

22nd October, 1998

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 22nd October, 1998
9:00 a.m.

PRESENT:

Acting Treasurer (Vern Krishna), Adams, Arnup, Carpenter-Gunn, Chahbar, Crowe, DelZotto, Epstein, Gottlieb, MacKenzie, Murphy, Ruby, Swaye, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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Ms. Lesley Cameron, Senior Counsel-Discipline introduced Ms. Jane E. Kelly who acted as Duty Counsel.

Re: Michael James CLARK - Toronto

Messrs. Topp and Epstein did not participate.

Ms. Catherine Braid appeared as counsel for the Society and the solicitor appeared on his own behalf.

The solicitor requested an adjournment so that he could produce his books and records for the November Convocation.

Counsel for the Society was not opposed.

It was moved by Mr. MacKenzie, seconded by Mr. Wilson that the matter be adjourned to the Discipline Convocation in November.

Carried

Re: Giuseppe ZITO - Sudbury

Mr. Topp did not participate.

Mr. Glenn Stuart appeared on behalf of the Society and Mr. Kapoor from Mr. Alan Gold's office appeared on behalf of the solicitor.

The solicitor requested an adjournment in order to consult counsel on the issue of penalty.

Mr. Stuart opposed the adjournment on the basis of the joint submissions made at the hearing on the recommended penalty.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Ruby, seconded by Mr. MacKenzie that the matter be adjourned to the Discipline Convocation in November.

Carried

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

Re: Richard Alexander SUTTON - Toronto

The Secretary placed the matter before Convocation.

Mr. Ruby and Ms. Carpenter-Gunn did not participate.

Ms. Braid appeared for the Society and Mr. Paul Monahan appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 13th August, 1998, together with an Affidavit of Service sworn 28th August, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 19th August, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 22nd October, 1998 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby, Chair
Kim Carpenter-Gunn
Hope Sealy

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

Catherine Braid
for the Society

RICHARD ALEXANDER SUTTON
of the City
of Toronto
a barrister and solicitor

Paul Monahan
for the solicitor

Heard: June 24, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

The hearing of this matter proceeded on June 24, 1998 before this Committee comprised of Clayton C. Ruby, Chair, Kim Carpenter-Gunn and Hope Sealy. The Solicitor attended the hearing and was represented by Paul Monahan.

History of the Matter

On August 8, 1996 Complaint D209/96 was issued against the Solicitor Richard Alexander Sutton alleging that he was guilty of professional misconduct, on the basis that:

- (a) Between approximately September 1992 and April 1994, he misappropriated the sum of \$39,285.47 more or less, from monies which he held on behalf of the parties to Ontario Court (General Division) action 55969/90Q;
- (b) He breached section 18 of Regulation 708 under the *Law Society Act* by failing to produce all evidence, vouchers, books and records required for the purpose of an investigation by the Law Society.

The hearing of Complaint D209/96 was held in public, on March 4, 1997, before a Discipline Committee comprised of Clayton Ruby (Chair), Kim Carpenter-Gunn and Hope Sealy. The Solicitor was present and represented by counsel. Three witnesses were called by the Law Society. The Solicitor did not call any evidence in defence.

After hearing the evidence and submissions of both counsel, the Discipline Committee found the Solicitor guilty of professional misconduct in respect of both particulars set out in Complaint D209/96. Following submissions from both counsel with respect to the issue of penalty, the Committee recommended that the Solicitor be disbarred. The Report and Decision of the Discipline Committee (Attachment "A") sets out the Committee's reasons with respect to its finding of professional misconduct and its recommendation as to penalty.

The matter was first presented before Convocation on June 26, 1997. At that time, and on a number of occasions following that date, the Solicitor requested and was granted adjournments in order to permit him time to obtain medical evidence to address the issue of penalty. With the assistance of and at the expense of the Law Society, a report was provided by a former psychiatrist for the Solicitor, Dr. Glenn Renecker, dated March 5, 1998. On consent of counsel for both parties, the Medical Report was received by this Committee *in camera* and ordered sealed.

The Medical Report was placed before Convocation on March 26, 1998. In light of matters disclosed in the Medical Report, Convocation asked for submissions from both counsel for the Solicitor and counsel for the Law Society with respect to whether or not the matter should be remitted back to the Discipline Committee for a reconsideration of its finding of professional misconduct. After receiving submissions *in camera*, Convocation ordered that the matter be remitted back to the same Discipline Committee to reconsider, in light of the Medical Report and such other evidence as the parties may seek and be permitted to adduce, the issue of whether or not the mental element required to establish misappropriation was sufficiently made out. Because Convocation dealt with this matter *in camera*, the Committee has also ordered that the transcript be appended, but sealed. (Attachment "B")

The Solicitor was content before us with the finding of professional misconduct made by the Discipline Committee and reported in its Report and Decision. Specifically the Solicitor did not seek to have the Discipline Committee reconsider the issue of whether or not the appropriate mental element required to commit misappropriation was present.

Joint Submission Respecting Penalty

With respect to the appropriate penalty to be imposed, the Solicitor and the Law Society jointly submitted to this Committee that it was appropriate to reconsider its recommendation as to penalty in light of the Medical Report. The Solicitor and the Law Society jointly submitted, and requested the Committee to recommend, that the Medical Report provides sufficient evidence in mitigation that a penalty of permission to resign in the instant case is the appropriate penalty to be imposed.

The Solicitor made his submissions based upon the following;

- (1) Consideration of the Medical Report, the medical records maintained by Dr. Renecker respecting the Solicitor and further consultation between Dr. Renecker and counsel for the Solicitor;
- (2) Consideration of the possible effects of alcohol on the Solicitor's mental condition;
- (3) Consideration of the established principles as set out in the decisions of Bruce Perreault, and James Frederick Harris Gray.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Richard Alexander Sutton be granted permission to resign.

REASONS FOR RECOMMENDATION

The Committee wishes to express its thanks to Ms. Braid, Counsel for the Law Society, for paying for and co-operating in the obtaining of the further evidence that was placed before it. This is exactly the response we expect and we are most pleased to see the Society assisting the Solicitor in this way in the circumstances where he could not afford to obtain the report and may not have been able to do so without assistance.

We also want to thank Mr. Raj Anand and Mr. John Rosen, who were Duty Counsel, in obtaining adjournments so the report could be prepared, and particularly Mr. Paul Monahan, who appeared before Convocation and before the Committee on a *pro bono* basis, and presented the case for his client in a light which is substantially different from what would have appeared without the efforts of all those who I have mentioned.

There are two ways in which the additional medical information is significant. First, it provides an explanation which was not offered before, which deals effectively with the circumstances under which this offence of misconduct was committed. It does not excuse the misconduct, but it provides a context within which it is possible to extend to the Solicitor leniency because there are now mitigating factors to consider. We accept the report as having achieved that result.

Second, there is a previous record of discipline history, but as Ms. Braid fairly points out, most of the offences in the previous record occurred during the same time period as the present offence and are subject to the same explanation.

The Society has an obligation to the public to protect it and to ensure that solicitors who practise meet a very high standard. There is no doubt that that standard was breached in a serious way in this case, but given the personal circumstances of the Solicitor at the time, it is appropriate that the Solicitor be permitted to resign, rather than be disbarred and we therefore make that recommendation to Convocation.

Richard Alexander Sutton was called to the Bar on April 6, 1979.

ALL OF WHICH is respectfully submitted

DATED this 14th day of May, 1998

Clayton C. Ruby, Chair

Ms. Braid made submissions with respect to the history of this matter and drew the Benchers' attention to the medical report from Mr. Glenn Renecker received in camera.

It was moved by Mr. MacKenzie, seconded by Mr. Wilson that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be permitted to resign.

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

It was moved by Mr. MacKenzie, seconded by Mr. Adams that the solicitor be permitted to resign.

Carried

The Acting Treasurer thanked Mr. Monahan for his valuable assistance.

Re: Michael Walter TESLUK - Pickering

The Secretary placed the matter before Convocation.

Messrs. Swaye, Topp and Gottlieb withdrew for this matter.

Ms. Kathryn Seymour appeared on behalf of the Law Society and Mr. Paul Fletcher appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 17th August, 1998, together with an Affidavit of Service sworn 28th August, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 19th August, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 21st October, 1998 (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

Ronald D. Manes, Chair
Gerald A. Swaye, Q.C.
Gary Lloyd Gottlieb, Q.C.

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

Kathryn Seymour
for the Society

MICHAEL WALTER TESLUK
of the Town
of Pickering
a barrister and solicitor

J. Paul Fletcher
for the solicitor

Heard: June 16, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 20, 1998 Complaint D27/98 was issued against Michael Walter Tesluk alleging that he was guilty of professional misconduct.

The matter was heard in public on June 16, 1998 before this Committee comprised of Ronald D. Manes, Chair, Gerald Swaye, Q.C. and Gary L. Gottlieb, Q.C. The Solicitor attended the hearing and was represented by J. Paul Fletcher. Kathryn Seymour appeared on behalf of the Law Society.

DECISION

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

Complaint D27/98

2. a) He breached section 14(8)(c) of Regulation 708 of the *Law Society Act* by drawing the sum of \$ 20,117.50 from his trust account towards payment of his fees without first having delivered a billing or other written notification to his clients;
- b) He breached section 14(3) of Regulation 708 of the *Law Society Act* by depositing trust money in the amount of \$8,914.04 into his general account without first having delivered a billing or other written notification to his clients; and
- c) He breached his Undertaking to the Law Society by transferring to his general account portions of retainers without first having delivered a billing or other written notification to his clients.

Evidence

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

“AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D27/98 and is prepared to proceed with a hearing of this matter on

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, R.S.O. 1990 c. S.22.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D27/98 and admits the particulars. The Solicitor also admits that the particulars, together with the facts as set out below, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in April, 1964. He practises as a sole practitioner in an association of lawyers under the name of Harris, Fletcher, Tesluk Associates. He practises in all areas of law - real estate, commercial, estates, family.

Particulars

2(a) He breached section 14(8)(c) of Regulation 708 of the *Law Society Act* by drawing the sum of \$20,117.50 from his trust account towards payment of his fees without first having delivered a billing or other written notification to his clients;

b) He breached section 14(3) of Regulation 708 of the *Law Society Act* by depositing trust money in the amount of \$8,914.04 into his general account without first having delivered a billing or other written notification to his clients;

c) He breached his Undertaking to the Law Society by transferring to his general account portions of retainers without first having delivered a billing or other written notification to his clients.

A. Breach of Undertaking

5. In or about August, 1994, Marie Morley, an examiner with the Audit & Investigation Department of the Law Society, completed an audit of the Solicitor's books and records, which audit was initiated on the basis of an allegation of practising under suspension. The examiner concluded that the incidents were minor and the matter was not pursued further.

6. However, the examiner noted that there were several other inadequacies in relation to the Solicitor's books and records, which inadequacies are detailed in her inter-office memorandum of August 31, 1994 (Document Book, Tab 23) as follows:

"...As we discussed, there was a number of inadequacies, the most significant of which is the fact that Mr. Tesluk does not bill his clients for funds which he withdraws from the trust account relating to fees earned for ongoing matters. The member eventually does prepare a billing at the end of the case but the clients are not billed during the progression of the matter, although Mr. Tesluk is taking his fees during that time.

The client(s) sign(s) an "Authority to Act and Retainer" which clearly indicates the total amount (flat fee for fees and disbursements) which will be required for the member to handle the case(s) and that money is deposited in the trust account when the file(s) is/are opened and the client(s) has/have paid the retainer.

Mr. Tesluk points out that he is up-front with clients by telling them at the beginning just how much money will be required but I think that he takes advantage of clients, sophisticated or not, when he does not regularly report to them about how he is spending their money. Mr. Tesluk has responded to and/or corrected some of the inadequacies which I discussed with him and correspondence regarding those items is not necessary. However, I have prepared an undertaking regarding the taking of fees ONLY after a billing has been prepared and issued and have completed correspondence about other more significant deficiencies as well...."

7. The notes from Ms. Morley's audit itemizing the deficiencies she discovered and the substance of her discussions with the Solicitor on June 8th, 10th and 13th are reproduced at Tabs 24 and 25.

8. As a result of the Law Society's audit and discovery of the Solicitor's practice of withdrawing trust funds for unbilled fees, the Solicitor agreed in September, 1994 to execute an undertaking to the Law Society, which undertaking was not in fact executed until September 1, 1995 (Tab 26). The undertaking stated:

"I hereby undertake to maintain all retainers from clients in my trust bank account and to transfer to my general bank account any portion of a retainer which has been earned only after a billing has been prepared and delivered to my client.

I understand that any breach of this undertaking may result in disciplinary action against me by the Law Society."

9. Despite the Solicitor's undertaking, he continued his practice of paying himself funds from client trust accounts prior to the rendering of any fee billings, details of which are set out in the following paragraphs.

B.1) Estates of Bryce Ashmore and Freda Willie

10. Bryce Ashmore and Freda Willie were husband and wife. On May 12, 1995, Mr. Ashmore killed Ms. Willie and then took his own life in a murder/suicide. Mr. Ashmore's daughter, Sharon Elizabeth Robinson, was named the Trustee of the estate of her late father and step-mother.

11. Shortly after the deaths, Ms. Robinson retained the Solicitor to wind up the estates. Ms. Robinson gave the Solicitor cash and cheques totalling approximately \$15,000.

12. Dissatisfied with the Solicitor's service and, in particular, his failure to respond to her request for an interim report and an account, Ms. Robinson retained Mr. James Wilbur in or about November, 1995.

13. On November 22, 1995, Mr. Wilbur wrote to the Solicitor enclosing Ms. Robinson's Direction to turn over the files to him. The Solicitor failed to respond to Mr. Wilbur's letter of November 22, 1995. Mr. Wilbur again wrote to the Solicitor on January 3, 1996 and January 22, 1996. Once again, the Solicitor failed to respond to Mr. Wilbur's correspondence.

14. On or about January 31, 1996, Mr. Wilbur wrote a letter of complaint to the Law Society. A copy of the Complaint was sent to the Solicitor on February 14, 1996, requesting his comments within two weeks. The Solicitor did not respond (Tab 1).

15. On February 26, 1996, Mr. Wilbur wrote to the Solicitor acknowledging receipt of the estate files under cover of letter from the Solicitor dated February 5, 1996 (Tab 2). In his letter to the Solicitor, Mr. Wilbur stated that:

"You neglected to send me a trust statement showing the money which your [sic] received on behalf of the estate and the manner in which you spent it. My client tells me that she gave you cheques and cash which amounted to over \$15,000 and she is entitled to an accounting."

16. On March 26, 1996, the Law Society wrote to the Solicitor requesting a response to its letter of February 14, 1996, and to its telephone message of March 21, 1996. The letter advised the Solicitor that the matter would be referred to Discipline if a response was not received from the Solicitor within 7 days (Tab 2a).

17. On April 10, 1996, the Solicitor responded to the Law Society and cited serious health problems as the reason for his delay in responding. He did not address the issue with respect to his failure to account to Ms. Robinson for the estate trust funds in excess of \$15,000 (Tab 3).

18. In or around October, 1996, Mr. Wilbur contacted the Law Society and advised that he was not yet in receipt of an accounting for the trust funds from the Solicitor (Tab 4).

19. On February 10, 1997, Mary Ann Lord, an Investigation Auditor with the Law Society, had a telephone conversation with the Solicitor in which he stated that he did not recall the file and then later in the same conversation, stated that the \$15,000 he had received had been applied towards his fees. In the same conversation, the auditor made an appointment to attend at the Solicitor's office to review the file on Monday, February 17, 1997 at 9:30 a.m. (Tab 5).

20. On February 21, 1997, the auditor attended at the Solicitor's office and reviewed all of the relevant files and ledgers. The files contained a copy of a letter from the Solicitor to Ms. Robinson dated February 20, 1997 (the day preceding the audit) in which the Solicitor stated that:

"I was recently reminded that, although your files has [sic] been turned over, a statement of payments made to me and a description of the work done had not.

This file was inadvertently closed. I am very sorry for the delays in getting these reports to you.

I am enclosing details of preparation of Family Trust Agreement and all accounts prepared to include GST as discussed." (Tab 6).

21. The Solicitor's reporting letter of February 20, 1997 contained the following account of fees received:

FEES RECEIVED ON ACCOUNT			
May 15, 1995	Cash on account	(a)	\$266.00
	Cash on account	(a)	148.04
May 19, 1995	Cheque on account	(b)	2,000.00
June, 1995	Cheque - payment in full	(c)	7,500.00
			<u>\$9,914.04</u>
CHEQUES RECEIVED PAYABLE TO MINISTER OF FINANCE			
May 18, 1995	For probate	(d)	\$1,600.00
May 19, 1995	For probate	(d)	1,525.00
			<u>\$3,125.00</u>

22. The individual items in the accounting are explained as follows:

- a) The "cash on account" receipts dated May 15, 1995 for \$266.00 and \$148.04 were monies received in cash from the estate (Tab 7);

The Solicitor states that, at the outset of his retainer from Ms. Robinson, he met with her for two hours and that he treated the cash he received from her (totalling \$414.04) as payment of fees for that two hour meeting and therefore, he deposited the funds directly to his general account. No fee billing was produced at that time nor at any time prior to the Solicitor's reporting letter of February 20, 1997.

- b) With respect to the "cheque on account" dated May 19, 1995 for \$2,000, these funds were deposited to trust on May 19, 1995 and were transferred to the Solicitor's general account on the same day (Tabs 8, 9, 10 and 11);

The Solicitor's time docket indicates that approximately 16 hours of his time was docketed prior to May 19, 1995 (Tab 12). Accordingly, the Solicitor transferred funds on account of fees from the estate trust account to his general account in the amount of \$2,000 prior to having issued an account to Ms. Robinson. The Solicitor states that he had earned the \$2,000 in fees, however, no fee billing was produced at that time or at any time prior to the Solicitor's reporting letter of February 20, 1997.

- c) With respect to the cheque marked "payment in full" dated June, 1995 for the amount of \$7,500, the Solicitor deposited these funds directly into his general account;

The Solicitor states that he had completed the work in relation to the estates at that time and, therefore, the amount of \$7,500 had been earned. However, no fee billing was produced at that time or at any time prior to the Solicitor's reporting letter of February 20, 1997. Accordingly, the Solicitor deposited trust funds into his general account for payment of his fees prior to having issued an account to Ms. Robinson;

- d) The funds marked for "probate" (\$3,125.00) were paid directly by Mr. Wilbur to the Minister of Finance and did not go to the Solicitor.

23. The accounts that the Solicitor finally rendered to Ms. Robinson under cover of his reporting letter dated February 20, 1997 are reproduced at Tabs 13 and 14. The Solicitor billed separately for each of the Estate of Ashmore and the Estate of Willie. Each fee billing was for \$4,957.02 for a total in fees of \$9,914.04. The total amount billed of \$9,914.04 is exactly the amount the Solicitor received from the estate as summarized in the table and sub-paragraphs a - c above.

B.2) Ashmore Family Trust

24. In addition to winding up the estates of Ashmore and Willie, the Solicitor was retained in relation to a family trust matter. According to the Solicitor, one of the beneficiaries of the estate (Ronald Ashmore) was mentally challenged and the other siblings wanted to ensure that he was provided for. The Solicitor suggested that a trust be set up to facilitate the transfer of the assets of Ronald Ashmore to his mother, Lois Ashmore (the deceased's ex-wife) for his continued care.

