

36. The Solicitor was found guilty of professional misconduct in failing to reply to the Society and failing to co-operate with a Law Society investigator, in his absence, on June 26, 1991. The Committee heard the complaint in the Solicitor's absence having been satisfied that the Solicitor had been apprised of the date and time of the hearing.

37. The Committee ordered that the Solicitor co-operate with the Society in the investigation of the complaints against him which gave rise to the charge of failing to reply. The Committee recommended that in the event of the Solicitor's co-operation, his penalty be a reprimand in Convocation. The Committee advised that failing the Solicitor's co-operation with the Society, he appear before Convocation and be suspended for a period of three months.

38. The Solicitor delivered his file regarding the subject of the Society's inquiries to the Society on September 25, 1991.

39. The Solicitor appeared before Convocation on September 26, 1991. Convocation suspended the Solicitor's right to practice law for one month effective December 1, 1991 and imposed an order that the Solicitor pay the Society's costs in the amount of \$1,750.

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

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Lee Edward Ward be suspended for a period of two months.

REASONS FOR RECOMMENDATION

On September 29, 1987, the Solicitor was reprimanded in Committee and fined \$1,000.00 for failure to serve clients in a conscientious, diligent and efficient manner, and for failure to reply to the Law Society.

On June 26, 1991, the Solicitor was found guilty of professional misconduct for failure to reply to the Law Society and for failure to co-operate with the Law Society's investigator. The Solicitor was suspended for one month in September 1991, to commence December 1, 1991. He had been given the chance to

26th March, 1992

be reprimanded in Convocation if he co-operated between June and September. He did not do so in that replies were not given to the Law Society until shortly before September Convocation.

At the time of the second hearing, (June of 1991), the Solicitor was receiving requests from the Law Society with respect to complaints made by two other clients. The Solicitor ignored the letters from the Law Society and did not reply to them until shortly before this hearing (letter dated October 28, 1991, received November 5, 1991, hearing November 14, 1991). The excuse, with respect to one of the matters was that he had mislaid the file. He did not, however, so advise the Law Society.

It would appear that the Solicitor will respond to the Law Society only when pressure is really turned on. The Committee considered, and rejected, the thought that he might be disbarred as being ungovernable. There were two reasons for this:

1. Counsel for the Law Society advised the Committee that no other member of the public has complained about his services. The Law Society is still investigating the response received on November 5th, but no one else has complained. The misconduct is failure to comply.
2. The Solicitor may not have had an opportunity to benefit from the one month suspension awarded in September, 1991. The time has not yet started to run and will not do so until December 1, 1991. Time was given to allow the Solicitor to accommodate his practice.

If a finding of similar misconduct is established as a result of a future complaint, this Committee would recommend to that Committee to suggest a heavier penalty.

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

ALL OF WHICH is respectfully submitted

DATED this 20th day of November, 1991

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

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

There were no submissions.

The Report was adopted.

It was moved by Mr. Rock, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for a period of two months, be adopted.

Counsel for the Society supported the two month suspension.

Counsel for the solicitor sought a lesser period of suspension. A psychiatric report on the solicitor was distributed to the Benchers.

26th March, 1992

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

It was moved by Mr. Bragagnolo, seconded by Ms. Elliott that the solicitor be suspended for a period of 30 days to commence August 1st, 1992.

Lost

It was moved by Mr. Bastedo, seconded by Mr. McKinnon that the solicitor be suspended for 1 month commencing June 1st, 1992.

Lost

It was moved by Mr. Campbell, seconded by Mr. O'Connor that the solicitor be suspended for 2 months commencing July 1st, 1992.

Carried

Mr. Rock's motion was not put.

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

Counsel and solicitor retired.

.....

Re: PETER ZINKO, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Stephen Waisberg appeared for the Society and Mr. G. W. McKechnie appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 10th March, 1992, together with an Affidavit of Service sworn 20th March, 1992 by Louis Katholos that he effected service on the solicitor by registered mail and by courier on 10th March, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

J. James Wardlaw, Q.C., Chair

Mary P. Weaver, Q.C.

Mrs. Netty Graham

26th March, 1992

In the matter of
The Law Society Act

Stephen Waisberg
for the Society

and in the matter of
PETER ZINKO
of the City
of Toronto
a barrister and solicitor

G. W. McKechnie
for the solicitor

Heard: November 13, 1991 and
January 22, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 20, 1991, Complaint D79/91 was issued against Peter Zinko, alleging that he was guilty of professional misconduct.

The matter was heard in public on November 13, 1991 and January 22, 1992, before this Committee comprised of J. James Wardlaw, Q.C., Chair, Mary P. Weaver, Q.C. and Mrs. Netty Graham.

Mr. Zinko attended the hearing and was represented by G.W. McKechnie. Stephen Waisberg appeared on behalf of the Law Society.

DECISION

The following particulars were found to have been established.

Complaint D79/91

- 2(a) During the period from November, 1987 to February, 1990, he misappropriated approximately \$11,812.50 from the Estate of Krystyna Chmiel by receiving in monthly installments the interest earned during that period on \$50,000 in investment certificates which he had purchased as an investment for the estate in October, 1987, and cashing the investment cheques and taking the cash for his own use, and not disclosing the interest in the books and records which he maintained for the estate;
- (b) He failed to disclose to Douglas Weber, a Law Society investigation auditor, his receipt of monthly interest instalments totalling \$11,812.50, despite a continuing investigation that had commenced in September, 1989, and despite ongoing communications with Mr. Weber, and requests by Mr. Weber, for the details of solicitor's and executor's fees taken;
- (c) He swore false Affidavits of Verification on December 14, 1989 and January 15, 1990 when he applied to the Surrogate Court for the passing of his accounts for the Estate of Krystyna Chmiel, by swearing that the accounts were full and correct and that the information contained in the applications was true, when he knew that the accounts did not disclose the \$11,812.50 in interest which he had been receiving;

26th March, 1992

- (d) During the years 1985 to 1989 he improperly appropriated \$19,988, more or less, from the Estate of Krystyna Chmiel on account of solicitor's and executor's fees, prior to the passing of his accounts and without authorization from the beneficiaries;
- (e) He failed to act in a conscientious, diligent and efficient manner on behalf of the Estate of Krystyna Chmiel,
 - i) by arranging an unsecured loan in 1989 from the estate to his son, thereby breaching the Trustees Act, in that the Will of Krystyna Chmiel did not waive the investment limitations of the Trustees Act, and
 - ii) by failing to file federal income tax returns for the Estate of Krystyna Chmiel for the years 1985 to 1989, thereby incurring additional penalties and interest costs.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

- 1. The Solicitor admits service of complaint D79/91.