25. According to the Solicitor, he received a fixed fee retainer (inclusive of GST) in the amount of \$3,500 which was received from Ms. Robinson on August 18, 1995 (Tabs 8 and 16). As fees were earned, the Solicitor transferred various amounts from the estate trust account to his general account:

August 18, 1995:	\$2,500 (Tab 17)
August 21, 1995:	\$500 (Tab 18)
October 23, 1995:	\$100 (Tab 19)
October 26, 1995:	\$400 (Tab 20).

26. No accounts were issued to Ms. Robinson prior to any of the above-noted transfers or at any time prior to the Solicitor's reporting letter of February 20, 1997, in which he enclosed an account for \$3,500 (Tab 21). Accordingly, the Solicitor transferred funds from the estate trust account to his general account for fees prior to his showing an account to Ms. Robinson.

B.3) Conclusion

27. In conclusion, the Solicitor received a total of \$13,414.04 (\$9,914.04 [para. 20] plus \$3,500.00 [para. 24]) from the estate to be placed in the estate trust account. Over the period May 15th to October 26, 1995, the Solicitor either transferred funds from the estate trust account to his general account or deposited estate trust funds directly into his general account all for the purpose of covering his fees. However, no fee billings were ever delivered to Ms. Robinson, trustee for the estate until February 20, 1997. Hence, with respect to the amount of \$5,500 which the Solicitor transferred from the estate trust account to his general account for the payment of unbilled fees, the Solicitor breached section 14(8)(c) of Regulation 708 of the *Law Society Act*, and with respect to the amount of \$7,914.04 of estate funds which the Solicitor deposited directly into his general account for unbilled fees, the Solicitor breached section 14(3) of Regulation 708 of the *Law Society Act*.

C. Failure to Deliver Accounts

C.1) Bryan Waters

28. On September 27, 1996, Bryan Waters retained the Solicitor to conduct patent research in the United States with respect to Mr. Waters' new invention, and he gave the Solicitor a retainer of \$1,500.00. That same day, Mr. Waters signed an "Authority to Act & Terms of Retainer" which indicated that the retainer was non-refundable (Tab 27).

29. The client trust ledger indicates that the retainer was deposited into trust on September 27, 1996 (Tabs 28 and 29). That same day, the Solicitor transferred \$750.00 to his general bank account from the trust bank account on account of fees (Tabs 30 and 31).

30. On October 11, 1996, the Solicitor transferred a further \$500.00 from the trust bank account to his general account on account of fees (Tabs 32 and 33).

31. The Solicitor admits that he did not prepare and deliver a fee billing to Mr. Waters prior to either the transfer of \$750.00 or the transfer of \$500.00 or, in fact, at any time to date. Accordingly, the Solicitor transferred funds from the client's trust account to his general account on account of fees without ever having rendered a fee billing.

32. On December 19, 1996, Mr. Waters gave the Solicitor \$5,000.00 to file a patent application, which \$5,000.00 retainer was deposited into trust that same day (Tab 34).

33. On December 20, 1996, the Solicitor transferred \$500.00 from the trust account to his general bank account, and again on January 10, 1997, the Solicitor transferred a further \$600.00 from the trust account to his general bank account (Tabs 35, 36, 37 and 38). Once again, the Solicitor did not prepare or deliver a fee billing to the client in advance of either of these transfers of funds from the client's trust account to the Solicitor's general account.

34. During the course of the Law Society's audit of the Solicitor and Ms. Lord's visit to the Solicitor's office on February 21, 1997, the Solicitor was questioned about the fee transfers and was advised that, despite the "Authority to Act & Terms of Retainer" document, the Solicitor was still required by Section 14(8)(c) of Regulation 708 of the *Law Society Act* to prepare and deliver a fee billing to the client. As a result of the Society's advice to the Solicitor, the Solicitor prepared a fee billing dated March 3, 1997 for \$5,000.00 (Tab 39).

35. On April 29, 1997, Mr. Waters advised the Law Society that he had provided a total of \$6,500.00 by way of non-refundable fees to the Solicitor, and was aware that he would not be receiving any funds back.

36. In conclusion, the Solicitor breached Section 14(8)(c) of Regulation 708 of the *Law Society Act*, and also breached his undertaking to the Law Society (paragraphs 5, 6, 7, and 8 above) by drawing the sum of \$2,350.00 on account of legal fees from Mr. Waters' trust account without first having delivered a fee billing to Mr. Waters.

C.2) Barry Davis

37. On December 16, 1996, Barry Davis retained the Solicitor to set aside a judgment in favour of Harvey Davis for the amount of \$100,727.75, and to negotiate a settlement with a mortgagee. That same day, Mr. Davis gave the Solicitor a retainer in the amount of \$2,500.00 and signed "Authority to Act & Terms of Retainer" which indicated that the retainer was non-refundable (Tab 40).

38. The client trust ledger indicates that \$2,500.00 retainer was deposited into trust on December 16, 1996 (Tabs 41 and 42). That same day, the Solicitor transferred \$1,000.00 from the trust account to his general account on account of fees (Tab 43).

39. On December 20, 1996, the Solicitor transferred \$750.00 on account of fees from his client's trust account to the Solicitor's general account, and on January 17, 1997, the Solicitor transferred a further \$500.00 on account of fees from the trust account to his general account (Tabs 44, 45, 46 and 47).

40. On December 20, 1996, the Solicitor transferred \$500.00 from the trust account to his general bank account, and again on January 10, 1997, the Solicitor transferred a further \$600.00 from the trust account to his general bank account (Tabs 35, 36, 37 and 38).

41. The Solicitor admits that he did not prepare and deliver a fee billing to Mr. Davis prior to either the transfer of \$750.00 or the transfer of \$500.00 or, in fact, at any time to date. Accordingly, the Solicitor transferred funds from the client's trust account to his general account on account of fees without ever having rendered a fee billing.

42. During the course of the Law Society's audit of the Solicitor and Ms. Lord's visit to the Solicitor's office on February 21, 1997, the Solicitor was questioned about the fee transfers and was advised that, despite the "Authority to Act & Terms of Retainer" document, the Solicitor was still required by Section 14(8)(c) of Regulation 708 of the *Law Society Act* to prepare and deliver fee billing to the client. As a result of the Society's advice to the Solicitor, the Solicitor prepared a fee billing dated March 3, 1997 for \$2,500.00 (Tab 48).

43. In conclusion, the Solicitor breached Section 14(8)(c) of Regulation 708 of the *Law Society Act*, and also breached his undertaking to the Law Society (paragraphs 5, 6, 7, and 8 above) by drawing the sum of \$2,250.00 on account of legal fees from Mr. Davis' trust account without first having delivered a fee billing to Mr. Davis.

C.3) John Bolender

44. Although the Solicitor's primary area of practice is in commercial and real estate law, he had previously practised for many years in criminal law and, accordingly, agreed to attend the bail hearing of John Bolender since Mr. Fletcher (the Solicitor's colleague who specializes in criminal law) was not available. On August 21, 1996, the Solicitor met with Mr. Bolender and attended the bail hearing.

45. On August 22, 1996, the Solicitor met with Mr. Fletcher to transfer the Bolender matter to him, and this was the Solicitor's last involvement on the file.

46. On August 23, 1996, \$7,000.00 was received from Mr. Bolender by way of a retainer, which funds were deposited into his trust account (Tab 49 and 50). That same day, the Solicitor transferred \$1,600.00 from Mr. Bolender's trust account to the Solicitor's general account, on account of fees (Tabs 51 and 52). The Solicitor admits that no fee billing had been prepared or rendered to Mr. Bolender prior to the transfer of \$1,600.00 from the trust account to the general account.

47. On August 29, 1996, a fee billing was prepared in the amount of \$2,675.00 (Tab 53). That same day, the Solicitor transferred \$1,075.00 from the trust account to his general account, on account of fees.

48. In conclusion, the Solicitor breached Section 14(8)(c) of Regulation 708 of the *Law Society Act*, and also breached his undertaking to the Law Society (paragraphs 5, 6, 7, and 8 above) by drawing the sum of \$1,600.00 on account of legal fees from Mr. Bolender's trust account without first having delivered a fee billing to Mr. Davis.

C.4) Marion Winter - Family Trust

49. In or about January 1996, Marion Winter and Lynn Rak retained the Solicitor for the purposes of establishing a family trust, the details of which are set out in a letter dated January 26, 1996, from the Solicitor to Mr. Russ Rak (Tab 54).

50. On February 6, 1996, Lynn Rak gave the Solicitor \$2,675.00 for deposit into the Winter family trust (Tabs 55 and 56). From that date to March 12, 1996, the trust balance was reduced to \$0.00 as a result of the following transfers made by the Solicitor from the trust account to his general account:

Date	Amount	Tab
February 6, 1996	2,675.00	56
February 6, 1996	-500.00	57,58
February 7, 1996	-1,200.00	59,60
February 9, 1996	-500.00	61,62
March 12, 1996	-475.00	
Balance	0.00	

51. The Solicitor admits that the only fee billing prepared with respect to this matter was dated February 12, 1996, for the amount of \$2,675.00 (Tab 63). Accordingly, the Solicitor admits that a total of \$2,200.00 was transferred from the client's trust account to the Solicitor's general account on account of fees prior to the delivery of a fee billing.

52. In conclusion, the Solicitor breached Section 14(8)(c) of Regulation 708 of the *Law Society Act*, and also breached his undertaking to the Law Society (paragraphs 5, 6, 7, and 8 above) by drawing the sum of \$2,200.00 on account of legal fees from Ms. Winter's trust account without first having delivered a fee billing to Ms. Winter.

C.5) Brownstone Apartments

53. On or about August 20, 1996, the Solicitor was retained by Aliah Akram, president of the Brownstone Apartments Inc., who executed an "Authority to Act & Terms of Retainer" that set out the terms of the retainer and the fact that the retainer of \$1,000.00 would be non-refundable, and that the maximum fees would be \$2,200.00 (Tab 64).

54. On August 21, 1996, the Solicitor received a cheque from Brownstone Apartments in the amount of \$1,000.00 which the Solicitor deposited directly into his general account (Tabs 65 and 66). The Solicitor admits that there was no trust account set up in this matter to receive the \$1,000.00 retainer, and further admits that no fee billing was delivered to Mr. Akram prior to the Solicitor depositing the \$1,000.00 retainer into the Solicitor's general account.

55. On November 21, 1996, the Solicitor provided a reporting letter to Mr. Akram and enclosed an account dated the same date for the amount of \$2,200.00 (Tabs 67 and 68). The Solicitor's account indicates receipt of the \$1,000.00 on August 21, 1996.

56. In conclusion, the Solicitor breached Section 14(3) of Regulation 708 of the *Law Society Act* by depositing trust monies in the amount of \$1,000.00 directly into his general account without having first delivered a fee billing to the client.

C.6) Roberts in Trust - Sale to Deir

57. In or about June, 1996, the Solicitor was retained by Ronald James Roberts and David Alexander Roberts, trustees for the Flutter family trust, to act on their behalf as vendors of a property which was being sold to Ms. Deir for \$150,000.00.

58. According to the Statement of Adjustments dated June 28, 1996, the balance due on closing was \$143,521.45 (Tab 70).

59. According to the Trust Statement of Receipts and Disbursements (Tab 71) and the Client Trust Ledger (Tab 72), a total of \$151,021.45 was received into trust and was eventually paid out of trust as follows:

DATE	PAID TO/REC'D FROM	DESCRIPTION	AMOUNT + rec'd / - paid
June 3/96	T.M. Deir	Purchase Deposit	+\$7,500.00
June 28/96	Max Rapoport in Trust	Sale to Deir	+143,521.45
July 2/96	Michael Tesluk	Sale to Deir	-\$1,237.75
July 2/96	David R. Vine	Execution Letter	-\$133.75
July 2/96	Michael Tesluk	Roberts/Flutter	-\$2,500.00
July 10/96	Michael Tesluk	Balance of Invoice	-\$175.00
July 11/96	LSUC	Vendors' levy	-\$50.00
July 24/96	Michael Tesluk	Roberts/Flutter on acc't	-\$500.00
July 26/96	Michael Tesluk	Roberts/Flutter on acc't	-\$500.00
Aug 1/96	Michael Tesluk	Roberts/Flutter	-\$1,070.00
Aug 2/96	Michael Tesluk	Roberts/Flutter	-\$802.50
Aug 7/96	Michael Tesluk	Roberts/Flutter	-\$535.00
Aug 9/96	Michael Tesluk	Roberts/Flutter	-\$802.50
Aug 23/96	Flutter Family Trust	House Sale	-\$140,000.00
Sept 6/96	Michael Tesluk	Roberts/Flutter	-\$700.00
Sept 10/96	Michael Tesluk	Roberts/Flutter	-\$150.00
Sept 20/96	Michael Tesluk	Roberts/Flutter	-\$1,500.00
Oct 17/96	Michael Tesluk	Roberts/Flutter	-\$100.00
Oct 17/96	Michael Tesluk	Roberts/Flutter Disb.	-\$100.00

60. The activity in the trust account can be summarized as follows:

Activity	Amount
Received re: sale	\$151,021.45
Paid to Mr. Vine re: execution letter	-133.75
Paid to LSUC re: levy	-50.00
Paid to Flutter Family Trust	-140,000.00
Paid to Tesluk	-10,672.75
Balance in trust	164.95

61. According to the client trust ledger, the Solicitor transferred a total of \$10,672.75 to himself on account of fees.
62. On October 11, 1996, the Solicitor wrote a reporting letter to the Roberts with respect to the sale transaction and included therewith four invoices totalling \$5,969.00 in legal fees paid from trust (Tab 74).
63. The difference between the \$10,672.75 shown as paid to the Solicitor on account of fees on the client trust ledger and the \$6,771.50 shown as billed to trust in the invoices attached to the Solicitor's reporting letter of October 11, 1996, is \$3,901.25. The Solicitor admits that no fee billings were prepared for the amount of \$3,901.25 which the Solicitor paid himself from the client trust account. The Solicitor further admits that, with the exception of \$200, he withdrew from the client's trust account a total of \$6,771.50 prior to his having issued the fee billings on October 11, 1996.
64. In conclusion, the Solicitor breached Section 14(8)(c) of Regulation 708 of the *Law Society Act*, and also breached his undertaking to the Law Society (paragraphs 5, 6, 7, and 8 above) by drawing the sum of \$6,217.50 on account of legal fees from his trust account without first having delivered a fee billing or other written notification to his clients.

V. PRIOR DISCIPLINE

65. On September 19, 1974, the Solicitor was found guilty of misappropriation in the approximate amount of \$91,000. He was suspended for two years and ordered to pay costs to the Law Society in the amount of \$1,300.00.
66. On July 7, 1993, the Solicitor was found guilty of failing to meet a financial obligation in relation to his practice by failing to pay clients the amount (\$3,775) ordered by the Assessment Officer in respect of a sale of property in August, 1988; and for failing to serve his executrix client diligently by failing to, among other things, keep her reasonably informed, causing undue delay in the administration of the estate, and provide a proper statement of account to his client. The Solicitor was reprimanded in Committee and ordered to pay costs to the Law Society in the amount of \$1,500.

DATED at Toronto, this 16th day of June, 1998."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Michael Walter Tesluk be reprimanded in Convocation.

REASONS FOR RECOMMENDATION

We are all of the view that the Solicitor should be reprimanded in Convocation.

The Solicitor was warned in 1994 that his practice of taking client retainers directly into general, or failing to render accounts against trust funds before moving them into general, was an unlawful practice, contrary to Regulation 14 (3) and 14 (8) (c) of the Act. The Solicitor was warned at the time that his practice of having clients execute a retainer form which appears at tab 27 of Exhibit 3, did not authorize the contravention of the Regulation with respect to taking these fees into his own pocket.

The Law Society, at that time, rather than charging the Solicitor, chose to proceed by way of undertaking such that this practice, while not condoned, was understood by the Solicitor to be wrong and executing the undertaking, would be to avoid a possible prosecution. This was at a time when, in 1993, the Solicitor had been reprimanded in committee with respect to financial dealings with a client, including failing to keep the client reasonably informed and provide a proper statement of account to his client.

I should say here that the Solicitor was guilty of a further misconduct in September of 1974, conduct of a very serious nature for which he received a two year suspension. We are of the view that little weight should be placed on that particular discipline in that it was well over twenty - or approximately twenty years, prior to the undertaking, notwithstanding the serious nature of the finding of guilt at that time.

Mr. Fletcher, on behalf of the Solicitor has made able submissions in mitigation. He points to Exhibit 4, which is a letter from the Solicitor's doctor with respect to his physical condition between 1988 and 1998. Although the serious aspects of the physical condition which befell the Solicitor were between 1990 and 1992 when he had a second operation for a femoral artery aneurysm and almost died on the operating table which resulted in two years of brain disfunction, there is no evidence before us that by the time of these occurrences in 1994 and on, that the Solicitor was impaired to any great physical extent, nor that he had diminished intellectual functions at the time or over that period of time.

What is clear is that the Solicitor was rebuilding his practice during this period of time and that the financial returns on that practice were marginal. That, of course, cannot justify nor even mitigate a misconduct. The heart of Mr. Fletcher's submissions were that the clients who were affected by the Solicitor's conduct did not complain and there were no assessments with respect to these matters. In our view, that is quite irrelevant, although on the face of it, it is an attractive argument. Clients are deemed to be vulnerable by the Society and the Solicitor is required to perform his or her obligations to the client in any event, whatever the degree or nature of a client's vulnerability. We notice, in fact, that in the Agreed Statement of Facts that with respect to the estates of Bryce, Ashmore and Freda Willie that a solicitor wrote to this Solicitor on a number of occasions, through contact by the Society, with respect to an accounting for trust funds in excess of \$15,000. According to the Agreed Statement of Facts, the Solicitor failed to respond and the complainant's solicitor wrote a letter of complaint to the Law Society as a result.

In all of the circumstances, it appears to us that the Solicitor having been warned in September of 1994 by the Law Society with respect to such conduct, having executed an undertaking which addressed itself precisely to the situation before us, that we cannot come to any other conclusion than that the Solicitor was either bloody minded about the Regulation and the undertaking, or chose to ignore it such that a reprimand in committee would not be appropriate in these circumstances.

We have had an opportunity to examine the undertaking executed by the Solicitor and we are all of the view that it would be inappropriate to include a requirement that the Solicitor participate in the Law Society's Practice Review Programme. Although the programme is certainly rehabilitative, in our view, such a requirement would be punitive, and expensive for the Law Society in this particular circumstance. We say that because it is not the Solicitor's general practice that requires review, but it is the Solicitor's attitude towards his undertaking and the Regulation with respect to placing monies in trust for clients or withdrawing those monies from trust that brings the Solicitor's conduct into question.

Accordingly, we would recommend the inclusion of numbers 1 and 5 in the undertaking as follows:

1. "To provide a monthly auditor's report for a period of 6 months certifying that I have reviewed all of my Books and Records with my auditor and that I have corrected any and all deficiencies as they arise, and certifying that I have issued proper billing statements and/or accounts to my clients prior to
 - a) drawing funds from trust on account of fees; and/or
 - b) drawing funds from general on account of fees; and/or
 - c) transferring to my general account trust/retainer funds on account of fees.
2. To pay costs in the amount of \$1,000 to the Law Society in monthly instalments of \$100 over a period of ten months commencing the first month following the date of the Order of Convocation.