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 D79/91 with his Counsel. The following facts are admitted by the solicitor.

IV. FACTS

4. The solicitor is 65 years of age having been born on February 7th, 1926. He was called to the Bar in 1956. For the past 35 years he has practiced as a sole practitioner in the Metropolitan Toronto area, most recently in the City of Etobicoke.

5. The complaints arise from the solicitor's conduct in his capacity as both solicitor and Administrator/Executor of the Estate of Krystyna Chmiel. Krystyna Chmiel died on February 25th, 1985. The solicitor was appointed sole Executor by her Will. A copy of the Will is attached hereto and marked as Exhibit "A".

6. The Will provided for a legacy of \$1,000.00 to Kataryna Klymenko. The contents of the Testator's home, the contents of a safety deposit box, a mortgage, a Georgian Bay property and the balance of accounts and investments were to be transferred to the Testator's daughter, Yvonne Monica Chmiel and the Testator's home or the sale proceeds thereof were to be divided equally between two charities, St. Casimir's Church and Klasztor Siostr Felicjanek. The value of the capital assets was found to be \$421,911.35.

7. The Testator's daughter, Yvonne Monica Chmiel, through her solicitor, Lance Evans, filed a caveat with the Surrogate Court. Solicitor, Lance Evans, was subsequently killed in a motor vehicle accident and solicitor, Donald Catalano was retained by Yvonne Monica Chmiel. The caveat was not lifted and solicitor, Zinko retained Angelo Cimetta to deal with solicitors Evans and Catalano. Solicitor Cimetta obtained an order appointing solicitor Zinko as Administrator Pendente Lite on October 2nd, 1986. The Testator's home was subsequently sold on October 9th, 1986. The Testator's daughter, Yvonne Monica Chmiel also known as Brandi Carrs and also known as Nicollette Carrs died on March 28th, 1988. This fact was not immediately communicated to solicitor Zinko. On the 7th day of November, 1988 Letters Probate were issued in the Estate of Krystyna Chmiel.

8. The Legatee Kataryna Klynmenko through her solicitor, Walter Petryshyn made a claim against the estate for \$15,000.00 plus interest for monies that she alleged she had earned for the care of the Testator prior to her death.

9. The Testator's former husband, Kazimierz Chmiel applied for and obtained Letters of Administration on November 28th, 1988 of the estate of his daughter, Brandi Carrs.

10. Kazimierz Chmiel demanded an accounting of his former wife's estate to enable him to administer his daughter's estate. Kazimierz Chmiel subsequently complained to the Law Society when an accounting was not forthcoming.

11. As a result of the complaint of Kazimierz Chmiel an audit was instructed. The Society audit was conducted under Section 18 of the Regulations made pursuant to The Law Society Act.

V. FACTS RELATING TO THE ALLEGATIONS OF MISAPPROPRIATION

12. The solicitor purchased a \$50,000.00 Guaranteed Investment Certificate (GIC) for the estate in October of 1987. The certificate was issued in the name of Peter Zinko in trust. The certificate was a five year certificate with a maturity date of October 22nd, 1992. The interest was 10.5% per annum. Monthly interest payments of \$437.50 were sent to the solicitor in trust commencing in November of 1987 and continued until May of 1989. Prior to May of 1989, the solicitor had requested that two cheques in the amount of \$218.75 each be sent to him in trust each month. The \$50,000.00 certificate was redeemed and two separate GIC's in the amount of \$25,000.00 each were issued at the same rate of interest and with the same maturity date of October 22nd, 1992. However, because of the computerized system at Montreal Trust, only one cheque of \$437.50 was sent to the solicitor each month. The solicitor again instructed that two cheques be issued each month, and in August of 1989 one of the \$25,000 certificates was cancelled and replaced with a new one of the same amount with the same interest rate and the same maturity date. The result was that two monthly cheques were issued to the solicitor in trust commencing November, 1 1989 each in the amount of \$218.75.

13. The passing of accounts for the estate of Krystyna Chmiel proceeded on May 28th, 29th and 30th of 1990 before Judge Gilbert of the Surrogate Court. The form of the order was not settled until October, 1991. Solicitor Zinko retained the services of Messrs. Beard, Winter and in particular, solicitor Margaret E. Rintoul to act on his behalf in settling the form of the order.

14. Solicitor Zinko advised solicitor Rintoul on November 26th, 1990 that he had personally received the sum of \$11,800.00 over a 27 month period.

15. Pursuant to a written direction from solicitor Zinko, Messrs. Beard, Winter were authorized to make full disclosure to the Court and to all parties involved that the sum of \$11,812.50 had been received by solicitor Zinko. The solicitors for Kazimierz Chmiel and the Court were so advised.

26th March, 1992

16. On April 11th, 1991 the solicitor advised the investigation officer, Mr. Douglas Weber, that he did not deposit the interest cheques from the GIC investments into his trust account nor to any of the estate bank accounts and that he did not record the receipt of the interest in his books and records, but that he had kept the interest for his personal use. It is admitted that the total interest earned from October 22nd, 1987 to January 22nd, 1990 amounted to \$11,812.50.

17. The solicitor also advised the investigation officer that he took the interest because it was due to him on account of executor's and solicitor's fees.

18. When asked why he did not deposit the 27 monthly interest cheques to the estate bank accounts, he advised that he did not wish to deposit it as it was more convenient for him to cash the cheques.

19. The order of Judge Gilbert re: the passing of accounts was ultimately signed and entered on October 11th, 1991. A copy of the order is attached hereto and marked as Schedule "B". The order provides that Peter Zinko pay to McCarthy, Tetrault in trust on behalf of the estate of Krystyna Chmiel the sum of \$11,812.50 being the interest payments on two Montreal Trust Guaranteed Investment Certificates in the amount of \$25,000.00 each at 10.5% dated October 23rd, 1987 due October 23, 1992 and October 27th, 1987 due October 27th, 1992 which Peter Zinko personally paid to himself.

20. The solicitor, Peter Zinko, acknowledges that the receipt by him of the sum of \$11,812.50 and the circumstances herein admitted, was improper.