Having said the above, we are also of the view that the Solicitor has learned his lesson in respect to this particular conduct, having regard to not only the submissions of counsel, but having heard from the Solicitor himself in that regard.

Michael Walter Tesluk was called to the Bar on April 10, 1964.

ALL OF WHICH is respectfully submitted

DATED this 17th day of August, 1998

Ronald D. Manes, Chair

Ms. Seymour asked that the following correction be made to the Report:

- page 18, 1st paragraph, 5th line - the spelling of the word "disfunction" be changed to "dysfunction"

There were no submissions.

It was moved by Mr. Wilson, seconded by Mr. Chahbar that the Report as amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation.

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

It was moved by Mr. MacKenzie, seconded by Mr. Wilson that the recommended penalty be adopted.

Carried

The Acting Treasurer administered the reprimand.

Re: Micaela Obreanu BORUP - Unionville

The Secretary placed the matter before Convocation.

Ms. Seymour appeared for the Society and the solicitor appeared on her own behalf.

The Secretary advised that Exhibit 1, the Report and Affidavit of Service and Exhibit 2, a letter from the solicitor dated June 23rd, 1998 were filed at Convocation in June 1988.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Paul D. Copeland

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

Kathryn Seymour
for the Society

MICAELA OBREANU BORUP
of the Town
of Unionville
a barrister and solicitor

Not Represented
for the solicitor

Heard: April 28, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

The following Complaints were issued against Micaela Obreanu Borup alleging that she was guilty of professional misconduct: on March 16, 1993 Complaint D70/93 was issued; on June 24, 1993 Complaint D81/93 was issued; on August 26, 1993 Complaint D223/93 was issued; and on November 25, 1997 Complaint D285/97 was issued. Complaints D81/93 and D285/97 were withdrawn and replaced by Complaint D285a/97 issued on February 2, 1998.

These matters were heard in public on April 28, 1998 before Paul D. Copeland sitting as a single bencher. The Solicitor attended the hearing and represented herself. Kathryn Seymour appeared on behalf of the Law Society.

DECISION

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

D70/93

2. a) She has failed to maintain sufficient balances on deposit in her trust account to meet all obligations to clients. The trust account is short \$7,234.85 more or less;
- b) She failed to maintain books and records pursuant to the Regulation.

Complaint D223/93

2. a) She failed to file with the Society within six months of the termination of her fiscal year ending September 30, 1992, a statutory declaration in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Complaint D285a/97

2. a) She failed to serve her clients in a conscientious, diligent and efficient manner or, in the alternative she abandoned her practice without making adequate arrangements for the protection of her clients, including but not limited to the following:
- (i) she failed to fulfil undertakings given by her;
 - (ii) she failed to honour her financial obligations;
 - (iii) she failed to account to her clients;
 - (iv) she failed to release client files;
 - (v) she failed to report to clients; and
 - (vi) she failed to complete services for her clients nor did she notify her clients of her inability to further represent them.
- b) She failed to reply to the Society regarding inadequacies discovered in her filing for the fiscal period ended September 30, 1991, despite letters dated March 23, 1993, April 23, 1993, June 23, 1993, July 23, 1993, August 23, 1993 and October 7, 1993;
- c) She failed to file with the Society within six months of the termination of her fiscal year ended September 30, 1993, September 30, 1994 and September 30, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the *Law Society Act*; and
- d) She failed to reply to the Law Society regarding complaints made by John Gaspar, Samir Dib, Diana Pouzar, Richard W. Hardy, Ernest J. Kirsh, Franca Tamburello, Robert W. Jackson, V. Giverin, Dieter Kruse, Ronald A. Bachew, C. Hall, J.A. Teixeira, Mike Harwood and Jack C. Goodman.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D70/93, D223/93 and D285a/97 and is prepared to proceed with a hearing of these matters on March 31 and April 1, 1998.

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 Complaint D70/93, D223/93 and D285a/97 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

Complaint D70/93

Particular 2a) She has failed to maintain sufficient balances on deposit in her trust account to meet all obligations to clients. The trust account is short \$7,234.85, more or less.

Particular 2b) She failed to maintain books and records pursuant to the Regulation.

4. An audit was authorized pursuant to Section 18 of the Regulation of the Law Society Act because the Solicitor had failed to file her Forms 2/3 for the fiscal year ending September 30, 1991.

5. On August 27, 1992, an Examiner with the Law Society's Audit and Investigation Department, commenced an audit of the Solicitor's books and records. On that date, the Examiner determined that the Solicitor's books were in arrears for a period of four months. The Solicitor was given one week to bring her records up to date.

6. The Examiner returned to the Solicitor's office on September 2, 1992. The Solicitor's books and records had not been updated. The Examiner also determined that there was a shortage in the approximate amount of \$5,500.00 in the Solicitor's trust account because the Solicitor overpaid her client, Dobosz, and had been unable to retrieve the amount from the client. (Tab 3, Document Book, Volume I) Co-signing controls were placed on the Solicitor's trust account that day as a result of the trust shortage.

7. On September 9, October 9 and October 30, 1992, the Examiner attended at the Solicitor's office to co-sign cheques on a second trust account which had been opened after the Solicitor's first trust account had been frozen. The Solicitor's books and records were still in arrears and the shortage remained outstanding.

8. By letter dated October 1, 1992 (Tab 4, Document Book, Volume I), the Staff Trustee's Office of the Law Society wrote to the Solicitor advising that he would determine the disposition of her trust funds. The Solicitor was further advised that she would also continue to deal with the Examiner. The Staff Trustee advised the Solicitor that her trust account had been frozen and would remain frozen until her books and records were updated. The Solicitor was provided with two options in order to correct the shortage of funds; repay the amount personally or the monies would be pro-rated and each client would be entitled to make a claim to Errors and Omissions and/or the Compensation fund. The Solicitor was asked to contact the Law Society with her position.

9. On October 13, 1992, the Solicitor called the Staff Trustee and advised that she was devoting as much time as possible to bringing her books and records up-to-date. A copy of the memo to file of the telephone conversation is contained at Tab 5 of the Document Book, Volume I.

10. On December 3, 1992 and January 7, 1993, the audit continued. The Solicitor's bookkeeper provided the Examiner with a copy of the client trust listing for the period October 1991 to March 1992 and for April 1992 to September 1992, copies of which are contained at Tab 6 of the Document Book, Volume I. The Examiner discovered a number of overdrawn transactions which had not been corrected by the Solicitor. The account was overdrawn in the amount of \$7,234.85. A copy of the ledger for the overdrawn trust account is contained at Tab 7 of the Document Book, Volume I.

11. The Solicitor informed the Examiner that the Solicitor had no resources to pay back the trust shortages. The Solicitor's trust account remained frozen and co-signing controls remained in effect on the Solicitor's second trust account.

12. On January 7, 1993, the Staff Trustee spoke with the Solicitor who advised that she would not be able to replace the trust shortage until she was able to render accounts. The Solicitor was instructed to bill out all accounts to reduce the amount of the shortage and to prepare an address list for the clients entitled to the funds. A copy of the memo to file of the telephone conversation is contained at Tab 8 of the Document Book, Volume I.

13. By letter dated January 22, 1993 (Tab 9, Document Book, Volume I), the Staff Trustee advised the Solicitor that since she was not in a position to repay the monies, she would have to prepare and send fee billings to her clients. The Solicitor was asked to complete this task by February 25, 1993.

14. A further appointment had been scheduled for January 25, 1993. On January 21, 22 and 25, 1993, the Solicitor called the Examiner to advise that she would not be available for the appointment. A copy of the messages are contained at Tabs 10 and 11 of the Document Book, Volume I.

15. By letter dated January 25, 1993 (Tab 12, Document Book, Volume I), the Solicitor wrote to the Examiner advising that due to personal problems she was unable to keep the scheduled appointment. The Solicitor further advised that she would provide the material to the Law Society within two weeks.

16. On January 27, 1993, the Solicitor called the Law Society and requested that the Examiner return her call to set up another appointment. A copy of the telephone message is contained at Tab 13 of the Document Book, Volume I.

17. On February 3, 1993, the Solicitor called and left a message for the Examiner advising that both she and her son were ill and that she would contact her by the end of the week. A copy of the telephone message is contained at Tab 14 of the Document Book, Volume I.

18. On February 8, 1993, the Solicitor called the Law Society and left a message for the Examiner advising that she would be unable to attend with her books and records on the following day as her sons were ill. The Solicitor further advised that she would be available that night if the Examiner wished to call her. A copy of the telephone message is contained at Tab 15 of the Document Book, Volume I.

19. On February 12, 1993, the Solicitor called the Examiner and left a message advising that she would be unable to bring her books and records that day as her son had a doctor's appointment. The Solicitor further advised that the bank had lost her bank statement and that her bookkeeper would be working on her books that weekend. The Solicitor advised that she would be available on the Tuesday of the following week. A copy of the telephone message is contained at Tab 16 of the Document Book, Volume I.

20. By letter dated March 18, 1993 (Tab 17, Document Book, Volume I), the Solicitor was reminded that she advised the Law Society several times that she would produce her books and records. The Solicitor was requested to deliver her records to the Law Society immediately.

21. By letter dated April 2, 1993 (Tab 18, Document Book, Volume I), the Solicitor advised the Law Society that she was not avoiding the Society but she had not been able to attend to the matters due to her physical and mental states. The Solicitor further advised that she was preparing responses to each letter by April 15, 1993. The Solicitor indicated that a meeting with the Staff Trustee's Office and a representative of the Discipline Department after April 15, 1993 would be helpful.

22. By letter dated April 6, 1993 (Tab 19, Document Book, Volume I), the Staff Trustee wrote to the Solicitor requesting that the Solicitor use her best efforts to answer all the inquiries received by the Law Society regarding her files. The Solicitor was asked to complete the responses by April 15, 1993 and to send them to the Law Society. The Solicitor was further reminded that she would need to prepare fee billings where appropriate. The Solicitor did not respond.

23. By letter dated April 14, 1993 (Tab 20, Document Book, Volume I), the Examiner wrote to the Solicitor requesting that she contact her when her books and records were available. The Solicitor did not respond.

24. By letter dated June 15, 1993 (Tab 21, Document Book, Volume I), the Staff Trustee confirmed that the Errors and Omissions Insurance department had taken possession of the Solicitor's current files. The Solicitor was advised that the Law Society wished to take control of her trust account. The Solicitor was asked to provide the Society with a signed trust cheque made payable to the Law Society. The Law Society would then confirm the balance of the account with the bank and deposit the amount into the Society's trust account. The Solicitor did not respond.

25. By letter dated July 20, 1993 (Tab 22, Document Book, Volume I), the Staff Trustee again requested the cheque from the Solicitor. The Solicitor did not respond.

26. By letter dated November 30, 1993 (Tab 23, Document Book, Volume I), the adjuster for the Law Society advised the Staff Trustee that they had attended to the registration of the discharges of mortgages found in the Solicitor's files. The adjuster provided the Society with a file summary prepared for the Errors and Omissions department.

27. On February 24, 1994, the Staff Trustee called the Solicitor who advised that she thought she could put together her trust records by March 4, 1994. A copy of the notes of the telephone conversation is contained at Tab 24 of the Document Book, Volume I.

28. On April 27, 1994, the Solicitor called the Staff Trustee and requested that he determine what outstanding fees she needed to pay to reinstate herself. On April 28, 1994, the Staff Trustee called the Solicitor and provided her with the information requested. A copy of the notes of the telephone conversations is contained at Tab 25 of the Document Book, Volume I.

29. By letter dated June 10, 1994 (Tab 26, Document Book, Volume I), the Staff Trustee again requested the Solicitor to provide a cheque made payable to the Law Society. The Solicitor was reminded not to fill in the amount as the balance would be confirmed with the bank.

30. On July 7, 1994, the Solicitor attended at the bank and signed a cheque on her trust account. By letter dated July 8, 1994 (Tab 27, Document Book, Volume I), the Staff Trustee wrote to the bank and requested that the bank forward the cheque to the Law Society to be co-signed. The bank was advised that once the cheque was co-signed and deposited into the Society's trust account, the Solicitor's account could be closed.

31. By letter dated July 11, 1994 (Tab 28, Document Book, Volume I), the bank forwarded the cheque to the Law Society. The funds were subsequently transferred to the Society's trust account.

32. The Solicitor, with the assistance of her bookkeeper, prepared handwritten accounts which eliminated the trust shortage. The fee billings were forwarded to the clients by the Law Society together with trust cheques to those who were owed monies.

33. The Staff Trustee's office continues to hold approximately \$15,000.00 in trust.
Complaint D285a/97

Particular 2b) She failed to reply to the Society regarding inadequacies discovered in her filing for the fiscal period ended September 30, 1991, despite letters dated March 23, April 23, June 23, July 23 and August 23, 1993.

34. The Solicitor filed for the fiscal year ended September 30, 1991 on October 23, 1992. Upon review of the filing, the Law Society determined there were some inadequacies. By letter dated March 23, 1993 (Tab 29, Document Book, Volume I), the Law Society advised the Solicitor that the trust bank reconciliations attached to her filing indicated that there was a deposit outstanding for two weeks; and that the accountant's report disclosed overdrawn trust ledger accounts which were permitted to exist uncorrected over a period in excess of one month. The Solicitor was asked to provide confirmation to the Law Society that the above had been corrected. The Solicitor did not respond.

35. By letters dated April 23, June 23, July 23 and August 23, 1993 (Tabs 30 to 33, Document Book, Volume I), the Law Society asked the Solicitor to respond to its March 23, 1993 letter. The Solicitor did not respond to the correspondence.

Complaint D223/93

Particular 2a) She failed to file with the Society within six months of the termination of her fiscal year ending September 30, 1992.

36. The Solicitor's fiscal year end is September 30. The Solicitor did not file her Form 2 or Form 3 within six months of the fiscal year ending September 30, 1992, as required by S.16(2) of Regulation 708 under the Law Society Act.

37. A Notice of Default in Annual Filing, dated April 5, 1993 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached at Tab 34 of the Document Book, Volume I.

38. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated May 8, 1993. The Solicitor was advised that she had not taken the necessary steps to bring her filings up-to-date. The Society's Second Notice was signed for and delivered on August 26, 1993. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is attached at Tab 35 of the Document Book, Volume I.

Complaint D285a/97

Particular 2c) She failed to file with the Society within six months of the termination of her fiscal years ending September 30, 1993 and September 30, 1994.

39. The Solicitor's fiscal year end is September 30. The Solicitor did not file her Form 2 or Form 3 within six months of the fiscal years ending September 30, 1993, as required by S.16(2) of Regulation 708 under the Law Society Act.

40. A Notice of Default in Annual Filing, dated April 6, 1994 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached at Tab 36 of the Document Book, Volume I.

41. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated May 9, 1994. The Solicitor was advised that she had not taken the necessary steps to bring his filings up-to-date. The Society's Second Notice was signed for and delivered on May 17, 1994. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is attached at Tab 37 of the Document Book, Volume I

42. The Solicitor did not file her Form 2 or Form 3 within six months of the fiscal years ending September 30, 1994, as required by S.16(2) of Regulation 708 under the Law Society Act.

43. A Notice of Default in Annual Filing, dated April 4, 1995 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached at Tab 38 of the Document Book, Volume I.

44. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated May 17, 1995. The Solicitor was advised that she had not taken the necessary steps to bring his filings up-to-date. The Society's Second Notice was signed for and delivered on June 1, 1995. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is attached at Tab 39 of the Document Book, Volume I.

45. To date, the Solicitor has not made her filings for the fiscal years ended September 30, 1992, September 30, 1993 and September 30, 1994.

V. PRIOR DISCIPLINE

46. On December 1, 1987, the Solicitor was reprimanded in Committee for failure to maintain her books and records and failure to file. The Solicitor also provided an Undertaking regarding her filing requirements and was ordered to pay costs in the amount of \$500.00.

DATED at Toronto, this 24th day of March, 1998."

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

47. The Solicitor admits service of Complaints D70/93, D223/93 and D285a/97 and is prepared to proceed with a hearing of these matters on April 28 and 29, 1998.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

49. The Solicitor has reviewed Complaint D70/93, D223/93 and D285a/97 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. BACKGROUND

50. The Solicitor was called to the Bar on April 6, 1979 and practised as a sole practitioner, primarily in real estate. The Solicitor first attended at the offices of her psychiatrist on August 31, 1992, to deal with the problems of a broken marriage; her youngest son's mental illness; the breakdown of her second (common law) marriage; and severe financial problems all of which contributed to the breakdown and loss of her law practice. At that time she was separated from her husband and had sole custody of her three sons, then ages 7, 9 and 13. The Solicitor was not receiving any support from her ex-husband. In early 1993, the Solicitor was diagnosed with "atypical clinical depression" which rendered her incapable of continuing the practice of law. The Solicitor's personal statement regarding her background and circumstances is attached hereto as Exhibit "A".

51. Primarily over the years of 1991, 1992 and 1993, the Law Society received many complaints from clients regarding the Solicitor and their respective transactions. The majority of the complaints related to the Solicitor's failure to report to clients subsequent to the closing of their respective real estate transactions.

52. The Law Society contacted the Solicitor during the latter part of 1992 in relation to the client complaints. The Solicitor indicated a sincere intention to address all of the outstanding matters and concerns.

53. However, due to the Solicitor's personal circumstances, including her mental health, she was overwhelmed and became incapable of taking any action to address the growing concerns of her clients. The Solicitor was sufficiently paralysed in her ability to act that she, was forced to abandon her practice.

54. On June 1, 1993, the Solicitor was suspended for non-payment of her Errors and Omissions Levy and was no longer entitled to practise law.

55. In or about June 1993, the Lawyers' Professional Indemnity Company (hereinafter referred to as "LPIC") retained Ponton, Coleshill, Edwards & Associates (hereinafter referred to as "Ponton") to review the Solicitor's files. The Solicitor's open files, approximately 217 files in total, were retrieved from the Solicitor's home. Upon review of the files, Ponton discovered problems with several files, including unregistered discharges and no reporting letters to clients. It was agreed that LPIC would pay the registration costs of the discharges and the Staff Trustee's Office would prepare the necessary reports. LPIC retained approximately thirty files as potential claims, and transferred the balance of the files to the Staff Trustee's office. Matthew Fisher was retained by the Staff Trustee's office to review the Solicitor's files and to complete any outstanding matters, including reporting letters to clients.

56. The Solicitor continues to experience medical problems. In January 1997, she was diagnosed with "Chronic Fatigue Immune Deficiency Syndrome" (CFIDS) and has not worked since May 1997. The Solicitor is currently supported by support payments from her ex-spouse and by UIC benefits have ceased. In July 1997, her father suffered a massive stroke in Kingston and the Solicitor frequently travels to Kingston to care for her parents. In addition, in October 1997, she filed for bankruptcy and remains undischarged at this time.

V. FACTS

Complaint D285a/97

Particular 2a) She failed to serve her clients in a conscientious, diligent and efficient manner or, in the alternative, she abandoned her practice without making adequate arrangements for the protection of her clients.

(i) She failed to fulfil undertakings given by her.

Matthew and Jacqueline Alexander

57. In 1991, the Solicitor was retained by the Alexanders to complete the sale of 61 Dobson Drive, Ajax. The Solicitor provided an Undertaking dated August 29, 1991 to advise the purchaser's solicitor of the discharge particulars. The Solicitor registered the discharge, but failed to fulfill her undertaking to advise of the particulars. By letter dated January 14, 1994, the Law Society provided the discharge particulars to the purchaser's solicitor (Tab 40, Document Book).

Dianna and David Armstrong

58. The Solicitor was retained by the Armstrongs to complete the sale of 73 Horseley Hill Drive, Scarborough which was scheduled to close on July 31, 1992. The Solicitor provided an Undertaking dated July 29, 1992 to the purchaser's solicitor to register a discharge of mortgage, to provide the particulars of the registration and to deliver the duplicate registered discharged mortgage to the purchaser's solicitor. The Solicitor registered the discharge but did not provide the particulars of the registration or deliver the registered discharge to the purchaser's solicitor, thus failing to fulfill her undertaking. By letters dated January 14, 1993, the Law Society provided the purchaser's solicitor and the Armstrongs with a copy of the discharge (Tab 42).

Killian and Joy Baptista

59. The Solicitor was retained by the Baptistas to complete the sale of 192 Mammoth Hall Trial, Scarborough which was scheduled to close on August 21, 1992. The Solicitor provided an Undertaking to the purchaser's solicitor to register a discharge of a mortgage. The Solicitor paid out the mortgage, but did not register the said discharge, thus failing to fulfill her undertaking. LPIC arranged for the registration of the discharge and by letter dated November 12, 1993, LPIC advised Mr. Rosenfarb, solicitor for the purchaser, that the mortgage had been discharged. By letter dated June 26, 1994, the Law Society provided a copy of the discharge to the Baptistas. (Tab 43).

Christene Best

60. The Solicitor was retained by Christene Best to complete the sale of 140 Wolverleigh Boulevard, Toronto which was scheduled to close on October 23, 1992. The Solicitor provided an Undertaking to the purchaser's solicitor, T. Edgar Reilly, to register two mortgage discharges. The Solicitor paid out the mortgages, but failed to register the discharges thus failing to fulfill her undertaking. LPIC arranged for the registration of the two discharges. By letter dated November 12, 1993, LPIC advised Mr. Reilly of the registration particulars. By letter dated January 26, 1994, the Law Society provided a copy of the discharges to Ms. Best (Tab 44).

Marjory Cooke

61. In 1992, the Solicitor was retained by Marjory Cooke to complete the purchase of 2 Raymerville Drive, #716, Markham. The Solicitor provided an Undertaking dated May 1, 1992 to provide the vendor's solicitor, Marvin Bongard, with one day's interest on the balance due on closing. The Solicitor failed to fulfill her Undertaking (Tab 45).

Adrien Couturier

62. The Solicitor was retained by Adrien Couturier to complete the sale of Part Lot 14, Concession 2, Uxbridge which was scheduled to close December 14, 1992. The Solicitor provided an Undertaking to Bailey & Sedore to register a discharge of a mortgage. The Solicitor failed to fulfill her undertaking. By letter dated March 22, 1993, Robert Sedore advised the Solicitor that he had not received the discharge particulars of the mortgage. In or about November, 1993, LPIC registered the said discharge and by letter dated November 22, 1993, provided Mr. Sedore with the registration particulars. (Tab 46).

Yvan and Ginette Couturier & Canada Trust

63. The Solicitor was retained by Yvan and Ginette Couturier to complete a mortgage transaction of 29 Griffiths Drive, Ajax which was scheduled to close on October 22, 1992. The Solicitor provided an Undertaking to register a mortgage discharge. The Solicitor did not comply with her undertaking and as a result, LPIC registered the said discharge. In addition, the Solicitor also acted for Canada Trust. Despite letters dated November 25, 1992, December 29, 1992 and January 26, 1993 requesting final documentation from the Solicitor, she did not provide the same. On April 6, 1993, Canada Trust made a complaint to the Law Society regarding the foregoing and by letter dated February 9, 1994, the Law Society forwarded the final documentation to Canada Trust (Tab 47).

Paul Desjardins and Lorraine Reilly

64. In or about January 1992, the Solicitor was retained by Paul Desjardins and Lorraine Reilly to complete the sale of 40 Ambercroft Blvd., Scarborough. The Solicitor provided an Undertaking dated January 30, 1992 to register the discharge of mortgage and to advise the purchaser's solicitor, John M. Daniels, of the particulars. If not completed within 90 days, the Solicitor further undertook to pursue a court application for an Order discharging the said mortgage. The Solicitor failed to fulfill her undertaking. By letter dated August 4, 1992, Mr. Daniels asked the Solicitor for a reply to her undertaking. The Solicitor did not respond. The Law Society obtained and registered the said discharge in May 1994. By letter dated June 10, 1996, the Law Society advised Mr. Daniels of the registration particulars. (Tab 48).

Gerald and Jeanne Huffman

65. The Solicitor was retained by Gerald and Jeanne Huffman to complete the sale of R.R.#1 Rouge River Circle, Markham. The Solicitor provided an Undertaking dated October 30, 1992 to register discharges of mortgage and to provide the purchasers with the registration particulars. If not completed within 60 days, the Solicitor further undertook to pursue a court application for an Order discharging the said mortgage. The Solicitor failed to fulfill her undertaking. Upon review of the Solicitor's file, the Law Society found three discharges. By letter dated November 12, 1993, LPIC provided the discharge particulars to the purchasers (Tab 49).

Somasunderam Kaneshapillai

66. The Solicitor was retained by Somasunderam Kaneshapillai to complete the sale of 914-100 Dundalk Drive, Scarborough which was scheduled to close February 5, 1992. The Solicitor provided an Undertaking dated February 4, 1992 to Mircheff & Mircheff to register two discharges of mortgage and to provide them with the registration particulars. If not completed within 90 days, the Solicitor further undertook to pursue a court application for an Order discharging the said mortgage. The Solicitor registered the discharges, but failed to fulfill her undertaking to advise of the registration particulars. By letter dated August 17, 1992, Nick Mircheff asked the Solicitor to provide him with the registration particulars. The Solicitor did not respond. The discharges were registered on January 15, 1993. By letter dated February 11, 1994, the Law Society advised the Mr. Mircheff of the registration particulars (Tab 50).

Hessameddin Kazemi and Azita Harirjan

67. The Solicitor was retained by Hessameddin Kazemi and Azita Harirjan to complete the purchase of 52 Shrewsbury Square, Scarborough. The Solicitor provided an Undertaking to Goodman & Griffin dated September 14, 1992 to register a deposit on title regarding Mr. Harirjan's proper name by September 30, 1992. The Law Society found a signed copy of the deposit in the Solicitor's file but the same was not sworn, thus the Solicitor failed to fulfill her undertaking. By letters dated January 28, 1993, February 11, 1993 and February 18, 1993, Mr. Goodman asked the Solicitor to provide him with the registration particulars of the Document General correcting the spelling of Mr. Hiririan's name. By letter dated May 31, 1994, the Law Society provided Mr. Goodman with the unsworn copy of the deposit (Tab 51).

Azlam Kermali

68. The Solicitor was retained by Azlam Kermali to complete the sale of 77 Goodwood Drive, Markham which was scheduled to close on January 19, 1993. The Solicitor provided an Undertaking to Barry Kaufman to register a discharge of mortgage. The Solicitor failed to fulfill her undertaking. LPIC registered the said discharge and provided the discharge particulars to Mr. Kaufman (Tab 52).

Alan Lau and Noel Mok

69. The Solicitor was retained by Alan Lau and Noel Mok to complete the sale of 131 Phalen Crescent, Scarborough which was scheduled to close on September 10, 1991. The Solicitor provided an Undertaking on closing to Mr. Sing to register a discharge of mortgage and to provide him with the registration particulars. The Solicitor failed to fulfill her undertaking. LPIC registered the said discharge and by letter dated November 12, 1993, advised Mr. Sing of the registration particulars (Tab 53).

Ted Lucas

70. The Solicitor was retained by Ted Lucas to complete the sale of 1605-3050 Ellesmere Road, Scarborough which was scheduled to close on July 3, 1992. The Solicitor provided an Undertaking to Glen Miller dated July 2, 1992 to register a discharge of mortgage. The Solicitor failed to fulfill her undertaking. By letters dated October 8, 1992, January 7, 1993 and March 12, 1993, Mr. Miller asked the Solicitor to provide him with the registration particulars of the mortgage. The Solicitor did not respond. LPIC registered the said discharge and by letter dated November 12, 1993, advised Mr. Miller of the registration particulars (Tab 54).

Donald and Margaret Misener

71. The Solicitor was retained by Donald and Margaret Misener to complete the sale of 77 Kingsdale Avenue, North York which was scheduled to close on October 15, 1990. The Solicitor provided an Undertaking to Ernest Kirsh dated October 16, 1990 to obtain and register a discharge of mortgage and to provide him with the registration particulars within 120 days, failing which the Solicitor undertook to obtain a court order discharging same at her cost. The Solicitor failed to fulfill her undertaking. Despite several letters and telephone calls to the Solicitor regarding her undertaking, she did not respond to Mr. Kirsh. By letter dated February 22, 1993, Mr. Kirsh wrote to the Law Society about the Solicitor's failure to comply with her undertaking. LPIC registered the said discharge and by letter dated November 12, 1993 provided the discharge particulars to Mr. Kirsh (Tab 55).

Joseph and Sandra Moniz

72. The Solicitor was retained by Joseph and Sandra Moniz to complete the sale of 1921 Parkside Drive, Pickering which was scheduled to close on November 30, 1992. The Solicitor provided an Undertaking to John Ort dated November 30, 1992 to register a discharge of mortgage and to provide him with the registration particulars. The Solicitor registered the discharge, but failed to fulfill her undertaking to advise of the registration particulars. By letter dated November 22, 1993, LPIC provided registration particulars of the discharge to Mr. Ort (Tab 56).

Helen and Konstantinos Moustieris

73. The Solicitor was retained by Helen and Konstantinos Moustieris to complete the purchase of 60 Coxworth Crescent which was scheduled to close on April 21, 1992. The Solicitor provided an Undertaking to Mr. Rubenstein to provide a clear tax certificate, a building department response showing no work orders and an insurance binder with full replacement value coverage to the mortgagee's solicitor. The Solicitor failed to fulfill her undertaking. By letter dated February 11, 1994, the Law Society provided the documents to Mr. Rubenstein in accordance with the Solicitor's undertaking (Tab 57).

Sukhvinder and Jasdeep Panesar

74. The Solicitor was retained by Sukhvinder and Jasdeep Panesar to complete the sale of R.R.#1, Aylmer which was scheduled to close on May 1, 1991. The Solicitor provided an Undertaking to H.B. Edwards dated April 30, 1991 to discharge a PPSA registration and to notify him of the registration particulars. In addition, by letter dated May 1, 1991, the Solicitor undertook to discharge the XLO and CIBC liens and mortgages. The Solicitor failed to fulfill her undertaking. By letter dated February 16, 1994, the Law Society wrote to the Panesars confirming the expiry of the PPSA registration (Tab 58).

Donald and Dorothy Penney

75. The Solicitor was retained by Donald and Dorothy Penney to complete the sale of 58-301 Washburn Way, Scarborough. The Solicitor provided an Undertaking to Gordon Brown dated July 29, 1992 to register a discharge of mortgage and to provide him with the registration particulars. If not completed within 120 days, the Solicitor further undertook to pursue a court application for an Order discharging the said mortgage. The Solicitor failed to fulfill her undertaking. LPIC registered the said discharge and by letter dated November 12, 1993 provided the discharge particulars to Mr. Brown (Tab 59).

Vince and Franca Petrielli

76. The Solicitor was retained by Vince and Franca Petrielli to complete the sale of 40 Cortez Court, Brampton which was scheduled to close on November 5, 1992. The Solicitor provided an Undertaking to Furlong, Collins dated November 4, 1992 to register a discharge of mortgage and to provide them with the registration particulars. If not completed within 90 days, the Solicitor further undertook to pursue a court application for an Order discharging the said mortgage. The Solicitor failed to fulfill her undertaking. LPIC registered the said discharge and by letter dated November 22, 1993, provided Mr. Collins with the registration particulars (Tab 60).

Judy Seeraj

77. The Solicitor was retained by Judy Seeraj to complete the sale of 136 Shady Hollow Drive. The Solicitor provided an Undertaking to register a discharge of mortgage. The Solicitor failed to fulfill her undertaking (Tab 61).

Bakhsish and Suvinder Singh

78. The Solicitor was retained by Bakhsish and Suvinder Singh to complete the sale of 98 Douglas Haig Drive, Markham which was scheduled to close on August 24, 1992. The Solicitor provided an Undertaking to Obaid Siddiqui dated August 25, 1992 to register a discharge of mortgage and to advise him of the registration particulars. The Solicitor failed to fulfill her undertaking. Mr. Siddiqui registered the said discharge and was reimbursed the cost of the registration by the Law Society (Tab 62).

Uppal and Surinder Singh

The Solicitor was retained by Uppal and Surinder Singh to complete the sale of 123 Greenbush Crescent, Thornhill which was scheduled to close on May 27, 1992. The Solicitor provided an Undertaking to Rayson, Wallach dated May 27, 1992 to register discharges of two mortgages and to provide them with the registration particulars. If not completed within 90 days, the Solicitor further undertook to pursue a court application for an Order discharging the said mortgage. The Solicitor failed to fulfill her undertaking. LPIC registered the said discharges and by letter dated November 12, 1993, provided Rayson, Wallach with the registration particulars (Tab 63).

Kuldip and Devinder Soor

79. The Solicitor was retained by Kuldip and Devinder Soor to complete the sale of 109-850 Huntingwood Drive, Scarborough which was scheduled to close on December 20, 1991. The Solicitor provided an Undertaking to Rufus Ho dated December 20, 1991 to register three discharges of mortgages. The Solicitor failed to fulfill her undertaking. LPIC attempted to register the discharges and discovered that two of the discharges had already been registered by Mr. Ho. LPIC proceeded to register the third discharge. By letter dated March 1, 1994, the Law Society provided Mr. Ho with the registration particulars of the third discharge (Tab 64).

Betty Tsang

80. The Solicitor was retained by Betty Tsang to complete the sale of 33 South Shields, Scarborough which was scheduled to close on June 14, 1991. The Solicitor provided an Undertaking to Rufus Ho dated June 14, 1991 to discharge a mortgage in favour of the Royal Bank of Canada and to forward to him the registration number. The Solicitor registered the discharge, but failed to fulfill her undertaking by failing to advise of registration particulars. By letter dated January 9, 1992, Mr. Ho asked the Solicitor to provide him with the registration particulars. In response, the Solicitor advised that the discharge would be registered "by the end of the month". Mr. Ho wrote to the Solicitor by letter dated July 29, 1992 again asking the Solicitor for the registration particulars. The Solicitor did not respond to this letter. By letter dated November 12, 1993, LPIC provided Mr. Ho with the registration particulars (Tab 65).

(ii) She failed to honour her financial obligations.

Martha Corbett

81. The Solicitor was retained by Ms. Corbett to refinance a Blue Mountain Drive property in Collingwood. A private lender, Kabirdin Jamal, also a client of the Solicitor's, provided an unsecured loan to Ms. Corbett in the sum of \$10,000.00. Mr. Jamal was advised that his loan would be paid out of Ms. Corbett's proceeds of settlement resulting from a motor vehicle accident. On November 9, 1990, the Solicitor, relying upon the prospect of significant settlement proceeds to Ms. Corbett, guaranteed Mr. Jamal's loan by signing an undertaking and promissory note to repay the sum of \$10,000.00 plus \$2,500.00 interest by May 9, 1991. The Solicitor subsequently signed a promissory note on May 28, 1991 setting out the same terms. On November 5, 1991, the Solicitor provided a further undertaking to Mr. Jamal to repay the loan plus interest on or before April 30, 1992. The Solicitor commenced payments but failed to repay the entire amount owing (Tab 66).

Diana Pouzar

82. The Solicitor was retained in or about December 1988 by Diana Pouzar with respect to her motor vehicle accident which occurred on or about October 4, 1988. The Solicitor failed to issue a statement of claim on Ms. Pouzar's behalf prior to the expiry of the limitation period. Negotiations between Ms. Pouzar and the Solicitor continued and on June 11, 1991, Ms. Pouzar accepted the sum of \$7,000.00 which was to be paid by the Solicitor personally. The Solicitor was unable to pay Ms. Pouzar immediately and offered to pay her from the sale proceeds of her house, by no later than December 31, 1991. The Solicitor subsequently undertook to pay Ms. Pouzar the sum of \$7,000.00 plus interest at 8%. Although the Solicitor's house eventually sold under power of sale, there were no funds to pay Ms. Pouzar as agreed. Ms. Pouzar retained Ron Hawkshaw and made a complaint to the Law Society. The claim was settled by LPIC on or about January 25, 1993 (Tab 67).

Jos A. Teixeira

83. The Solicitor had retained the services of the Sheriff's office. The Solicitor forwarded a cheque in the amount of \$55.00 which was returned "NSF". By letter dated November 5, 1992, Mr. Teixeira from the Sheriff's office wrote to the Solicitor enclosing the NSF cheque and requested a replacement cheque. The Solicitor failed to respond and failed to fulfill her financial obligation. By letter dated November 24, 1992, the Sheriff's office made a complaint to the Law Society regarding the Solicitor's failure to pay the account. (Tab 68)

(iii) She failed to account to her clients.

Dieter Kruse

84. The Solicitor was retained by Dieter Kruse to complete the purchase of 4 Bellbrook Road, Scarborough which was scheduled to close on November 1, 1992. By letter dated March 4, 1993, Mr. Kruse asked the Solicitor for an account together with the original discharge papers. The Solicitor did not comply with the request. By letter dated March 22, 1993, Mr. Kruse made a complaint to the Law Society regarding the foregoing. The Law Society found, among other things, an account dated November 2, 1992 in the Solicitor's original file which, the Solicitor states, was inadvertently not mailed out. A copy of the account was forwarded to Mr. Kruse by letter dated January 14, 1994 (Tab 69).

Ronald Bachew and Judy Seeraj

85. The Solicitor was retained by Ronald Bachew and Judy Seeraj to complete the sale of 136 Shady Hollow Drive, Scarborough. Upon completion of the transaction, the Solicitor forwarded a cheque to Mr. Bachew in the sum of \$9,905.00, however, Mr. Bachew advised that he should have received \$9,957.73. The Solicitor was asked to provide an accounting and an explanation for the difference in the amounts. The Solicitor did not respond. (Tab 61)

(iv) She failed to release client files.