VI. FACTS RELATING TO THE ALLEGATIONS THAT THE SOLICITOR FAILED TO MAKE DISCLOSURE TO THE LAW SOCIETY'S INVESTIGATION AUDITOR

21. The investigation audit commenced September 28th, 1989. The investigating auditor counselled solicitor Zinko to prepare an accounting of the assets of the estate.

22. A number of draft accounts were prepared by the solicitor's secretary. These were reviewed by the investigating auditor and changes were suggested. The accounts were revised on at least two separate occasions. Correspondence was exchanged between the investigating auditor and the solicitor over a protracted period of time.

23. None of the accountings or letters received from the solicitor by the investigating auditor, Douglas Weber, disclosed the interest earned on the Guaranteed Investment Certificates.

24. The investigating auditor made inquiries concerning the Guaranteed Investment Certificates. These inquiries concerning the Guaranteed Investment Certificates. These inquiries were directed to solicitor Zinko and the solicitor's secretary, Lily O'Donnell. The investigating auditor, Mr. Weber concluded that the interest earned on the Guaranteed Investment Certificates were not payable until their maturity in October of 1992.

25. During discussions in 1989 between the investigating auditor and the solicitor regarding the solicitor's taking of executor and solicitor's fees, the solicitor failed to disclose to the investigating auditor the facts relating to the interest earned on the \$50,000.00 in Guaranteed Investment Certificates.

VII. FACTS RELATING TO THE ALLEGATIONS OF FALSE AFFIDAVITS OF VERIFICATION

26. The solicitor filed two applications to pass accounts on the estate of Krystyna Chmiel in the Surrogate Court. These applications contained affidavits of verification sworn by the solicitor on December 14th, 1989 and January 15th, 1990 respectively to the effect that the accounts marked as Exhibit "A" to his affidavits were full and correct and that the information contained in the application and in any attached pages was true.

27. The solicitor, Peter Zinko, acknowledges that the affidavit of verification sworn on December 14th, 1989 and again on January 5th, 1990 were false.

28. The accounts did not disclose that \$11,812.50 in interest has been received by the solicitor on the GIC investments.

VIII. FACTS RELATING TO THE ALLEGATIONS OF IMPROPER PRETAKING OF SOLICITOR'S AND EXECUTOR'S FEES

29. Prior to the passing of accounts, the solicitor had paid himself \$19,988.00 from the estate on account of solicitor's and executor's fees (in addition to \$4,088.55 for legal fees for acting on the sale of the house). The solicitor had rendered interim accounts totalling only \$16,500.00 despite having paid himself \$19,988.00.

30. The investigation auditor directed the solicitor to inject \$3,488.00 into his trust account, being the amount he had taken in excess of the accounts that had been rendered.

31. The solicitor informed the investigating auditor that he preferred to wait until the accounts were passed before injecting monies into his trust account regarding unbilled fees taken.

32. At the passing of the accounts conducted on May 28th, 29th and 30th, 1990 before Judge Gilbert of the Surrogate Court, the solicitor was allowed \$20,000.00 in executor's fees. The solicitor's account for legal fees and disbursements of \$31,915.88 dated October 31, 1989 was reduced to \$11,422.38. His account for the sale of the residence was reduced by \$1,000.00.

33. Judge Gilbert ordered that the solicitor personally pay to the estate the sum of \$4,000.00 on account of interest owed to the estate with respect to the solicitor having pretaken compensation over the years from 1985 to 1988 without the approval of the beneficiaries of the estate.

34. The solicitor acknowledges that it was improper for him to pretake the \$19,988.00 from the estate on account of solicitor's and executor's fees prior to the passing of his accounts and without authorization to the beneficiaries.

IX. FACTS RELATING TO THE ALLEGATIONS OF AN UNSECURED LOAN FROM THE ESTATE TO THE SOLICITOR'S SON

35. The Solicitor acknowledges that the sum of \$10,000.00 was paid from the estate on November 24th, 1989 and that the sum of \$10,042.77 was deposited to the account on December 6th, 1989.

36. The solicitor acknowledges that his son had approached him in November of 1989 for a loan for the purchase of a car. His son needed the money immediately so that he would not lose the opportunity of purchasing the car and did not have time to receive monies from a Credit Union. The solicitor then provided \$10,000.00 to his son using the cash on hand in the estate bank account. After purchasing the car, the solicitor's son arranged a loan through a Credit Union

26th March, 1992

and repaid the estate with \$42.77 in interest. The solicitor acknowledges that no security was arranged for the loan but states that he personally guaranteed the loan.

37. Other than the entries in the passbook of the estate bank accounts, the investigating officer was not shown any documentation with respect to the loan.

37. Other than the entries in the passbook of the estate bank accounts, the investigating officer was not shown any documentation with respect to the loan. It is noted and acknowledged the Will of the deceased did not waive the limitations under The Trustees Act with respect to investments on behalf of the estate.

X. FACTS RELATING TO FAILURE TO FILE FEDERAL INCOME TAX RETURNS

38. It is acknowledged that the solicitor did not file Federal Income Tax returns for the estate of Krystyna Chmiel for the years 1985 to 1989.

39. At the passing of accounts, Judge Gilbert of the Surrogate Court ordered that the solicitor forthwith cause to be completed the deceased's terminal income tax return to the date of death and any personal income tax returns for previous years not filed by the deceased, and ordered that the solicitor personally pay any penalty and interest assessed by Revenue Canada in connection with the late filing by him of such returns.

DATED at Etobicoke, this 8th day of November, 1991."

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said Peter Zinko be granted permission to resign on the condition that the sum of \$11,812.50 is repaid to the estate of Krystyna Chmiel before March 26th, 1992, such resignation to come into effect not later than July 22nd, 1992 and that in the interim a co-signer for trust cheques be required. The reason for the six month delay is to enable the Solicitor to wind up and/or sell his practice.

REASONS FOR RECOMMENDATION

The Solicitor, through his counsel has admitted professional misconduct with respect to complaints 2(a) and 2(e). With respect to paragraphs 2(b), (c) and (d), no admission was made of professional misconduct by the Solicitor, although the facts themselves are admitted.

With respect to complaint 2(c), the Solicitor did not give sworn testimony but stated when questioned that the failure to include the interest in the accounts was inadvertent on his part. When he realized it was not included, he volunteered the information to the counsel he had employed for the accounting and it came forward as a result of that.