John Gaspar

86. The Solicitor was retained by John Gaspar on several matters since in or about 1989 including the refinancing of 33 Millcroft Way, Vaughan and the purchase of 683 Gorham Road, Newmarket. Subsequently, Mr. Gaspar discovered that the Solicitor had failed to discharge the first mortgage on 33 Millcroft Way. Mr. Gaspar retained Dan Moshinsky who assisted Mr. Gaspar in clearing up the matter. Mr. Gaspar then requested that his files be transferred to Mr. Moshinsky. Despite Mr. Gaspar's requests, the Solicitor failed to deliver the files to Mr. Moshinsky. By letter dated July 20, 1992, Mr. Gaspar made a complaint to the Law Society regarding the Solicitor's failure to deliver his files to Mr. Moshinsky. The Law Society subsequently acquired possession of the Solicitor's files and Mr. Moshinsky picked up Mr. Gaspar's files from the Society in March 1994 (Tab 70).

v) She failed to report to clients.

Matthew and Jacqueline Alexander

87. The Solicitor was retained by Matthew and Jacqueline Alexander to complete the purchase of 10 Cady Court, Aurora which was scheduled to close on September 21, 1991. The Solicitor also acted for the mortgagee, the Bank of Nova Scotia. The Solicitor failed to report to the bank on the transaction. By letter dated April 15, 1992, the Bank of Nova Scotia asked the Solicitor to provide the final report and documentation. The Solicitor did not respond to this letter. A signed report was found in the Solicitor's original file by the Law Society and by letter dated January 14, 1994, the Law Society provided a copy of the same to the Bank of Nova Scotia (Tab 71).

Dianna and David Armstrong

88. The Solicitor was retained by Dianna and David Armstrong to complete the sale of 73 Horseley Hill Drive, Scarborough and the purchase of 168 Manse Road, Scarborough which were scheduled to close on July 31, 1992. The Solicitor failed to report to the Armstrongs on the transaction. By letter dated January 14, 1994, the Law Society wrote to the Armstrongs and provided them with a report and copies of final closing documentation in connection with both transactions.

89. The Solicitor also acted for the Toronto-Dominion Bank (hereinafter referred to as "the Bank") regarding the Manse Road property. The Solicitor failed to report to the Toronto-Dominion Bank on the transaction. Between September 1992 and February 1993, the Bank wrote to the Solicitor requesting the final documentation. The Solicitor did not respond to these requests. By letter received by the Law Society on March 25, 1993, the Bank made a complaint to the Law Society regarding the Solicitor's failure to report. By letter dated January 14, 1994, the Law Society provided the Bank with the documentation requested. (Tab 72)

Bruce Bacon

90. The Solicitor was retained by Bruce Bacon to complete the refinancing of a mortgage with Canada Trust. The funds were advanced on or about January 8, 1993. The Solicitor also acted for Canada Trust. The Solicitor failed to report to either Mr. Bacon or Canada Trust on the transaction. By letters dated April 5, 1994, the Law Society provided Mr. Bacon and Canada Trust with the final documentation regarding the transaction (Tab 73).

Charlotte Bader

91. The Solicitor was retained by Charlotte Bader to complete the refinancing of 62 Marlow Crescent, Markham. Upon the Law Society's review of the Solicitor's file, the Society contacted the mortgagee, National Trust, to inquire about the status of the mortgage. National Trust advised that the mortgage had been paid out in May 1993. No report had been sent to Ms. Bader. (Tab 74)

Joseph-Bert Baptista

92. The Solicitor was retained by Joseph-Bert Baptista to complete the purchase of 400 McLevin Avenue, Suite 1401, Scarborough which was scheduled to close on May 28, 1992. The Solicitor had prepared a report to the client but failed to send the same to him. By letter dated January 31, 1994, the Law Society forwarded a copy of the Solicitor's report to Mr. Baptista.

93. The Solicitor also acted on behalf of the Bank of Montreal. The Solicitor failed to report to the Bank of Montreal on the transaction. Despite several letters and telephone calls to the Solicitor requesting the final documentation, the Solicitor did not respond. By letter dated February 18, 1993, Ms. Hall of the Bank of Montreal made a complaint to the Law Society regarding the Solicitor's failure to report. By letter dated January 31, 1994, the Law Society provided the Bank with the closing documentation (Tab 75).

Killian and Joy Baptista

94. The Solicitor was retained by Killian and Joy Baptista to complete the purchase of 1883 Rosebank Road, Pickering which was scheduled to close on August 14, 1992. The Solicitor also acted for the mortgagee, the Bank of Montreal on this transaction. The Solicitor failed to report to either the Baptistas or the Bank of Montreal. By letters dated March 14, 1994, the Law Society provided the Baptistas and the Bank of Montreal with the final documentation (Tab 76).

95. The Solicitor was also retained by the Baptistas to complete the sale of 192 Mammoth Hall Trail, Scarborough which was scheduled to close on August 21, 1992. Again, no report was found in the Solicitor's file. By letter dated January 26, 1994, the Law Society prepared and forwarded a report to the Baptistas (Tab 76).

Don Berry

96. The Solicitor was retained by Don Berry to complete the purchase of 9 Minnacote Avenue, Scarborough which was scheduled to close on August 28, 1992. The Solicitor also acted for Household Trust Company on the transaction. The Solicitor failed to report to either the purchaser or the mortgagee. The Law Society found copies of the Solicitor's interim reports in the Solicitor's original file. By letters dated January 26, 1994, the Law Society provided a report and the final documentation to Mr. Berry and Household Trust Company (Tab 77).

Christene Best

97. The Solicitor was retained by Christene Best to complete the purchase of 90 Edgewood Avenue, Suite 126, Toronto and the sale of Wolverleigh Boulevard, Toronto which were scheduled to close on October 8, 1992 and October 23, 1992 respectively. The Solicitor also acted for the Toronto-Dominion Bank. The Solicitor failed to report to either the purchaser or the mortgagee on the transaction. The Law Society found a copy of an uncompleted report in the Solicitor's original file which had not been sent to Ms. Best by the Solicitor. By letter dated January 26, 1994, the Law Society provided a report to Ms. Best and the Toronto-Dominion Bank (Tab 78).

Jacqueline Boddaert

98. The Solicitor was retained by Jacqueline Boddaert to complete the purchase of 52 Royal Road, Aurora which was scheduled to close on November 2, 1992. The Solicitor also acted for the mortgagee, Firstline Trust. The Solicitor failed to report to either Ms. Boddaert or Firstline Trust on the transaction. By letters dated January 26, 1994, the Law Society forwarded reports to Ms. Boddaert and Firstline Trust (Tab 79).

David and Beryl Bogues

99. The Solicitor was retained by David and Beryl Bogues to complete the purchase of 33 Castille Crescent, Keswick which was scheduled to close on July 15, 1991. The Solicitor also acted for the mortgagee, the Canadian Imperial Bank of Commerce. The Solicitor failed to report to CIBC on the transaction. By letter dated March 14, 1994, the Law Society provided CIBC with a report and the final documentation (Tab 80).

Gerard Cerbu

100. The Solicitor was retained by Gerard Cerbu to complete the refinancing of 19 Milner Gate, Thornhill on December 27, 1991. The Solicitor also acted for the mortgagee, National Trust Company. The Solicitor failed to report to either Mr. Cerbu or the National Trust Company on the transaction. By letters dated March 14, 1994, the Law Society provided Mr. Cerbu and National Trust Company with a report and the final documentation (Tab 81).

Alburn Clarke and Tina Kennedy

101. The Solicitor was retained by Alburn Clarke and Tina Kennedy to complete the purchase of 805-236 Albion Road, Etobicoke which was scheduled to close on February 3, 1992. The Solicitor failed to report to Mr. Clarke and Ms. Kennedy. By letter dated February 2, 1994, the Law Society forwarded a report and final documentation to Mr. Clarke and Ms. Kennedy (Tab 82).

Marjory Cooke

102. The Solicitor was retained by Marjory Cooke to complete the purchase of 2 Raymerville Drive, #716, Markham which was scheduled to close on May 1, 1992. The Law Society found a reporting letter in the Solicitor's original file and by letter dated February 2, 1994, Ms. Cooke with the same (Tab 45).

Martha Corbett

103. The Solicitor was retained by Corbett to refinance a Blue Mountain Drive property in Collingwood. By letter dated June 6, 1996, the Law Society wrote to Laurentian Bank of Canada providing a copy of the registered mortgage and provided a copy of the letter to Corbett. The letter to Corbett was returned to the Society "moved". (Tab 66)

Heather Corner

104. The Solicitor was retained by Heather Corner to complete the purchase of 73 Foreht Crescent, Aurora which was scheduled to close on December 30, 1992. The Solicitor also acted for the mortgagee, CIBC Mortgage Corporation. The Solicitor failed to report to either Ms. Corner or CIBC Mortgage Corporation. By letters dated February 2, 1994, the Law Society forwarded a report and final documentation to Ms. Corner and CIBC Mortgage Corp.(Tab 83)

Adrien Couturier

105. The Solicitor was retained by Adrien Couturier and the mortgagee, FirstLine Trust to complete the refinancing of a Mount Albert property and the sale of Part Lot 14, Concession 2, Uxbridge which were scheduled to close on December 14, 1992. The Solicitor failed to report to either Mr. Couturier or FirstLine Trust on these transactions. By letters dated January 14, 1994, the Law Society provided Mr. Couturier and FirstLine Trust with a report and the final documentation. Subsequently, by letter dated February 2, 1994, the Law Society provided Mr. Couturier with a report and final documentation on the second transaction (Tab 84).

Yvan and Ginette Couturier

106. The Solicitor was retained by Yvan and Ginette Couturier and the mortgagee, Canada Trust to complete a mortgage transaction of 29 Griffiths Drive, Ajax which was scheduled to close on October 22, 1992. The Solicitor failed to report to Canada Trust on the transaction. By letter dated February 9, 1994, the Law Society provided Canada Trust with a report and the final documentation (Tab 47).

Christine Davis

107. The Solicitor was retained by Christine Davis to complete the purchase of 4 Camelot Way, Unit 97, Markham which was scheduled to close on June 30, 1992. The Solicitor failed to report to Ms. Davis on the transaction. By letter dated February 2, 1994, the Law Society provided Ms. Davis with a report and the final documentation (Tab 85).

Winston and Suzette Dayal

108. The Solicitor was retained by Winston and Suzette Dayal to complete the refinancing of 34 Carondale Crescent, Scarborough which was scheduled to close on December 20, 1991. The Solicitor failed to report to Mr. and Mrs. Dayal on the transaction. By letter dated February 2, 1994, the Law Society provided Mr. and Mrs. Dayal with a report and the final documentation (Tab 86).

Audrey and Levi Deerr

109. The Solicitor was retained by Audrey and Levi Deerr and the mortgagee, National Bank of Canada to complete the refinancing of 39 Castlehill Road, Brampton which was scheduled to close on June 30, 1992. Despite several letters from the mortgagee, the Solicitor failed to report to National Bank of Canada on the transaction. By letter dated February 22, 1993, National Bank of Canada made a complaint to the Law Society regarding the Solicitor's failure to report. By letter dated March 14, 1994, the Law Society provided National Bank of Canada with a reporting letter (Tab 87).

Gihan and Buddhika DeSilva

110. In or about December 1988, the Solicitor acted for Gihan and Buddhika DeSilva and the mortgagee, Household Trust, with respect to the refinancing of 2 Edmonton Avenue, North York. The Solicitor failed to report to either the DeSilvas or Household Trust on the transaction. By letter dated February 11, 1992, Household Trust requested the final documents from the Solicitor. The Solicitor did not respond to the request. By letters dated June 7, 1996, the Law Society provided Mr. & Mrs. DeSilva and Household Trust with a report and the final documentation (Tab 88).

Paul Desjardins and Lorraine Reilly

111. The Solicitor was retained by Paul Desjardins and Lorraine Reilly to complete the sale of 40 Ambercroft Boulevard, Scarborough which was scheduled to close on January 31, 1992. The Solicitor failed to report to the clients. Upon review of the Solicitor's file, the Law Society found a cheque dated March 12, 1992 from Central Guaranty in the amount of \$2,593.67 payable to Mr. Desjardins. By letter dated April 5, 1994, the Law Society forwarded the cheque to Mr. Desjardins. By letter dated June 23, 1994, the Law Society provided Mr. Desjardins and Ms. Reilly with the original discharge of mortgage (Tab 48).

Dhanna and Mohinder Dhaliwal

112. The Solicitor was retained by Dhanna and Mohinder Dhaliwal to complete the refinancing of 4205-4209 Huron Church Road, Windsor which closed on January 29, 1992. The Solicitor failed to report to his clients. By letter dated June 6, 1996, the Law Society provided Mr. and Mrs. Dhaliwal with a copy of the mortgage, however, the letter was returned to the Law Society "moved" (Tab 89).

Samir and Nina Dib

113. In 1992, the Solicitor was retained by Samir and Nina Dib and the mortgagee, Royal Bank of Canada to complete the purchase of 37 Rosseter Road, Markham. The Solicitor failed to report to either Mr. and Mrs. Dib or Royal Bank of Canada. By letter dated September 17, 1992, Mr. Dib made a complaint to the Law Society about the Solicitor's failure to verify the dimensions on the property. Mr. Dib advised that he listed the house for sale and had a potential buyer until the purchaser's lawyer advised that the lot size was incorrect. As a result, the deal fell through. Mr. Dib advised that they did not receive any report or documents pertaining to the property from the Solicitor. The matter was reported to LPIC and the claim had been settled for \$4,000.00. The Dibs had sold the house and confirmed that the mortgage had been discharged (Tab 90).

Alexander and Rose Ferbinteanu

114. The Solicitor was retained by Alexander and Rose Ferbinteanu to complete the refinancing of 58 Lemay Crescent, Scarborough which was scheduled to close on July 31, 1992. The Solicitor failed to report to Mr. and Mrs. Ferbinteanu on the transaction. By letter dated February 7, 1994, the Law Society provided the Mr. & Mrs. Ferbinteanu with a copy of the final documentation.

115. The Solicitor also acted for the mortgagee, the Toronto-Dominion Bank. The Solicitor failed to report to the Toronto-Dominion Bank on the transaction. By letters dated July 21, 1992, December 3, 1992 and January 8, 1993, Toronto-Dominion Bank requested the Solicitor for the final documentation. The Law Society found a report in the Solicitor's original file which had not been sent to the Toronto-Dominion Bank. By letter dated February 7, 1994, the Law Society provided the the Toronto Dominion Bank with a copy of the final documentation (Tab 91).

Emilio, Yolande and Kurt Fernandes

116. The Solicitor was retained by Emilio, Yolande and Kurt Fernandes to complete the purchase of 24 Beath Street, Scarborough which was scheduled to close on September 1, 1992. Upon review of the Solicitor's file, the Law Society found a reporting letter to the Fernandes dated January 31, 1993. It was unclear whether or not the report had been received by the clients. For this reason, the Law Society provided a copy of the reporting letter to the Fernandes by letter dated January 26, 1994.

117. The Solicitor also acted for the mortgagee, the Toronto-Dominion Bank. The Solicitor failed to report to the bank on the transaction. By letters dated November 4 and December 7, 1993, the bank attempted to obtain final documentation from the Solicitor without success. By letter dated March 26, 1993; the bank made a complaint to the Law Society regarding the Solicitor's failure to provide the final documentation. By letter dated January 14, 1994, the Law Society provided a report to the Toronto-Dominion Bank (Tab 92).

Nancy Fong

118. The Solicitor was retained by Nancy Fong to complete a mortgage transaction of 207 Woodhall Road, Markham which was scheduled to close on April 15, 1992. The Solicitor failed to report to Ms. Fond on the transaction. Upon review of the Solicitor's file, the Law Society found copies of various documents and by letter dated February 7, 1994, the Law Society forwarded the documentation to Ms. Fong (Tab 93).

Alphonso and Myrtle Gabbidon

119. The Solicitor was retained by Alphonso and Myrtle Gabbidon to complete the purchase of 49 Havergal Crescent, Markham which was scheduled to close on October 8, 1992. Upon review of the Solicitor's original file, the Law Society found a charge of mortgage which had not been discharged. By letter dated June 23, 1994, the Law Society provided the Gabbidons with the original discharge of mortgage.

120. The Solicitor also acted for the mortgagee, the Toronto-Dominion Bank. Despite several letters from the Toronto-Dominion Bank, the Solicitor failed to report on the transaction. By letter dated January 11, 1994, the Toronto-Dominion Bank made a complaint about the Solicitor's failure to provide the final reporting letter and documentation. By letter dated March 14, 1994, the Law Society provided the Toronto-Dominion Bank with the mortgage particulars. (Tab 94).

Stephen and Belinda Guppy

121. In 1991, the Solicitor was retained by Stephen and Belinda Guppy and the mortgagee, General Trust to complete the refinancing of 78 Lowcrest Boulevard, Scarborough. Upon review of the Solicitor's file, the Law Society found a letter from General Trust to the Solicitor dated March 10, 1992, requesting confirmation regarding payment of the credit card debts. The Solicitor did not respond to the request. By letter dated February 7, 1994, the Law Society provided General Trust with copies of the Solicitor's payment letters confirming the debts had been paid (Tab 95).

Amin Haji

122. The Solicitor was retained by Amin Haji to complete two mortgage transactions. Upon review of the Solicitor's original file, the Law Society found a report to Mr. Haji in which the Solicitor indicated that she would forward copies of the assignments of mortgage to the client. The Solicitor failed to do so. By letter dated February 7, 1994, the Law Society provided Mr. Haji with copies of the registered mortgage assignments (Tab 96).

Jean and Maral Hajjar

123. The Solicitor was retained by Jean and Maral Hajjar to complete the refinancing of 51 Muirbank Road, Scarborough. The Solicitor failed to report to Mr. and Mrs. Hajjar on the transaction. Upon review of the Solicitor's original file, the Law Society found a cancelled mortgage, a copy of a new mortgage and various closing documents. By letter dated February 9, 1994, the Law Society provided Mr. and Mrs. Hajjar with the closing documentation (Tab 97).

Fatmeh and Saleh Hamad

124. In 1990, the Solicitor was retained by Fatmeh and Saleh Hamad to complete the sale of shares of H & S Leather and Leather Goods Incorporated to Zuheir Hamad. The Solicitor failed to report to Mr. and Mrs. Hamad on the transaction. By letter dated February 9, 1994, the Law Society provided Mr. and Mrs. Hamad with the final documentation (Tab 98).

Marjorie and Mohamed Hassan

125. The Solicitor was retained by Marjorie and Mohamed Hassan to complete the refinancing of 33 Wickens Crescent, Ajax which was scheduled to close on May 14, 1992. Upon review of the Solicitor's file, the Law Society determined that the Solicitor failed to provide Mr. and Mrs. Hassan with a report and the final documentation. By letter dated March 14, 1994, the Law Society provided Mr. and Mrs. Hassan with a copy of the documentation (Tab 99).

Judy Ann Hitchen

126. The Solicitor was retained by the estate of Judy Ann Hitchen who passed away in August 1991. The Solicitor failed to report to the executrix. By letter dated June 10, 1996, the Law Society provided the executrix with a copy of the estate accounts (Tab 100).

Wendy Siu Shan Ho

127. The Solicitor was retained by Wendy Siu Shan Ho and by the mortgagee, the Toronto-Dominion Bank to complete the purchase of 137 Corinthian Boulevard, Scarborough which was scheduled to close on August 30, 1991. The Solicitor failed to report to either Ms. Ho or the Toronto-Dominion Bank on the transaction. By letters dated April 15, 1992, June 12, 1992, November 17, 1992, December 10, 1992 and February 10, 1993, the Toronto-Dominion Bank requested a reporting letter from the Solicitor. The Law Society confirmed with the Toronto-Dominion Bank that no report had been received. By letters dated February 9, 1994, the Law Society provided the Toronto-Dominion Bank and Ms. Ho with the documentation and a reporting letter (Tab 101).

Paul Hoegenauer

128. The Solicitor was retained by Paul Hoegenauer and by the mortgagee, CIBC to complete the refinancing of 764 Sandford Road, Uxbridge which was scheduled to close on November 14, 1992. The Solicitor failed to report to either Mr. Hoegenauer or CIBC on the transaction. By letters dated February 9, 1994, the Law Society prepared reports and provided Mr. Hoegenauer and CIBC with the closing documentation to (Tab 102).

Somasunderam Kaneshapillai

129. The Solicitor was retained by Somasunderam Kaneshapillai to complete the sale of 914-100 Dundalk Drive, Scarborough which was scheduled to close on February 5, 1992. Upon review of the Solicitor's file, the Law Society found various closing documentation. The Law Society confirmed that the mortgage had been discharged. The Solicitor did not report to Mr. Kaneshapillai and by letter dated February 11, 1994, the Law Society reported to and provided him with the documentation (Tab 50).

Azlam Kermali

130. The Solicitor was retained by Azlam Kermali to complete the sale of 77 Goodwood Drive, Markham which was scheduled to close on January 19, 1993. Upon review of the Solicitor's file, the Law Society found various closing documents. The Solicitor did not report to Mr. Kermali and by letter dated February 9, 1994, the Law Society reported to and provided him with the documentation (Tab 52).

Dieter Kruse

131. The Solicitor was retained by Dieter Kruse to complete the purchase and refinancing of 4 Bellbrook Road, Agincourt which was scheduled to close on November 2, 1992. The Solicitor also acted for the Bank of Nova Scotia. Upon review of the Solicitor's file, the Law Society found various closing documents including a reporting letter to the client. The Solicitor did not report to either the Bank or Mr. Kruse and by letters dated January 14, 1994, the Law Society forwarded a copy of the report and the documentation to them (Tab 69).

Eleanor Lambie

132. The Solicitor was retained by Eleanor Lambie to complete the refinancing of 2 Highwood Avenue, Scarborough which was scheduled to close on September 28, 1992. The Solicitor failed to report to Ms. Lambie. The Law Society found various closing documents in the Solicitor's original file. By letter dated February 16, 1994, the Law Society reported and provided Ms. Lambie with the closing documentation (Tab 103).

So'n Tran and Silvana Lamson

133. The Solicitor was retained by So'n Tran and Silvana Lamson to complete the refinancing of 284 Victoria Street, Kingston which was scheduled to close on November 9, 1992. The Solicitor failed to report to the Mr. and Mrs. Lamson. The Law Society found various closing documents in the Solicitor's original file. By letter dated February 9, 1994, the Law Society provided Mr. and Mrs. Lamson with a report and the final documentation (Tab 104).

Alan Lau and Noel Mok

134. The Solicitor was retained by Alan Lau and Noel Mok to complete the sale of 31 Phalen Crescent, Scarborough which was scheduled to close on September 10, 1991. The Solicitor failed to report to Mr. Lau and Ms. Mok. The Law Society found various closing documents in the Solicitor's original file. By letter dated February 9, 1994, the Law Society provided Mr. Lau and Ms. Mok with a report and the final documentation (Tab 53).

Yat Tung Leung and Mo Ching Law

135. The Solicitor was retained by Yat Tung Leung and Mo Ching Law to complete the purchase of Highland Express Fish n' Chip & Seafood which was scheduled to close on November 30, 1990. The Solicitor failed to report to Mr. Leung and Ms. Law. The Law Society found various closing documents in the Solicitor's original file. By letter dated February 9, 1994, the Law Society provided Mr. Leung and Ms. Law with a report and the final documentation (Tab 105).

Rebecca and Enrique Liongco

136. The Solicitor was retained by Rebecca and Enrique Liongco to complete a mortgage renewal of 86 Pioneer Pathway, Scarborough which was scheduled to close on September 22, 1992. The Solicitor failed to report to Mr. and Mrs. Liongco. The Law Society found various closing documents in the Solicitor's original file. On or about February 9, 1994, the Law Society provided Mr. and Mrs. Liongco with a report and the documentation (Tab 106).

Ted Lucas

137. The Solicitor was retained by Ted Lucas to complete the purchase of 62 Reese Avenue, Ajax which was scheduled to close on October 30, 1992. The Solicitor failed to report to Mr. Lucas. The Law Society found various closing documents in the Solicitor's original file. By letter dated January 31, 1994, the Law Society provided Mr. Lucas with a report and the documentation.

138. The Solicitor also acted for FirstLine Trust on the transaction. Despite several requests by FirstLine Trust for a report, the Solicitor did not respond. By letter dated March 16, 1993, FirstLine made a complaint to the Law Society regarding the Solicitor's failure to provide a final report together with the final documentation. By letter dated January 31, 1994, the Law Society provided FirstLine Trust with a report and the final documentation (Tab 107).

Joan MacElheran

139. The Solicitor was retained by Joan MacElheran to complete the refinancing of 1545 Adamson Street, Mississauga which was scheduled to close on April 10, 1992. The Solicitor failed to report to Ms. MacElheran. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated February 11, 1994, the Law Society provided Ms. MacElheran with a report and the final documentation (Tab 108).

Dumitru and Nina Maceac

140. The Solicitor was retained by Dumitru and Nina Maceac to complete the purchase of 15 Pebble Byway, Unit 57, North York which was scheduled to close on July 30, 1992. The Solicitor failed to report to the Mr. and Mrs. Maceac. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated February 11, 1994, the Law Society provided Mr. and Mrs. Maceac with a report and the final documentation (Tab 109).

Logabalachandran and Gunabalchandran Manickavasagar

141. The Solicitor was retained by Logabalachandran and Gunabalchandran Manickavasagar to complete the transfer of 43 Haven Hill Square, Scarborough, to the beneficial owners which was scheduled to close on May 23, 1991. The Solicitor failed to report to her clients on the transaction. Upon review of the Solicitor's file, the Law Society found various documents concerning the transaction. By letter dated February 11, 1994, the Law Society provided Mr. and Mrs. Manickavasagar with a report and the documentation (Tab 110).

Parshotham Mehan

142. The Solicitor was retained by Parshotham Mehan to complete the purchase of Duffy's Store, R.R. #1, Waubashene which was scheduled to close on July 8, 1991. The Solicitor failed to report to Mr. Mehan. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated February 11, 1994, the Law Society provided Mr. Mehan with a report and the documentation (Tab 111).

Greg and Bernadette Miller

143. The Solicitor was retained by Greg and Bernadette Miller to complete the refinancing of 115-4662 Kingston Road, Scarborough which was scheduled to close on January 15, 1993. The Solicitor did not report to the Millers. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated February 11, 1994, the Law Society reported and provided the documentation to the Millers.

144. The Solicitor also acted for the mortgagee, London Life Insurance Company. The Solicitor failed to report to her client. By letter dated March 12, 1993, London Life requested the Solicitor to provide a final report. The Solicitor did not respond. By letter dated February 11, 1994, the Law Society reported and provided the documentation to London Life (Tab 112).

Joseph and Sandra Moniz

145. The Solicitor was retained by Joseph and Sandra Moniz to complete the sale of 1921 Parkside Drive, Pickering and the purchase of R.R. #2, Cannington which were scheduled to close on November 30, 1992. The Solicitor did not report to the Moniz. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated February 11, 1994, the Law Society forwarded a report and the documentation to the Monizs regarding the sale transaction and by letter dated January 14, 1994, the Law Society forwarded a report and the documentation regarding the purchase transaction.

146. The Solicitor also acted for Canada Trust. By letter dated April 6, 1993, Canada Trust made a complaint to the Law Society about the Solicitor's failure to provide the final documentation. By letter dated January 14, 1994, the Law Society forwarded a copy of the Solicitor's report to Canada Trust. (Tab 113).

Helen and Konstantinos Moustieris

147. The Solicitor was retained by Helen and Konstantinos Moustieris to complete the purchase of 60 Coxworth Crescent, Scarborough which was scheduled to close on April 21, 1992. The Solicitor did not report to the Moustieris. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated February 11, 1994, the Law Society forwarded a report and the documentation to the Moustieris (Tab 57).

Kai Yan Ng

148. The Solicitor was retained by Kai Yan Ng to complete the purchase of 1012-1470 Midland Avenue, Scarborough which was scheduled to close on December 1, 1992. The Solicitor did not report to the Ngs. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated February 11, 1994, the Law Society forwarded a report and the documentation to Mr. Ng (Tab 114).

Edward Nimer

149. The Solicitor was retained by Edward Nimer to complete the refinancing of 2941 Sheppard Avenue East, Scarborough which was scheduled to close on September 16, 1992. The Solicitor did not report to Mr. Nimer. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated January 14, 1994, the Law Society forwarded a report and the documentation to Mr. Nimer (Tab 115).

Sukhvinder and Jasdeep Panesar

150. The Solicitor was retained by Sukhvinder and Jasdeep Panesar to complete the sale of R.R. #1, Aylmer which was scheduled to close on May 31, 1991. The Solicitor did not report to the Panesars. Upon reviewing the Solicitor's file, the Law Society found various closing documents. By letter dated February 16, 1994, the Law Society forwarded a report and the documentation to the Panesars (Tab 58).

Vince and Franca Petrielli

151. The Solicitor was retained by Vince and Franca Petrielli to complete the sale of 40 Cortez Court, Brampton which was scheduled to close on November 5, 1992. The Solicitor did not report to the Petriellis. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated February 16, 1994, the Law Society forwarded a report and the documentation to the Petriellis (Tab 60).

Anil Sadekar

152. The Solicitor was retained by Anil Sadekar to complete the purchase of 90 Boake Trail, Richmond Hill which was scheduled to close on October 17, 1991. The Solicitor failed to report to Mr. Sadekar on the transaction. Upon review of the Solicitor's file, the Law Society found various closing documents. By letter dated February 16, 1994, the Law Society provided Mr. Sadekar with a report and the documentation (Tab 116).

Judy Seeraj

153. The Solicitor was retained by Judy Seeraj to complete the purchase of 10-34 Dundalk Drive, Scarborough. The Solicitor also acted for the Toronto Mortgage Corporation regarding the second mortgage advanced to Ms. Seeraj. Despite several letters and telephone calls to the Solicitor requesting that she provide the final reporting letter, one was not received. In addition, the Solicitor was asked to revise the expiry date of the mortgage to July 1, 1993. By letter dated December 4, 1992, Toronto Mortgage Corporation made a complaint to the Law Society regarding the foregoing. The Law Society was unable to obtain a reporting letter from the Solicitor as the file was delivered to Ms. Seeraj directly (Tab 117).

Alford Shearer

154. The Solicitor was retained by Alford Shearer and the mortgagee, CIBC Mortgage Corporation, to complete the refinancing of 16 Whitley Castle Crescent, Scarborough which was scheduled to close in or about September or October 1992. The Solicitor failed to report to CIBC Mortgage Corporation. By letter dated January 14, 1994, the Law Society provided CIBC Mortgage Corporation with a report and the documentation (Tab 118).

J. Singh (798718 Ontario Inc.)

155. The Solicitor was retained by J. Singh to complete a chattel mortgage transaction on R.R. #2, Uxbridge. Upon review of the Solicitor's file, the Law Society found various documents but there was no report to the Solicitor's client. By letter dated February 16, 1994, the Law Society reported and forwarded the documentation to Mr. Singh (Tab 119).

Sukhdev, Surjit and Amrik Singh

156. The Solicitor was retained by Sukhdev, Surjit and Amrik Singh to complete the purchase of 33 Whiteleas Avenue, Scarborough which was scheduled to close on July 29, 1992. Upon review of the Solicitor's file, the Law Society found a report to the Singhs and the mortgagee, National Trust, together with various closing documents. The report had not been forwarded to the clients. By letter dated February 16, 1994, the Law Society provided a copy of the Solicitor's report and the documentation to the Singhs (Tab 120).

Chuhar Singh and Surjit Kaur Uppal

157. The Solicitor was retained by Chuhar Singh and Surjit Kaur Uppal to complete the purchase of 3 Springhead Gardens, Richmond Hill and the sale of 123 Greenbush Crescent, Thornhill which were scheduled to close on May 27, 1992. The Solicitor also acted for the mortgagee, Canada Trustco on the purchase transaction. Upon review of the Solicitor's file, the Law Society found a final report to Canada Trustco, and various closing documents. The Solicitor failed to report to her clients on either transaction. By letter dated February 16, 1994, the Law Society reported and provided the documentation to the Uppals (Tab 121).

Richard Tabaracci

158. The Solicitor was retained by Richard Tabaracci and the mortgagee, SunLife Trust Company to complete the purchase of 51 Kildonan Drive, Scarborough which was scheduled to close on July 17, 1992. The Solicitor failed to report to either the client or the mortgagee. A complaint was received on behalf of Mr. Tabaracci regarding the Solicitor's failure to provide the final documentation and balance of the funds. Upon review of the Solicitor's file, the Law Society found various closing documents. By letters dated January 14, 1994, the Law Society provided a report and the documentation to Mr. Tabaracci, Beneficial Realty and Sun Life Trust Company, the mortgagee (Tab 122).

Eugenia Teohari

159. The Solicitor was retained by Eugenia Teohari and by the mortgagee, the Royal Bank of Canada to complete the purchase of 25 Easterbrooke Avenue, Unit 106, Willowdale which closed on June 15, 1992. The Solicitor failed to report to either Ms. Teohari or the Royal Bank of Canada on the transaction. Upon review of the Solicitor's file, the Law Society found various closing documents. By letters dated March 14, 1994, the Law Society forwarded a report and the documentation to Ms. Teohari and the Royal Bank of Canada, the mortgagee (Tab 123).

Clement Toney and Theresa Ferreira

160. The Solicitor was retained by Clement Toney and Theresa Ferreira and by the mortgagee, SunLife Trust Company to complete the purchase of 25 Syracuse Crescent, Scarborough which was scheduled to close on July 15, 1992. The Solicitor failed to report to either the clients or SunLife Trust Company on the transaction. Upon review of the Solicitor's file, the Law Society found various closing documents. SunLife wrote to the Solicitor requesting the final documentation but did not receive a reply from the Solicitor. By letters dated March 1, 1994, the Law Society reported and provided the documentation to Mr. Toney, Ms. Ferreira and to SunLife Trust Company (Tab 124).

Gursharn and Jinderpal Virdee

161. The Solicitor was retained by Gursharn and Jinderpal Virdee to complete the purchase of 54 Queensmill Court, Richmond Hill which was scheduled to close on December 17, 1991. Upon review of the Solicitor's file, the Law Society found various closing documents including a report to the Canadian Imperial Bank of Commerce. The Solicitor failed to report to Mr. and Mrs. Virdee on the transaction. By letter dated March 1, 1994, the Law Society reported and provided the documentation to the Virdees (Tab 125).

Agnes and Laurence Wong

162. The Solicitor was retained by Agnes and Laurence Wong and the mortgagee, the Toronto-Dominion Bank to complete the purchase of 72 Houston Crescent, North York which was scheduled to close on November 10, 1992. On April 23, 1993, a complaint was made by Jessie Cheng, the selling agent, on behalf of the Wongs regarding the Solicitor's failure to provide closing documents, an account and the balance of the funds. The Solicitor did not report to either the Wongs or the Toronto-Dominion Bank on the transaction. By letters dated January 14, 1994, the Law Society reported and provided the documentation to the Wongs and the Toronto-Dominion Bank (Tab 126).

Yee Ping Wong

163. The Solicitor was retained by Yee Ping Wong and the mortgagee, the Toronto-Dominion Bank to complete the purchase of 729-25 Bamburgh Circle which was scheduled to close on May 22, 1992. Upon review of the Solicitor's file, the Law Society found various closing documents. A final report had been sent to the Toronto-Dominion Bank, however, the Solicitor failed to report to Mr. Wong. By letter dated March 1, 1994, the Law Society reported and provided the documentation to Mr. Wong (Tab 127).

(vi) She failed to complete services for her clients nor did she notify her clients of her inability to further represent them.

164. The Solicitor had been suspended since June 1, 1993 for non-payment of her Errors and Omissions levy. The Solicitor did not advise her clients that she was no longer entitled to practise law.

Profir Alexandru

165. The Solicitor was retained by Profir Alexandru regarding his wrongful dismissal action. Upon review of the Solicitor's file, the Law Society found a letter from the Solicitor to the defendant, Magna advising that she would file a Notice of Discontinuance as soon as a reference letter had been received for Mr. Alexandru. The Solicitor failed to discontinue the action although the reference letter had been received. Further, the Solicitor failed to provide the reference letter to her client. By letter dated March 14, 1994, the Law Society advised Mr. Alexandru and Magna about the Solicitor's status and suggested that a new solicitor be retained if any other legal services were required. The Law Society also provided Mr. Alexandru with a copy of the revised reference letter (Tab 128).

Bruce Bacon

166. The Solicitor was retained by Bruce Bacon to complete the refinancing of 9 Keystone Avenue, Toronto. The funds were advanced by Canada Trust on January 8, 1993. The Solicitor failed to register two discharges of mortgage prior to advancing the mortgage. The Law Society registered one of the discharges and arranged for the discharge of the other mortgage (Tab 73).

Christene Best

167. The Solicitor was retained by Christene Best to complete the sale of 140 Wolverleigh Boulevard, Toronto which was scheduled to close on October 23, 1992. Upon review of the Solicitor's file, the Law Society found a cheque dated October 23, 1992 made payable to Toronto Hydro. The Law Society arranged for the reissuance of the cheque (Tab 78).

Gerard Cerbu

168. The Solicitor was retained by Gerard Cerbu to complete the refinancing of 19 Milner Gate, Thornhill which was scheduled to close on December 27, 1991. The Solicitor was to register a discharge of mortgage but failed to do so. On or about November 2, 1993, LPIC arranged to register the said discharge (Tab 81).

Renganath and Elaine Chelliah

169. The Solicitor was retained by Renganath and Elaine Chelliah to complete the refinancing of 43 Gorsey Square, Scarborough and 860 Brock Road, Unit 20, Pickering. Upon review of the Solicitor's file, the Law Society determined that the Chelliahs are owed \$500.86 by the Solicitor. The Solicitor did not remit this amount to the Chelliahs. By letter dated June 13, 1994, the Law Society forwarded a cheque for the said amount to the Chelliahs (Tab 129).

Jack Colin

170. The Solicitor was retained by Jack Colin to file a PPSA registration. Upon review of the Solicitor's file, the Law Society determined that the Solicitor filed a Financing Statement on Mr. Colin's behalf in 1989. The Society also found a signed Financing Change Statement which had not been registered by the Solicitor. A PPSA search was conducted by the Law Society and it was determined that the registration had expired. It did not appear that the Solicitor forwarded the documentation to Mr. Colin. By letter dated February 7, 1994, the Law Society advised Mr. Colin of the foregoing and provided copies of the documentation to him (Tab 130).