Counsel for the Solicitor argued that complaints 2(b), (c) and (d) are de minimus having regard to the admissions already made. Counsel for the Society, however, has not withdrawn those complaints or agreed that they are included within them. The facts are admitted. A finding of professional misconduct is therefore made on all counts.

26th March, 1992

A joint submission was made with respect to penalty, namely that on the condition that the sum of \$11,812.50 is repaid to the estate before March 26th, 1992, Mr. Zinko be permitted to resign his membership in the Law Society, such resignation to come into effect not later than July 22nd, 1992 and that in the interim a co-signer for trust cheques be required. The reason for the six month delay is to enable Mr. Zinko to wind up and/or sell his practice. Counsel for Mr. Zinko, Mr. W.G. McKechnie, has agreed to act as a co-signer and he has advised us that in his absence, his two associates, J.W. MacKenzie and H.M. Jurgeit have agreed to act as co-signers. In the absence of any of those persons, Counsel for the Law Society has suggested than an auditor employed by the Law Society be also authorized to be a co-signer. Law Society Counsel had no problem with any of Mr. McKechnie, Mr. MacKenzie and Mr. Jurgeit acting as co-signers and the Committee agrees that if Convocation should accept this recommendation, that they be allowed to be the co-signers.

A majority of the Committee, the Chair and Mrs. Weaver, have agreed to accept the submission and are making that recommendation to Convocation. Mrs. Graham will render a separate recommendation.

If the condition is not satisfied, a majority of the Committee recommends disbarment.

The reasons for the Chair and Mrs. Weaver accepting the recommendation include the following:

While this is not the Solicitor's first record of disciplinary proceeding, nevertheless, he has had a reasonably good record in his almost thirty-five years of practice.

The Complaints that were heard in 1986 and 1989 were essentially complaints with respect to what I may classify as offenses against the Act as opposed to professional misconduct per se. The borrowing of \$6,000.00 without ensuring that the client had independent legal representation was a bit more serious, but was resolved prior to the hearing.

The Solicitor's record of prior complaints with the Society are that on August 12th, 1986, he was reprimanded in Committee for filing a false form 2 declaration because it failed to disclose indebtedness to a client, to disclose such indebtedness on an audit questionnaire and for failing to maintain his books and records as required by the regulation under the Law Society Act. In addition, on March 28, 1989, he was reprimanded in Committee for failing to maintain his books and records as required by the regulation under the Law Society Act.

Dr. Malcolm, while finding no psychological problems, has made some additional submissions. He has stated that Mr. Zinko is a very honest and conscientious man but he is also righteous and he felt extremely offended by the behaviour of a whole sequence of people in the course of his attempt to resolve problems in this estate. He said to me with much sincerity "I could have done this whole thing in six months" and he also said, "my sympathy was with Mrs. Chmiel". By way of comment, Mrs. Chmiel was his client whose estate he was administering.

Going on to quote from Dr. Malcolm's letter, he says, "These two statements seem to account for his exquisite sense of frustration at the hands of many people and his intense loyalty to the deceased, Mrs. Chmiel, who first hired him to attend to her affairs." To paraphrase Dr. Malcolm in the rest of his letter, he indicates that Mr. Zinko's sense of outrage clouded his judgment as to what he could and could not do and what he should and should not do. Dr. Malcolm concludes by saying, "Mr. Zinko does not represent any hazard to the community, in fact he has been a great asset to this community over a very long period of time.

26th March, 1992

In passing, I must state that no evidence was submitted to this Committee with respect to that final observation other than comments made by the Solicitor to Dr. Malcolm, but we see no reason not to accept it.

The Solicitor is in the process of retiring from practice which is for sale and the six months agreed upon by counsel gives him an opportunity to wind it up and sell it.

In conclusion, a majority of the Committee recommends that Convocation accept the joint recommendation as to penalty.

Peter Zinko was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 20th day of September, 1956.

ALL OF WHICH is respectfully submitted

DATED this 10th day of March, 1992

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

DISSENT

Peter Zinko Disciplinary Matter

RECOMMENDATION AS TO PENALTY

With respect, I cannot agree with the Joint Submission to allow the solicitor to resign with the proviso that he repay the Estate of Kystyna Chmiel the sum of \$11,812.50 before March 26, 1992 and that he be required to have a co-signor for all of his trust cheques. I also cannot agree with the submission that the resignation come into effect not later than July 22nd, 1992 in order to enable Mr. Zinko to wind up and sell his practice. Quite frankly, the solicitor does not deserve that most generous consideration.

This man misappropriated funds from his trust account. The general rule in these cases is that save unusual circumstances, disbarment is required. There were no unusual circumstances or mitigating factors in this case to warrant the lesser penalty of permission to resign. Dr. Malcolm's report revealed, "...that there was absolutely no mental disorder in the case of this man." and further, "...He was not clinically depressed; but he was sad as he considered these several indications that his life was in the process of unwanted change over which he had very little control." The Doctor goes on to make several other observations which are important to note in connection with this matter. At page 4 of his report, the Doctor indicates that Mr. Zinko was very frustrated with this case and he was very angry; that he is a proud and dogged man. Further on page 4 he quotes Mr. Zinko as having said the following: "I'm getting older but I'm not ready to die and I'm not ready to be disgraced either." The Doctor goes on,, "He does not want to be suspended because this would make it much harder for him to sell his practice. He does not want to be disbarred because "after 34 years of good practice I do not see myself as a crook." And here he becomes a difficult client because he goes on to say: "The Law Society doesn't have to do anything at all. I didn't do it to steal money. It was for fees."

26th March, 1992

It is very important to note Mr. Zinko's feelings and ideas about this matter. When the Doctor indicated that Mr. Zinko was an angry man, I would indicate to Convocation that that anger was abundantly obvious at the hearing. Although the evidence consisted of the Agreed Statement of Facts and no evidence as such from the solicitor himself, the panel did have a few questions that Mr. Zinko personally answered. This man does not feel that he has done anything seriously wrong. He felt justified in the taking of the monies because he felt they were owed to him. Even during the Society's investigation audit, he failed to disclose the taking of the monies as fees. It took considerable time and expense to the Law Society by the auditor to get to the bottom of these matters. It is reasonable to expect a solicitor to render accounts when he's taking fees and when acting for an estate, to advise the beneficiaries of the estate that he is taking these fees.

When I specifically asked him a question in connection with the matter of the unsecured loan from the Estate to his son, his reaction and answer was almost hostile. His face got red and he answered very indignantly that the boy was his son, he needed the money, and therefore, he gave it to him. He did point out that the monies had been promptly repaid with interest. The very clear impression I got from his response was, "How dare you even ask such a question." That was the tone of his response.

This solicitor has a previous discipline history. On August 12, 1986 the Solicitor was Reprimanded in Committee for filing a false form 2 Declaration which failed to disclose his indebtedness to a client, for failing to disclose such indebtedness on an audit questionnaire and for failing to maintain his books and records as required by the Regulation under the Law Society Act.

On March 28, 1989 the Solicitor was Reprimanded in Committee for failing to maintain his books and records as required by the Regulation under the Law Society Act.

The legal profession would see public confidence rapidly evaporate if the Law Society failed to pronounce its condemnation of these most serious findings of professional misconduct in the strongest possible terms. This is a Solicitor who shows absolutely no remorse, there is no mental disorder, there has been no restitution to the Estate for the misappropriated funds as at the date of the hearing, there was no co-operation with the Law Society's investigation audit. There can be no other penalty but disbarment because there are no mitigating circumstances to allow him to resign so that he can benefit from the sale of his practice.

With respect to the restitution of the misappropriated funds, there is an Order of the Surrogate Court of the Judicial District of York by J. Gilbert, Judge of the said Court (attached to and forming part of the Agreed Statement of Facts) that orders Mr. Zinko specifically to pay the sum of \$11,812.50 to the McCarthy Tetrault firm, in trust on behalf of the Estate of Krystyn Chmiel at page 5 therein.

For the above noted reasons, and for the protection of the public, and for the message that must be sent out to the profession, I strongly recommend that the said Peter Zinko be disbarred.

26th March, 1992

Peter Zinko was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 20th day of September, 1956.

ALL OF WHICH is respectfully submitted

DATED this 27th day of February, 1992

"N. Graham"
Netty Graham

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

There were no submissions.

The Report was adopted.

Mr. Rock presented the Recommendation as to Penalty and asked counsel whether the solicitor had satisfied the condition set out in the Recommendation.

Counsel for the Society stated that the condition had not been satisfied and that the appropriate penalty should be disbarment.

It was moved by Mr. Rock, seconded by Mr. Murray that the solicitor be disbarred.

Counsel for the solicitor opposed disbarment and stated that the condition had been satisfied that unconditional arrangements had been made to satisfy the debt.

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

It was moved by Mr. Bastedo, seconded by Mr. Strosberg that the proposal put forward by the solicitor be accepted in lieu of the requirement for repayment in the Recommendation as to Penalty.

Withdrawn

Counsel, the solicitor, the reporter and the public were recalled and counsel was asked to make submissions on penalty as Convocation had not yet come to a decision as to whether the condition had been satisfied.

Mr. McKechnie made submissions in favour of the solicitor being permitted to resign.

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

It was moved by Mr. Finkelstein but failed for want of a seconder that the solicitor be suspended for a period of 1 year.

The motion to disbar the solicitor was lost.

It was moved by Ms. Peters, seconded by Ms. Elliott that the solicitor be permitted to resign on condition that he satisfy his indebtedness out of the proceeds of the sale of his house and practice.

Lost

It was moved by Mr. Bastedo, seconded by Mr. Strosberg that the solicitor be permitted to resign effective July 22nd, 1992 on an undertaking of his counsel to register the mortgage.

Carried

It was moved by Mr. Bragagnolo, seconded by Mr. Cullity that the solicitor be permitted to resign and relieve him from the obligation to registered the mortgage.

Not Put

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

Counsel and solicitor retired.

.....

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

.....

CONVOCATION RECONVENED AT 2:15 P.M.

.....

PRESENT:

The Treasurer, Arnup, Bastedo, Bragagnolo, Brennan, Cullity, Elliott, Feinstein, Finkelstein, Graham, Hickey, Lamont, McKinnon, Murray, D. O'Connor, Palmer, Peters, Rock, Scott, Somerville, Strosberg, Thom, Topp and Weaver.

.....

.....

IN PUBLIC

.....

Re: KARLA KATHLEEN GOWER, Toronto

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

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

Convocation had before it the Report of the Discipline Committee dated 14th February, 1992 together with an Affidavit of Service sworn 20th March, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier 21st February, 1992 (marked Exhibit 1). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

26th March, 1992

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

In the matter of
The Law Society Act

Gavin MacKenzie
for the Society

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

Not Represented
for the solicitor

Heard: November 5, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

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

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

DECISION

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

Complaint D207/90

- 2(a) She acted for both the vendor and the purchaser in a transaction in which she knew there was likely to be a conflict of interest in that:
- (i) the vendor was an elderly man of doubtful mental competence;
 - (ii) the purchaser was a friend of the Solicitor; and
 - (iii) the purchase price was less than one-third of the fair market value of the property.

26th March, 1992

- (b) She facilitated a transaction whereby her friend and client, Robert Krueger, took unfair advantage of her client, Sam Katz, a man of doubtful mental competence, by inducing him to sell real estate property to him for an amount which was less than one-third of its value.

Complaint D63/91

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

Complaint D161/91

- 2(a) From January, 1990, to September, 1991, she deceived her client, Giselle Diener, by:
 - (i) falsely informing her that she had issued a statement of claim in which she had claimed damages for personal injuries on Ms. Diener's behalf;
 - (ii) falsely informing her that the defendant had waived examinations for discovery;
 - (iii) falsely informing her that a pre-trial conference had been held as a result of which the pre-trial judge had recommended that the defendant settle her claim on the basis of a substantial payment;
 - (iv) falsely informing her on two occasions that dates had been set by the court for the trial of the action; and
 - (v) falsely informing her that the defendant had offered to settle the claim for a substantial amount of money upon receipt of a satisfactory report from Ms. Diener's therapist.

26th March, 1992

- (b) In support of the falsehoods referred to in particular (a), she created and provided to Ms. Diener two false documents, namely a statement of claim purportedly issued in the District Court of January 10, 1990, and a letter dated August 30, 1991, from one Ron Hammond of the law firm Madigan & Associates to the Solicitor; and
- (c) During the month of October, 1990, she falsely informed her fellow solicitor and former employer, Angela Costigan, that the reason that there was no statement of claim in the file which she opened on Ms. Diener's behalf was that the statement of claim had been issued by a previous solicitor for Ms. Diener.