Michael Collinge

171. The Solicitor was retained by Michael Collinge to complete the refinancing of 2-30 Sandhurst, Scarborough. Upon review of the Solicitor's file, the Law Society found a discharge which had not been registered by the Solicitor. The Law Society registered the same on or about May 24, 1994. By letter dated May 26, 1994, the Law Society forwarded the original discharge to Mr. Collinge (Tab 131).

Winston and Suzette Dayal

172. The Solicitor was retained by Winston and Suzette Dayal to complete the refinancing of 34 Carondale Crescent, Scarborough which was scheduled to close on December 20, 1991. Upon review of the Solicitor's file, the Law Society determined that the Solicitor failed to discharge a mortgage. LPIC arranged for the registration of the discharge of mortgage (Tab 86).

Audrey and Levi Deerr

173. The Solicitor was retained by Audrey and Levi Deerr to complete the refinancing of 39 Castlehill Road, Brampton which was scheduled to close on June 30, 1992. The Solicitor was to prepare a postponement of the Toronto-Dominion Bank mortgage and provide same to National Bank of Canada. Upon review of the Solicitor's file, the Law Society determined that the postponement had not been prepared. The Law Society contacted the Toronto-Dominion Bank which agreed to prepare and execute the postponement. By letter dated March 14, 1994, the Law Society advised National Bank of Canada of the foregoing (Tab 87).

Gihan and Buddhira DeSilva

174. The Solicitor was retained by Gihan and Buddhira DeSilva to complete the refinancing of 2 Edmonton Avenue, North York. The Solicitor had accepted an undertaking from another solicitor regarding the discharge of a mortgage. The Solicitor failed to follow up regarding the undertaking. The Law Society arranged for David Rubenstein to register the discharge of mortgage (Tab 88).

Paul Desjardins and Lorraine Reilly

175. The Solicitor was retained by Paul Desjardins and Lorraine Reilly to complete the sale of 40 Ambercroft Boulevard, Scarborough. The Solicitor received a cheque from Central Guaranty dated March 12, 1992 in the amount of \$2,593.67 made payable to Paul Desjardins. The cheque represented Mr. Desjardins mortgage overpayment. Upon review of the Solicitor's file, the Law Society found the cheque. By letter dated April 5, 1994, the Law Society provided a copy of Central Guaranty's letter and the cheque to Mr. Desjardins and Ms. Reilly (Tab 48).

Dhanna Dhaliwal

176. The Solicitor was retained by Dhanna Dhaliwal to complete the refinancing of a Windsor property. The Solicitor was to register a discharge of mortgage but failed to do so (Tab 89).

Alphonso and Myrtle Gabbidon

177. The Solicitor was retained by Alphonso and Myrtle Gabbidon to complete the purchase of 49 Havergal Crescent, Markham which was scheduled to close on October 8, 1992. Upon review of the Solicitor's file, the Law Society determined that the Toronto-Dominion Bank mortgage had not been discharged. The Law Society registered the discharge and by letter dated June 23, 1994, provided the original mortgage to the Gabbidons (Tab 94).

John Gaspar

178. The Solicitor was retained by John Gaspar to complete the refinancing of 33 Millcroft Way, Vaughan. The Solicitor failed to register a postponement of a mortgage. Mr. Gaspar contacted the Bank of Montreal to clear up the matter himself (Tab 70).

Jean and Maral Hajjar

179. The Solicitor was retained by Jean and Maral Hajjar to complete the refinancing of 51 Muirbank Road, Scarborough. The Solicitor was to register a discharge of mortgage but failed to do so. The Law Society registered the said discharge on or about November 10, 1993 (Tab 97).

Marjorie and Mohamed Hassan

180. The Solicitor was retained by Marjorie and Mohamed Hassan to complete the refinancing of 33 Wickens Crescent, Ajax which was scheduled to close on May 14, 1992. The Solicitor was to register a discharge of mortgage but failed to do so. The Law Society registered the said discharge (Tab 99).

Judy Ann Hitchen

181. The Solicitor was retained to handle an estate matter. The Solicitor failed to pay the estate's 1991 income taxes and did not prepare an accounting to the beneficiaries of the estate (Tab 100).

Paul Hoegenauer

182. The Solicitor was retained by Paul Hoegenauer to complete the refinancing of 764 Sandford Road, Uxbridge which was scheduled to close on November 14, 1992. The Solicitor was to register a discharge of mortgage but failed to do so. The Law Society registered the said discharge on or about October 19, 1993 (Tab 102).

Dieter Kruse

183. The Solicitor was retained by Dieter Kruse to complete the purchasing and refinancing of 4 Bellbrook Road, Agincourt which was scheduled to close on November 2, 1992. The Solicitor was to register a discharge of mortgage but failed to do so. The Law Society registered the said discharge on or about October 19, 1993 (Tab 69).

So'n Tran and Silvana Lamson

184. The Solicitor was retained by So'n Tran and Silvana Lamson to complete the refinancing of 284 Victoria Street, Kingston which was scheduled to close on November 9, 1992. The Solicitor was to register a discharge of mortgage but failed to do so. The Law Society registered the said discharge on or about October 20, 1993 (Tab 104).

Edward Nimer

185. The Solicitor was retained by Edward Nimer to complete the refinancing of 2941 Sheppard Avenue East, Scarborough which was scheduled to close on September 16, 1992. The Solicitor also represented Mr. Nimer's brother, Victor. Mr. Nimer provided the Solicitor with \$50.00 to draft a contract setting out the relationship between the Nimers. The Solicitor did not prepare the said contract. Upon review of the Solicitor's file, the Law Society found a handwritten note relating to the contract which was forwarded to Mr. Nimer by letter dated January 14, 1994 (Tab 115).

Rasmi Parikh

186. The Solicitor was retained by Rasmi Parikh to handle a discharge of an existing mortgage and to arrange for a new mortgage through a self directed RRSP. Mr. Parikh paid the Solicitor the sum of \$105.25 to discharge the mortgage. The Solicitor paid out the mortgage but failed to register the discharge of mortgage. The Law Society contacted Mr. Parikh on January 11, 1994 who advised that he resolved the matter himself (Tab 132).

Donald and Lois Pugh

187. The Solicitor was retained by Donald and Lois Pugh and by the mortgagee, Toronto-Dominion Bank to complete the refinancing of 406 Allgood Street, Richmond Hill. Upon review of the Solicitor's file, the Law Society found a discharge that had not been registered by the Solicitor. By letter dated February 23, 1994, Toronto-Dominion Bank provided the Law Society with an amended discharge which was registered by the Law Society on or about May 18, 1994. By letter dated May 26, 1994, the Law Society forwarded the original discharge to the Pughs (Tab 134).

Chan Quach

188. The Solicitor was retained by Chan Quach to defend a claim against him for breach of contract as Mr. Quach failed to close a house deal. Upon review of the court file, the Law Society determined that the Solicitor was still on record and that the action was ongoing. By letter dated August 4, 1994, the Law Society advised Mr. Quach of the Solicitor's status and suggested that he retain new counsel if he wished to proceed with this matter. Mr. Quach was further provided with the name of the plaintiff's solicitor and encouraged to contact him directly or have his new lawyer contact him. In addition, the Law Society advised the plaintiff's solicitor, David Tyndale, of the Solicitor's status and provided him with Mr. Quach's address (Tab 135).

Red Carpet La Baye Inc.

189. In or about October 1991, the Solicitor was retained by Dillon Hinds, a real estate agent with Red Carpet La Baye Realty Inc. to sue Home Team Realty Inc. et. al, for a real estate commission. The Law Society determined that the action was still active, however, the defendants had served a motion record for dismissal on or about March 15, 1993. The Solicitor did not respond to the motion. By letter dated March 14, 1994, the Law Society advised Mr. Hinds of the Solicitor's status and suggested that he retain new counsel (Tab 136).

Gavino Requina

190. The Solicitor was retained by Gavino Requina to complete the refinancing of 26 Seagrave Crescent, Scarborough. Upon review of the Solicitor's file, the Law Society found a discharge that had not been registered by the Solicitor. The Law Society registered the said discharge on or about June 16, 1994. By letter dated July 22, 1994, the Law Society forwarded the original discharge to Mr. Requina (Tab 137).

Anil Sadekar

191. The Solicitor was retained by Anil Sadekar to complete a mortgage transaction of 4 Camberley Court, Markham. The Solicitor did not register the discharge of mortgage (Tab 116).

Judy Seeraj

192. The Law Society received a complaint from Mr. Hardy, Toronto Mortgage Corporation, with respect to the second mortgage on the Seeraj purchase of 34 Dundalk Drive, Unit 10. Mr. Hardy requested the Law Society's assistance in obtaining a reporting letter and an expiry date revision. By letter dated March 14, 1994, Mr. Hardy was advised by the Law Society that the file was delivered to the client, Ms. Seeraj (Tab 61).

Nizar and Naseem Shamji

193. The Solicitor was retained by Nizar and Naseem Shamji to complete the refinancing of 17 Brookhill Crescent, Richmond Hill. Upon review of the Solicitor's file, the Law Society found a discharge that had not been registered by the Solicitor. The Law Society registered the said discharge on or about May 12, 1994. By letter dated May 26, 1994, the Law Society forwarded the original discharge to the Shamjis (Tab 138).

Alford Shearer

194. The Solicitor was retained by Alford Shearer to complete the refinancing of 16 Whitley Castle Crescent, Scarborough which was scheduled to close in or about September or October 1992. Upon review of the Solicitor's file, the Law Society found two discharges that had not been registered by the Solicitor. The Law Society registered the said discharges (Tab 118).

Camille Singh and Ackloo Rameia

195. The Solicitor was retained by Camille Singh and Ackloo Rameia to make a PPSA registration for a chattel mortgage. Upon review of the Solicitor's file, the Law Society determined that the Solicitor forwarded the registration to the PPSA office but same was returned by the registrar as the cheque was the incorrect amount. There appeared to be no further steps taken by the Solicitor in this regard. By letter dated March 14, 1994, the Law Society advised Ms. Singh and Mr. Rameia of the status of the registration (Tab 139).

Irwin and Claudette Skeete

196. The Solicitor was retained by Irwin and Claudette Skeete to complete the refinancing of 58 Timberbank Boulevard, Scarborough. Upon review of the Solicitor's file, the Law Society found two discharges that had not been registered by the Solicitor. The Law Society registered the said discharges on March 30 and May 24, 1994 respectively and forwarded the original discharges to the Skeetes by letter dated May 26, 1994 (Tab 140).

Solomon and Ina Stewart

197. The Solicitor was retained by Solomon and Ina Stewart to complete the refinancing of 288 Hoover Drive, Pickering. Upon review of the Solicitor's file, the Law Society determined that a discharge of mortgage was not registered. On March 30, 1994, National Trust advised that a discharge of mortgage had been sent directly to the Stewarts in or about February 1992. Mr. and Mrs. Stewart made a claim to the Compensation Fund for the amount they had paid to the Solicitor to discharge the mortgage. It was necessary for them to retain another lawyer to register the discharge of mortgage (Tab 141).

Richard Spada

198. The Solicitor was retained by Richard Spada regarding his lawsuit against Maureen Seefeld. The Law Society determined that a claim had been issued and served upon the defendant and that the action had been defended. No further action had been taken since September 23, 1991. The Law Society conducted a court file search and determined that the action was still pending and that the Solicitor remained as solicitor of record. By letter dated March 14, 1994, the Law Society advised Mr. Spada of the Solicitor's status and suggested that if he wished to pursue the matter further, to retain new counsel (Tab 142).

Alex and Annette Stevens

199. The Solicitor was retained by Alex and Annette Stevens to complete the purchase of 181 Gillard Avenue, Toronto which was scheduled to close on June 3, 1992. Upon review of the Solicitor's file, the Law Society determined that a balance of \$1,464.15 remained in the trust account with respect to this transaction. An account had been rendered by the Solicitor on June 3, 1992 which showed a balance owing of \$266.30. By letter dated June 10, 1994, the Law Society forwarded the balance of the funds less the amount of the Solicitor's fees to the Stevens (Tab 143).

Thambyrajah and Rangini Sivapatham

200. The Solicitor was retained by Thambyrajah and Rangini Sivapatham to complete the refinancing of 89 Shier Drive, Scarborough. Upon review of the Solicitor's file, the Law Society determined that a dispute existed between the Sivapathams and the mortgagee, Central Guaranty Trust, regarding the discharge. By letter dated March 14, 1994, the Law Society advised the Sivapathams of the Solicitor's status and suggested that it may be necessary for them to retain new counsel to resolve the dispute (Tab 144).

Particular 2(b) She failed to reply to the Law Society regarding complaints made by John Gaspar, Samir Dib, Diana Pouzar, Richard W. Hardy, Ernest J. Kirsh, Franca Tamburello, Robert W. Jackson, V. Giverin, Dieter Kruse, Ronald A. Bachew, C. Hall, J.A. Teixeira, Mike Harwood and Jack C. Goodman.

John Gaspar

201. By letter dated July 20, 1992, John Gaspar made a complaint to the Law Society regarding the Solicitor's handling of his real estate transaction. The Law Society contacted the Solicitor by letters dated August 10, 1992, January 8 and February 2, 1993 and by telephone on August 17 and 19, 1992. The Solicitor did not respond to the Law Society with respect to the complaint by Mr. Gaspar. A copy of the communications with the Solicitor are contained at Tab 145.

Samir Dib

202. By letter dated September 17, 1992, Samir Dib made a complaint to the Law Society regarding the Solicitor's handling of his real estate transaction. The Law Society contacted the Solicitor by letters dated October 16, 1992 and March 30, 1993 and by telephone on December 1, 1992 and January 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Samir Dib. A copy of the communications with the Solicitor are contained at Tab 146.

Diana Pouzar

203. By letter dated September 30, 1992, Diana Pouzar made a complaint to the Law Society regarding the Solicitor's handling of her motor vehicle accident claim. The Law Society contacted the Solicitor by letters dated October 16, 1992 and March 30, 1993 and by telephone on December 1, 1992 and January 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Ms. Pouzar. A copy of the communications with the Solicitor are contained at Tab 147.

Richard W. Hardy

204. By letter dated December 4, 1992, Richard W. Hardy of Toronto Mortgage Corporation made a complaint to the Law Society regarding the Solicitor's failure to report on a real estate transaction. The Law Society contacted the Solicitor by letters dated January 29, 1993 and March 12, 1993 and by telephone on January 4, 19, March 1 and 3, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Mr. Hardy. A copy of the communications with the Solicitor are contained at Tab 148.

Ernest J. Kirsh

205. By letter dated February 22, 1993, Ernest J. Kirsh made a complaint to the Law Society regarding the Solicitor's failure to comply with her undertaking to him on the closing of a real estate transaction. The Solicitor represented the vendor and Mr. Kirsh represented the purchaser. The Law Society contacted the Solicitor by letters dated March 10 and April 15, 1993 and by telephone on May 4, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Mr. Kirsh. A copy of the communications with the Solicitor are contained at Tab 149.

Franca Tamburello

206. By letter dated March 16, 1993, Franca Tamburello of FirstLine Trust made a complaint to the Law Society regarding the Solicitor's failure to provide a final reporting letter. The Law Society contacted the Solicitor by letter dated April 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Ms. Tamburello. A copy of the communications with the Solicitor are contained at Tab 150.

Robert W. Jackson

207. By letter received on March 25, 1993, Robert W. Jackson of the Toronto-Dominion Bank made a complaint to the Law Society regarding the Solicitor's failure to provide final documentation upon the completion of a real estate transaction. The Law Society contacted the Solicitor by letter dated April 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Mr. Jackson. A copy of the communications with the Solicitor are contained at Tab 151.

V. Giverin

208. By letter dated March 15, 1993, V. Giverin of the Scotiabank made a complaint to the Law Society regarding the Solicitor's failure to provide a report and a mortgage charge. The Law Society contacted the Solicitor by letter dated April 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Mr. Giverin. A copy of the communications with the Solicitor are contained at Tab 152.

Dieter Kruse

209. By letter dated March 4, 1993, Dieter Kruse made a complaint to the Law Society regarding the Solicitor's failure to account. The Law Society contacted the Solicitor by letter dated April 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Mr. Kruse. A copy of the communications with the Solicitor are contained at Tab 153.

Ronald A. Bachew

210. By letter dated January 26, 1993, Ronald A. Bachew made a complaint to the Law Society regarding the Solicitor's handling of a real estate transaction. The Law Society contacted the Solicitor by letters dated February 25 and April 15, 1993 and by telephone on March 12, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Mr. Bachew. A copy of the communications with the Solicitor are contained at Tab 154.

C. Hall

211. By letter dated February 18, 1993, C. Hall of the Bank of Montreal made a complaint to the Law Society regarding the Solicitor's failure to report on a real estate transaction. The Law Society contacted the Solicitor by letters dated March 10 and April 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Ms. Hall. A copy of the communications with the Solicitor are contained at Tab 155.

Jos A. Teixeira

212. By letter dated November 24, 1992, Jos A. Teixeira of the Sheriff's Office made a complaint to the Law Society regarding the Solicitor's failure to honour a financial obligation. The Law Society contacted the Solicitor by letters dated March 29 and April 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Ms. Teixeira. A copy of the communications with the Solicitor are contained at Tab 156.

Mike Harwood

213. By letter dated February 22, 1993, Mike Harwood of the National Bank of Canada made a complaint to the Law Society regarding the Solicitor's failure to report on a real estate transaction. The Law Society contacted the Solicitor by letters dated March 11 and April 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Ms. Harwood. A copy of the communications with the Solicitor are contained at Tab 157.

Jack C. Goodman

214. By letter dated March 5, 1993, Jack C. Goodman made a complaint to the Law Society regarding the Solicitor's failure to comply with her undertaking. The Law Society contacted the Solicitor by letter dated April 15, 1993. The Solicitor did not respond to the Law Society with respect to the complaint by Mr. Goodman. A copy of the communications with the Solicitor are contained at Tab 158.

215. The Solicitor has now attended at the Law Society's offices and has reviewed her old client files and has, to the best of her ability, provided explanations and responses to the Law Society.

V. PRIOR DISCIPLINE

216. On December 1, 1987, the Solicitor was reprimanded in Committee for failure to maintain her books and records and failure to file. The Solicitor also provided an Undertaking regarding her filing requirements and was ordered to pay costs in the amount of \$500.00.

DATED at Toronto, this 9th day of April, 1998."

RECOMMENDATION AS TO PENALTY

I recommend that Micaela Obreanu Borup be granted permission to resign within thirty days from the date that this matter is dealt with at Convocation, failing which, that she be disbarred.

REASONS FOR RECOMMENDATION

This matter proceeded before me as a single Benchers hearing. I had conducted the pre-hearing in this matter and Ms. Borup and the Society consented to proceeding before me. Ms. Borup cooperated fully with the Society in regard to this matter. The hearing before me was based on two Agreed Statement of Facts signed by Ms. Borup in which she admitted the particulars of her professional misconduct. The proposed penalty in this matter was placed before me as a joint submission.

While the particulars of misconduct found against Ms. Borup are serious, they are allegations of neglect or non-performance resulting from the personal problems Ms. Borup was suffering. I am advised by counsel for the Society that there are no allegations of dishonesty or malfeasance. There were 25 instances of failing to fulfil undertakings, sixty-eight instances of failing to report on real estate transactions, 36 instances of failing to complete services, 14 instances of failing to reply to the Law Society.