Evidence

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

AGREED STATEMENT OF FACTS

1. JURISDICTION AND SERVICE

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

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

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

IV. FACTS

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

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

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

26th March, 1992

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

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

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

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

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

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

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

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

12. The transactions closed on October 7, 1988. Title to 18 Byng was taken in the name of Tom Reid "In Trust". The Solicitor's file and accounting records reveal that the only consideration passing on closing was \$215,000. The deed that was registered showed consideration of \$290,000 and the land transfer affidavit, signed by the Solicitor on October 7, 1988, also shows consideration of \$290,000. The deed and land transfer affidavit are attached as Exhibit 4 to this agreed statement of facts. The Solicitor says that Mr. Reid informed her that the balance of the \$290,000 consideration had been satisfied by the prior delivery of a \$75,000 promissory note to Michelle Development. There is no evidence of this in the Solicitor's file, and the Society therefore cannot confirm it.

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

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

26th March, 1992

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

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

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

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

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

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

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

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

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

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

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

26th March, 1992

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26th March, 1992

Complaint D161/91 - Giselle Diener

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATION AS TO PENALTY

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

REASONS FOR RECOMMENDATION

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

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

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

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

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

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

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

ALL OF WHICH is respectfully submitted

DATED this 14th day of February, 1992

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

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

There were no submissions.

The Report was adopted.

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

Submissions were made by both counsel.

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

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

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

The Treasurer advised that Convocation would hear further submissions. It was suggested that further material be provided to Convocation regarding psychiatric evidence, transcripts and exhibits.

Mr. Bellmore asked that the matter be put over so that submissions could be prepared plus additional psychiatric evidence be made available. Mr. Bellmore also waived Convocation being seised of the matter and that copies of the transcript and exhibits could be distributed to Convocation prior to the next meeting of Special Convocation.

The matter was adjourned to the next Discipline Convocation.

Counsel and the solicitor retired.

.....

Re: GORDON WILLIAM WINSOR, North York

Mr. Rock placed the matter before Convocation.

The reporter was sworn.

Mr. Thomas Lockwood appeared for the Society and Mr. Charles Mark appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 7th November, 1991, together with an Affidavit of Service sworn 21st January, 1992 by Louis Katholos that he had effected service on the solicitor by registered mail and by courier on 12th December, 1991 (marked Exhibit 1) and Acknowledgement, Declaration and Consent executed by the solicitor on 26th March, 1992 (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

Michael G. Hickey, Q.C., Chair
Patricia Peters, Q.C.
High Guthrie, Q.C.

26th March, 1992

In the matter of
The Law Society Act

Thomas J. Lockwood, Q.C.
for the Society

and in the matter of
WILLIAM GORDON WINSOR
of the City
of North York
a barrister and solicitor

Charles C. Mark, Q.C.
for the solicitor

Heard: November 7, 1990
December 7, 1990
March 27, 1991
May 23, 1991

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 22, 1990, Complaint D7/90 was issued against William Gordon Winsor, alleging that he was guilty of professional misconduct.

The hearing was heard in public on November 7, 1990, December 7, 1990, March 27, 1991 and May 23, 1991 before this Committee composed of Michael G. Hickey, Q.C., Chair, Hugh Guthrie, Q.C. and Patricia Peters, Q.C. Mr. Winsor attended the hearings and was represented by Charles C. Mark, Q.C. Thomas J. Lockwood, Q.C. appeared on behalf of the Law Society.

DECISION

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

- 2(a) While acting for the purchaser, Agnes Miranda, and the mortgagee, Montreal Trust Company, he attempted to mislead the mortgagee by falsely leading it to believe that the balance of the funds to close the purchase transaction were not borrowed funds when he knew that most of these funds were being supplied by a vendor take back mortgage in third position.
- (d) While acting on the various Tandon transactions, he misapplied approximately \$210,375.47, more or less, of trust funds by appropriating funds from his mixed trust account to close the Tandon purchase transactions when he did not have sufficient funds in trust to close those transactions resulting in a total loss to other clients.

Books and Records

- (g) He failed to properly maintain the books and records of his practice of law despite being Reprimanded in Committee on a prior occasion for the same misconduct.

Evidence

Part of the evidence before the Committee was contained in the following Statement of Admitted Facts.

"STATEMENT OF ADMITTED FACTS

I. JURISDICTION AND SERVICE

1. The solicitor admits service of Complaint D7/90 and is prepared to proceed with a hearing of this matter on November 7th and 8th, 1990.

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 D7/90 with his counsel, Charles C. Mark, and makes the following admissions.

IV. FACTS IN RESPECT OF CHARGE 2(d)

4. The solicitor acted for Mr. Hemant (Bill) Tandon for approximately four years. On the 28th of April, 1989 the solicitor acted for Tandon on the following transactions:

- (a) Sale of 905 Gentry Court.
- (b) Purchase and sale (simultaneous flip) of 19 Bracken Fernway.
- (c) Purchase of Lot 27, Concession 7.
- (d) Purchase of west half of Lot 23, Concession 4.

5. On Friday, the 28th of April, 1989 the four transactions referred to in the preceding paragraph were to close. On this day the following happened:

- (a) The sale of 905 Gentry Court was completed and \$43,574.53 was deposited into the solicitor's trust account at the Royal Bank of Canada as reflected on Trust Ledger 20194, the ledger sheet for the purchase of the west half of Lot 23, Concession 4, Uxbridge.
- (b) \$171,500.00 was received from Tandon and his associates and deposited in the solicitor's trust account at the Royal Bank of Canada as reflected on Trust Ledger 20194. This receipt left a balance on this ledger card of \$215,074.53.
- (c) Just before 6:00 p.m., Sherman Wong, an assistant to the Solicitor, drew three cheques on the Royal Bank of Canada trust account and reflected them as disbursements on Trust Ledger 20194. These cheques were:

Town of Uxbridge	\$ 1,025.00
Hatean Swaise & Inge Swaise	34.05
Gordon M. Edwards In Trust	214,116.77

Total	\$ 215,175.72
-------	---------------

Sherman Wong was hard pressed to make it to the Royal Bank of Canada by 6:00 p.m. and left the ledger sheet 20194 only partially completed; the current trust balance was left uncompleted.

- (d) The solicitor received a cheque payable to him in trust for \$32,008.17. This was the balance due on closing the sale of 19 Bracken Fernway. These monies were to be and were deposited by the solicitor in his trust account at Canada Trust, an institution which was open until 8:00 p.m.
- (e) The solicitor immediately thereafter and shortly after 6:00 p.m. went to the client ledger sheet 20194, observed the last entry and the current trust balance (line 12), namely, \$215,074.53, and drew and cheque on his trust account at the Royal Bank of Canada for this sum payable to himself for deposit to his trust account at Canada Trust. He did this so he could certify a cheque after 6:00 p.m.
- (f) Sherman Wong then returned from the Royal Bank of Canada with the three certified cheques referred to in subparagraph (c) and was then given by the solicitor the cheques for \$215,074.53 and \$32,008.17 for deposit at Canada Trust. The solicitor then instructed Sherman Wong to draw the cheques to complete the sale of Lot 27, Concession 7, Uxbridge.
- (g) Sherman Wong then draw on account number 20193 three cheques (lines 8 to 10) to complete this transaction:

Town of Uxbridge	\$ 3,259.92
Gordon M. Edwards In Trust	54,329.13
Tasso Vagenas	27,000.00

The cheque for \$27,000.00 was by oral direction of Tandon payable to a third party and was picked up later in the night by Tandon.

- (h) Sherman Wong then deposited the cheques mentioned in subparagraphs (d) and (e) and certified the cheques mentioned in subparagraph (g). He then returned to the office.
- (i) The solicitor then closed the purchase of the two Uxbridge properties with Mr. Gordon Edwards, the solicitor acting for the vendor in each of these two transactions.

6. On Monday, the 1st of May, 1989 Sherman Wong drew the cheques on ledger card 20193 at lines 11 to 14. These cheques paid land transfer tax and legal fees on the transactions. The amount of these four cheques were \$31,318.30. The cheques were drawn by Mr. Wong on the Royal Bank of Canada and should have been drawn on Canada Trust. The cheques at lines 15 and 16 corrected this error.

7. On the 4th of May, 1989 Tandon attended on the solicitor and the solicitor paid him a further \$100,000.00. This cheque is reflected on ledger sheet 20193 at line 17.

8. On the 10th of May, 1989 a further \$30,000.00 was paid to Tandon as reflected on the same ledger sheet at line 18.

9. Thereafter:

- (a) The solicitor was ignorant of the overdraft until sometime after the 2nd of June, 1989.
- (b) Did not have time to report the four transactions which closed on the 28th of April since he had closed 25 deals on the 28th of April and had 54 deals to close in May, 1989.

26th March, 1992

- (c) The trust bank reconciliation for April done on the 29th of May, 1989 disclosed the overdraft.
- (d) On or about the 29th of May Patricia Rook, a freelance bookkeeper found the overdraft and left a note attached to the trust bank reconciliation on the solicitor's desk. The note advised the solicitor then absent from the office of the overdraft.
- (e) The solicitor was unable to get the monies back from Tandon and reported the matter to the Law Society on the 30th of June, 1989.

V. FACTS IN RESPECT OF CHARGE 2(e)

10. In this transaction the solicitor acted for a brother of Tandon and paid to Tandon on his brother's direction the sum of \$20,987.04. This was done on the 26th of May when the solicitor was ignorant of the overdraft.

VI. FACTS IN RESPECT OF CHARGE 2(f)

11. The facts in respect of this are that on the 28th of July, 1989 the solicitor applied monies belonging to the Surjanata syndicate to make the monthly payment. Surjanata was then beyond the reach of telephone in Indonesia. Approximately a month later the solicitor decided that the Surjanata monies had been paid to him for discharge of the mortgage rather than making an instalment payment and that he should reimburse the trust account for his personal funds.

VII. FACTS IN RESPECT OF CHARGE 2(a)

12. The solicitor was engaged by Agnes Miranda to complete the purchase of a condominium. On the 12th of October, 1989 the solicitor reviewed the file which had been looked after by his secretary without any supervision. The solicitor then saw that a proposed third mortgage for \$38,000.00 was contrary to the terms of the first mortgage commitment. The solicitor could not reach Agnes Miranda but reached the vendor, Pradeep Bujaj. The solicitor had a concurrent retainer from Pradeep Bujaj on another matter. The solicitor explained that the third mortgage would violate the first mortgage commitment. Pradeep Bujaj then told the solicitor that Agnes Miranda had that very evening arranged to pay the amount that otherwise would have been secured by a third mortgage as additional deposit. The solicitor for Bujaj eventually sent an amended statement of adjustments reflecting the increase in deposit and the elimination of the third mortgage. The transaction was closed on the 17th of October, 1989.

VIII. FACTS IN RESPECT OF CHARGE 2(b)(ii)

13. The solicitor and two real estate agents entered into a partnership to purchase and resell 2342 Strathmore Crescent. The original transaction was one in which the real estate agents would charge no commissions and the solicitor would charge no fees. Later, the real estate agents insisted on a commission being paid to them and the solicitor then was given a real estate fee for the transaction as a quid pro quo for the agents taking a commission. The solicitor at all times considered himself a principal.

IX. FACTS IN RESPECT OF PRIOR DISCIPLINE HISTORY

14. The solicitor was reprimanded in Committee and executed an undertaking requiring the submission of trust comparisons.

Dated at Toronto this 6th day of November, 1990."

26th March, 1992

In addition to the Agreed Statement of Facts, the evidence consisted of the testimony of twelve witnesses and thirty exhibits. Upon careful consideration of all the evidence the Committee found that particulars 2(b)(i) and (ii), (c), (e) and (f) were not established and that the Solicitor was guilty of professional misconduct in respect of particulars 2(a), (d) and (g).

At the outset, counsel for the Society indicated that the issue was largely one of credibility, the Solicitor's position being that he was unaware of what was happening. In large measure the Committee accepted the evidence of the Solicitor that he did not knowingly and intentionally misapply trust funds from his mixed trust account.

Particular 2(a)

When the Solicitor became aware prior to closing that the balance of the funds to close the purchase transaction were to come from a vendor take-back third mortgage, he advised the vendor that this was contrary to his instructions from the first mortgagee, Montreal Trust Company, and was assured by the vendor and the purchaser that the purchaser had arranged to pay the closing balance and there was no need for a third mortgage. The Solicitor accepted these assurances without taking proper precautions to ensure that the third mortgage, which had been prepared in his office, albeit without his specific instructions, was not delivered to the vendor and subsequently registered by the vendor without the Solicitor's knowledge two days after closing. At no time did the Solicitor notify Montreal Trust Company of the third mortgage.

Particular 2(d)

In acting on behalf of his client Hemant Tandon in the closing of the four transactions on the 29th day of April, 1989, as enumerated in paragraph 4 of the Agreed Statement of Facts, the Solicitor's assistant, Sherman Wong, failed to properly complete the trust ledger for the purchase of the west half of Lot 23, Concession 4, Uxbridge, by leaving the current balances unrecorded after issuing three cheques totalling \$215,175.72 on the Solicitor's Royal Bank trust account. Later, the Solicitor upon observing the last entry in the current trust balance in the amount of \$215,074.53, issued a cheque for this sum to transfer the funds from the Royal Bank trust account to his trust account at Canada Trust so that he could certify cheques after 6 p.m.

Not realizing that his client had not provided sufficient funds to close both purchases and believing that he had sufficient funds in the Canada Trust account, the Solicitor closed the purchases notwithstanding shortages of \$53,375.47 in the monies received from the contemporaneous sale transactions and his client's co-investors. Before the overdraft came to his attention, the Solicitor issued further cheques on his mixed trust account to or on behalf of his client Hemant Tandon totalling \$157,000.00, making a total shortage in his trust accounts of \$210,375.47.

When the trust shortage was first brought to his attention by his bookkeeper towards the end of May, 1989, the Solicitor immediately contacted his client Tandon who acknowledged that there were miscalculations with respect to the purchases but failed to co-operate with the Solicitor in reconciling his bank records with the Solicitor's trust records. The Solicitor also reported the misapplication of funds to the Director of Insurance of the Law Society. The Solicitor later retained counsel to sue Tandon who was then in financial difficulties and the suite was eventually settled for approximately \$30,000.00 which was paid into the Solicitor's frozen trust account thereby reducing the shortage to this extent.

The evidence disclosed that the Solicitor closed twenty-five transactions on the 28th of April, 1989 and while he and his staff were undoubtedly pressed, nevertheless, it was gross negligence tantamount to wilful blindness, for the

26th March, 1992

Solicitor to pay out of his trust account \$210,375.47 when he should have known that there were insufficient funds in his trust account to close the transactions and make the other payments to or for his client Tandon.

Particular 2(g)

The Solicitor acknowledged that there were inadequacies in his books and records similar to those found previously for which the Solicitor was reprimanded in Committee. These included the following:

1. Overdrawn trust ledger accounts not corrected forthwith;
2. Bank errors and other reconciling items not corrected forthwith;
3. Credit balances in the general section of client ledger accounts;
4. Personal funds co-mingled in the trust account;
5. Inactive trust ledger accounts over one year;
6. Disbursements charged to clients in excess of invoices found in the clients' files.

RECOMMENDATION AS TO PENALTY

The Committee recommends that the said William Gordon Winsor be suspended for a period of twelve (12) months.

REASONS FOR RECOMMENDATION

In considering the matter of penalty, the Committee was mindful of the fact that there was no finding of dishonesty and there was no personal benefit to the Solicitor from the misapplication of his trust funds. While the misapplication of funds was inexcusable it was not intentional. However, the Committee was strongly of the view that there must be a clear message to the profession that conduct of this nature cannot be tolerated and that the interests of the public must be protected.

The Solicitor was previously reprimanded in Committee for deficiencies in his books and records and clearly a reprimand in this instance would be an inappropriate penalty. In all of the circumstances, the Committee considered a suspension of twelve months to be appropriate.

William Gordon Winsor was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 22nd day of March, 1974.

ALL OF WHICH is respectfully submitted

DATED this 7th day of November, 1991

"M. Hickey"
Michael G. Hickey, Q.C., Chair

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

Written submissions by both counsel were filed. Mr. Lockwood supported the Report and Mr. Mark sought rejection of the Report in that particulars 2(a) and 2(b) were not found.

Counsel took questions from the Bench.

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

The Report was adopted.

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

It was moved by Mr. Rock, seconded by Mr. Murray that the Recommendation as to Penalty contained in the Report that is, that the solicitor be suspended for a period of 12 months, be adopted.

Mr. Mark requested that the solicitor be permitted to call viva voce evidence regarding the solicitor's character.

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

It was moved by Mr. Wardlaw, seconded by Mr. Topp that the matter be referred to Committee to hear evidence on character.

Lost

It was moved by Mr. Somerville, seconded by Mr. Bragagnolo that the matter proceed.

Carried

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

Mr. Stephen Sands was sworn as a witness and examined in-chief by Mr. Marks.

Mr. Lockwood cross-examined Mr. Sands. There was no re-direct and the witness retired.

Mr. V. Kumar was sworn as a witness and examined in-chief by Mr. Marks. There was no cross-examination and the witness retired.

Ms. Ito was sworn as a witness and examined in-chief by Mr. Marks.

Mr. Lockwood cross-examined Ms. Ito and the witness retired.

Mr. David McKillop was sworn as a witness and was examined in-chief by Mr. Lockwood.

Mr. Mark cross-examined Mr. McKillop and the witness retired.

Mr. Gordon William Winsor was sworn was examined in-chief by Mr. Mark. There was no cross-examination by Mr. Lockwood.

Convocation heard further submissions as to penalty by both counsel. Mr. Mark sought a reprimand in Convocation or a lesser period of suspension.

Mr. Lockwood urged Convocation to accept the Committee's recommendation.

Counsel took questions from the Bench.

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

The motion to suspend the solicitor for 12 months was lost.

26th March, 1992

It was moved by Ms. Elliott, seconded by Mr. Lamont that the solicitor be suspended for a period of six months.

Carried

It was moved by Mr. Thom, seconded by Mr. Bragagnolo that the solicitor be suspended for a period of two months.

Not Put

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision and advised that Reasons would be provided.

Counsel and the solicitor retired.

.....

CONVOCATION ADJOURNED AT 5:35 P.M.

.....

Confirmed in Convocation this *29th* day of *May*, 1992


Treasurer