22nd October, 1998

Attached as Exhibit "A" to the Agreed Statement of Facts, Exhibit 6, is a memorandum prepared by Ms. Borup outlining the personal difficulties and tragedies that led to the collapse of her practice. Very briefly put those include a marriage breakup, attempting to function as a single parent to three boys, one of whom was autistic and was a behavioural challenge, a serious illness of her father, a breakup of another domestic relationship, Ms. Borup's own poor health which was ultimately diagnosed as her suffering from chronic fatigue immune deficiency syndrome, and the effects of the recession. As a result of all these events she lost her ability to maintain her practice. Eventually, she was forced into bankruptcy.

The Solicitor has not practised since the spring of 1993. While she has made some significant recovery from the personal difficulties that overwhelmed her, she does not believe that at this point she is capable of returning to practice. She is not sure she will ever want to return to practice. It is her desire to be granted permission to resign from the Society.

I do not believe that the professional conduct of Ms. Borup warrants her disbarment. A suspension may be a suitable penalty.

If Ms. Borup did not wish to resign from the practice, it is my view that it might be possible to structure an arrangement whereby Ms. Borup, after a period of suspension, could be allowed to return to practice. The terms for such a return to practice would include obtaining appropriate psychiatric reports, arranging to practice under the supervision of another lawyer, and co-signing controls on her trust account. Because of the passage of time, it might also be appropriate for Ms. Borup to take the necessary courses to re-qualify to practise law.

Because of Ms. Borup's express desire to resign from the Society, I have not laid out in detail what I would regard as an appropriate penalty in this matter. As noted above, I have accepted the joint submission as to penalty in this case.

Micaela Obreanu Borup was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 6th day of April, 1979.

ALL OF WHICH is respectfully submitted

DATE: May 12, 1998

Paul D. Copeland

An Acknowledgement, Declaration and Consent dated October 22nd, 1998 was filed as Exhibit 3.

The public withdrew and Convocation went in camera.

Counsel for the Society and the solicitor made submissions on the in camera material contained in the Report.

The public returned.

Ms. Seymour made submissions in support of a 2 year suspension following the administrative suspension and if the solicitor returned to practice that she comply with the following conditions:

- (1) that the solicitor satisfy the Society that she is mentally and physically well enough to practice;
- (2) co-operate with the Society in settling the monies in trust;
- (3) meet the requalification requirements; and
- (4) not practise as a sole practitioner.

There were questions from the Bench.

The solicitor made submissions in support of the 2 year suspension and conditions.

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

It was moved by Mr. DelZotto, seconded by Mr. Murphy that the \$160 reinstatement fee be waived and that the solicitor be suspended for 1 day and indefinitely thereafter until the conditions in Ms. Seymour's submissions are complied with.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the \$160 reinstatement fee be waived and that the solicitor be suspended for 1 day and indefinitely thereafter until the conditions set out in Ms. Seymour submissions are complied with.

Convocation took a brief recess at 10:25 a.m. and resumed at 10.45 a.m.

Re: Donald Frederick MORRIS - Ottawa

The Secretary placed the matter before Convocation.

Messrs. Wilson and Chahbar withdrew for this matter.

Ms. Braid appeared on behalf of the Society and Ms. Kelly, Duty Counsel appeared on behalf of the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 4th September, 1998, together with an Affidavit of Service sworn 15th September, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 11th September, 1998 (marked Exhibit I). 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

Paul D. Copeland, Chair
William D. T. Carter
Nora Angeles

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

DONALD FREDERICK MORRIS
of the City
of Ottawa
a barrister and solicitor

Jonathan Batty
for the Society

Not Represented
for the solicitor

Heard: August 25, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On 6th of May, 1998 Complaint D62/98 was issued against Donald Frederick Morris alleging that he was guilty of professional misconduct.

The matter was heard in public on August 25, 1998 before a Committee composed of Paul Copeland, Chair, Bill Carter and Nora Angeles. Mr. Batty appeared on behalf of the Society. The Solicitor participated in the hearing by telephone from Ottawa. This had not been approved in advance at the Hearing Management Tribunal or by the Committee. The Solicitor indicated that he lacked the funds to travel to Toronto for the hearing.

Motion for Dismissal or Stay

We had before us a nine page letter plus attachments from the Solicitor dated 4th of August, 1998. That letter contained an application to preclude the Society "from bringing this proceeding". In the written submissions the Solicitor relied on three grounds: (1) settlement; (2) estoppel; (3) timeliness. In his oral submissions the Solicitor only relied on the settlement and timeliness issues.

On the settlement issue the Solicitor relied on a letter sent to the Society on December 11, 1996, just prior to his previous discipline hearing. The letter contains the following: "if all the Society wishes to do... and in the interest of having matters settled once and for all you may advise the Committee that I consent to the order being made...". The Solicitor indicated that the Society counsel Jane Ratchford had not rejected that consent either orally or in writing. The Solicitor's previous discipline matter was dealt with before Philip Epstein sitting as a single Bencher. The Solicitor did not attend that hearing and evidence was called by the Society.

In our view the settlement argument has no merit and the Society is not "precluded from bringing this proceeding".

On the timeliness issue, the Solicitor argues that the delay in bringing this proceeding has caused him prejudice. Even though the Complaint was not sworn until the 6th of May, 1998, it had been authorized some 19 months earlier. The prejudice the Solicitor claimed was that he had destroyed the notes of his conversation on February 28, 1996 with Hugh Levin, a staff trustee in the Audit and Investigation Department.

We are of the view that the destruction of the notes caused the Solicitor no prejudice. The Solicitor in his written submissions made detailed references to the conversation he had with Mr. Levin. In our view, unless credibility concerning that conversation became an extremely important issue in these proceedings, the lack of contemporaneous notes of the conversation did not prejudice the Solicitor. As well we noted virtually all of the delay of which the Solicitor complained was what would be termed in the criminal context as pre-charge delay.

We ruled that the timeliness issue was not such that "the Society is precluded from bringing this proceeding".

DECISION

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

Complaint D62/98

2. a) The Solicitor failed to maintain the books and records in connection with his practice in accordance with section 15 of Regulation 708 under the *Law Society Act*.

Evidence

Viva voce evidence was called on behalf of the Society. Jennifer Campbell, Anita McCann and Marlene Chapman testified before us. Ms. Chapman was an examiner with the Audit and Investigation Department. She testified that after telephone calls and correspondence with the Solicitor he delivered to her parts of the books and records required to be kept by a solicitor under Regulation 708, but did not provide the following documents: (a) books of original entry for trust receipts and trust disbursements; (b) books of original entry for general receipts and general disbursements; (c) fee book or chronological file of copies of billings, and (d) monthly trust comparisons including a detailed list showing the amount of trust money held for each client and identifying each client for whom trust money is held and a detailed reconciliation of each trust bank account.

Other than the fee book or chronological file of copies of billings the Solicitor did not seriously contest Ms. Chapman's evidence.

The Committee was faced with the decision of whether we would attempt to permit the Solicitor to testify under oath or affirmation by telephone from Ottawa. Ultimately the Committee decided, for the reasons hereinafter set out, that it would not be necessary to have the Solicitor sworn.

The Solicitor's defence to the complaint was that as a result of his conversation with Hugh Levin on February 28, 1996 the Solicitor "dismantled" i.e. deleted computer information of my Accounting Records; Master Client List; Client File List (save and except current files) and Closed File List on March 5, 1996". As well, the Solicitor indicated that on June 21, 1996 he discarded additional documents and discarded further additional documents on the 5th of January, 1998.

In the Solicitor's letter to the Committee dated August 4, 1998 he provided the following account of his conversation with Mr. Levin on February 28, 1996.

"During this conversation I advised him of the following:

- (1) That I did not have the physical space to keep all my office, personal and accounting records;
- (2) That my trust account had been closed in accordance with instructions from my Trustee;
- (3) That I wanted to get rid of most of my records as files had long been transferred; there were no claims from clients about inappropriate billings or anything else and I did not contemplate returning to practice.
- (4) I told him that I had not filed my Form 3's for two years as I did not have the money to do so and questioned whether this procedure would pose any problems.

He advised me:

- (1) if the Audit and Investigation Department had not conducted an audit of my records by now because of the non-filing then they would not as they did not have the manpower to do so and;
- (2) that I would be contacted by the Audit and Investigation Department to ensure that I was not in possession of or requesting that continuing clients provide me with funds that may be disguised as trust funds."

The Committee indicated to the Solicitor that, rather than deal with the issue of having him sworn to testify over the telephone, we were prepared to rule on the case on the basis that the conversation with Mr. Levin occurred exactly as set out above. It is the Solicitor's argument that Mr. Levin's conversation induced him to destroy certain of his books and records and that that, to use the Solicitor's words, "officially induced error", was the defence to the charge of failing to maintain books and records.

The regulations require that trust records be kept for 10 years and that general account records be kept for seven years. It is the view of the Committee that there was no justification for the Solicitor destroying any portion of his books and records as a result of his conversation with Mr. Levin. It was not necessary for the Committee to decide whether as of early March of 1996 the Solicitor had maintained books and records in connection with his practice in accordance with s. 15 of Regulation 708 of the Law Society Act.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Donald Frederick Morris be suspended for a period of one month definite, and from month to month thereafter until his books and records in connection with his practice in accordance with s. 15 of Regulation 708 under the *Law Society Act* are provided to the Society. The Committee recommends that the suspension be concurrent with the suspension that the Solicitor is presently under pursuant to the order of Convocation made the 3rd day of April, 1997.

REASONS FOR RECOMMENDATION

Mr. Batty, on behalf of the Society, recommended the penalty set forth above. Mr. Batty's position was that the failure to maintain books and records and the failure to file offence (the Solicitor's previous discipline matter) are frequently dealt with in one discipline hearing. It is for that reason that Mr. Batty recommended that a concurrent identical penalty be imposed on the Solicitor for this offence.

The Solicitor initially indicated to the Committee that rather than being suspended he wished the Committee to grant him permission to resign from the Society. A discipline resignation would be easier for the Solicitor than preparing the necessary material, documents and records in order to resign administratively.

After further discussion with the Solicitor, the Committee indicated that it would recommend the penalty suggested by Mr. Batty. We advised the Solicitor that if he wished to pursue a permission to resign resolution to this matter, he could make submissions to that effect before Convocation.

Donald Frederick Morris was called to the Bar on March 28, 1990.

ALL OF WHICH is respectfully submitted

DATED this 4th day of September, 1998

Paul D. Copeland, Chair

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

- page 1, last paragraph - second word should be "our" not "or"
- page 4, (2), 2nd line - the word "wan" should be "was"
- page 4, last paragraph - 1st line sentence should read "The regulations require that trust records be kept for 6 years" not "10".

Ms. Kelly advised that that the solicitor had hired an independent accountant to complete his books and records and hoped to return to work in January.

It was moved by Mr. Wright, seconded by Mr. Adams that the Report amended be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month definite and from month to month thereafter until his books and records are provided to the Society and that the suspension be concurrent with the suspension ordered by Convocation on April 3rd, 1997.

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

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

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

It was moved by Mr. Topp, seconded by Mr. MacKenzie that the suspension be consecutive.

Counsel, Duty Counsel, the reporter and the public were recalled and heard submissions on the issue of the motion made that the suspension be consecutive.

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

The Topp/MacKenzie motion was voted on and lost.

The Wright/Crowe motion was voted on and carried.

Counsel, Duty Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for 1 month definite and from month to month thereafter until his books and records are provided and that the suspension be concurrent with the suspension previously ordered by Convocation.

Re: Adam John BULL - Toronto

Mr. Hugh Corbett appeared on behalf of the Society and Ms. Kelly, Duty Counsel appeared on the behalf of the solicitor who was present.

Messrs. Topp, Ruby, Gottlieb and Chahbar withdrew for this matter.

An adjournment to the November Convocation was requested by the solicitor. The solicitor's books and records would be produced by November 9th.

The Society was not opposed.

It was moved by Mr. Wright, seconded by Mr. Adams that the matter be adjourned to the Discipline Convocation in November.

Carried

Re: Frank Andrew THERIAULT - Toronto

Messrs. Wilson and Topp did not participate.

Ms. Amanda Worley appeared for the Society and the solicitor appeared on his own behalf assisted by Ms. Kelly, Duty Counsel.

The solicitor requested an adjournment to the January Discipline Convocation. Ms. Kelly made submissions that the solicitor had made every effort to bring his books and records in line and wanted the opportunity to complete the requirements.

Counsel for the Society advised that the solicitor had co-operated and was presently administratively suspended.

Ms. Worley requested an adjournment to the Discipline Convocation in November.

Ms. Kelly made submissions that the adjournment be put over to January as the solicitor was employed as a bike courier and did not want to miss any further days from work.

It was moved by Mr. Gottlieb, seconded by Mr. Swaye that the matter be adjourned to the Discipline Convocation in January 1999.

Carried

Re: Craig Alexander STEPHENSON - Brampton

The Secretary placed the matter before Convocation.

Messrs. Topp, Ruby, Gottlieb, Chahbar and Wilson withdrew for this matter.

Ms. Braid appeared on behalf of the Society. The solicitor was not present.

Convocation had before it the majority Report of the Discipline Committee dated 3rd September, 1998, together with an Affidavit of Service sworn 24th September, 1998 by Pal Singh that he had effected service on the solicitor by registered mail on 14th September, 1998 (marked Exhibit I). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Clayton C. Ruby, Chair
Gary L. Gottlieb, Q.C.
Abdul A. Chahbar

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

Jonathan Batty
for the Society

CRAIG ALEXANDER STEPHENSON
of the City
of Brampton
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 14, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 8, 1998 Complaint D47/98 was issued against Craig Alexander Stephenson alleging that he was guilty of professional misconduct.

The matter was heard in public on July 14, 1998, before this Committee composed of Clayton C. Ruby, Chair, Gary L. Gottlieb, Q.C. and Abdul A. Chahbar. The Solicitor attended the hearing but was unrepresented by counsel. Jonathan Batty appeared on behalf of the Law Society.

DECISION

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

Complaint D47/98

2. a) The Solicitor breached on Order of Convocation dated September 27, 1996 pursuant to section 36 of the *Law Society Act*, which suspended his rights and privileges as a member of the Law Society, by practising law continuously between September 28, 1996 and January 24, 1997;
- b) The Solicitor failed to produce the books, records, accounts and papers in connection with his practice to the Law Society in breach of section 18(1) of Regulation 708 under the *Law Society Act*, and
- c) The Solicitor breached his Undertaking to the Law Society dated January 15, 1998 to provide a written response to written communications from the Law Society within seven days.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D47/98 and is prepared to proceed with a hearing of this matter on June 30, 1998.

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 D47/98 and this Agreed Statement of Facts and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the Complaint supported by the facts set out below constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1993. He is a sole practitioner.

Particular 2(a) The Solicitor breached an Order of Convocation dated September 27, 1996 pursuant to section 36 of the *Law Society Act*, which suspended his rights and privileges as a member of the Law Society, by practising continuously between September 28, 1996 and January 24, 1997.

5. By first notice dated April 29, 1996 (Document Book, Tab 1), the Solicitor was notified by the Lawyers' Professional Indemnity Company ("LPIC") that his errors and omissions insurance levy for 1996 could not be processed by reason of insufficient funds in his Toronto Dominion Bank chequing account. The Solicitor was further advised that, pursuant to Section 36 of the *Law Society Act*, if he failed to pay the levy within four months after the day on which payment is due, Convocation may, by order, suspend his rights and privileges as a member for such time and on such terms as considered proper in the circumstances.

6. By second and final notice dated August 28, 1996 (Document Book, Tab 2), the Solicitor was reminded that the said insurance levy was overdue. The Solicitor was further reminded that, pursuant to Section 36 of the *Law Society Act*, failure to pay could result in his suspension.

7. By registered letter dated September 27, 1996 (Document Book, Tab 3), the Solicitor was notified by the Law Society that, by Order of Convocation, his rights and privileges as a member of the Law Society had been suspended effective September 27, 1996, for failure to satisfy his errors and omissions insurance levy. A further letter was sent to the Solicitor dated December 17, 1996 (Document Book, Tab 5) which re-iterated that he was suspended.

8. In January of 1997, the Solicitor discussed with the Law Society the outstanding fees and levies he was required to pay to re-instate himself (Document Book, Tabs 7 and 9). The Solicitor then satisfied his outstanding errors and omissions insurance levy and membership fee which thereby allowed his membership to be reinstated effective January 27, 1997 (Document Book, Tabs 8, 11 and 12).

9. Throughout the period September 28, 1996 to January 24, 1997, the Solicitor practised law while under suspension. The following table describes, in part, the Solicitor's practice during his period of suspension:

<u>Client</u>	<u>Date</u>	<u>Activity</u>
M. Scheibli Custody & Support (Document Book, Tab 16)	September 28, 1996	Telephone call to/from client.
	October 9, 1996	Telephone conversation with client.
	January 16, 1997	Counselling with client.
M. Quinney Child Welfare (Document Book, Tab 17)	October 8, 1996	Telephone conversation with client.
	October 21, 1996	Telephone conversation with client's paternal aunt. Telephone conversation with client's father.
	November 7, 1996	Telephone call to/from client. Phone call opposing counsel. Telephone conversation with Peel CAS.
	November 12, 1996	Motion with Notice Preparation. Receipt and review of Notice of Motion and supporting affidavit. Phone call opposing counsel. Telephone conversation with Peel CAS. Telephone call to/from client.
	November 13, 1996	Counselling with client. Meeting with client in preparation for motion attendance. Motion - Attendance Attendance at motion - mother's counsel not in attendance; terms agreed to; adjourned to January 29, 1997.
	November 20, 1996	Phone call opposing counsel. Telephone conversation with Peel CAS.
	November 21, 1996	Phone call opposing counsel. Telephone conversation with Peel CAS. Receipt and review of draft Order. Return of approved draft Order. Document Filing/Transmittal.
	November 22, 1996	Opinion to Legal Aid. Reporting letter to Legal Aid. Preparing bills.

<u>Client</u>	<u>Date</u>	<u>Activity</u>
J. Homier Matrimonial (Document Book, Tab 18)	October 15, 1996	Document preparation. Preparation of Affidavit of Service and filing of Motion material.
	October 16, 1996	Telephone conversation with client.
	October 24, 1996	Document Filing/Transmittal. Attendance at Court Office.
	October 25, 1996	Document Filing/Transmittal Attendance at Court office to file Order.
	October 28, 1996	Document Filing/Transmittal Attendance at Court Office to obtain Certificate of Divorce.
D. Pelikan Matrimonial (Document Book, Tab 19)	October 15, 1996	Document Preparation. Preparation of Affidavit of Service and filing of Motion material.
	October 16, 1996	Telephone conversation with client.
	October 24, 1996	Document Filing/Transmittal. Attendance at Court Office.
	October 25, 1996	Document Filing/Transmittal Attendance at Court office to file Order.
	October 28, 1996	Document Filing/Transmittal Attendance at Court Office to obtain Certificate of Divorce.
S. Jamieson Custody (Document Book, Tab 20)	November 1, 1996	Telephone conversation with opposing counsel.
	January 21, 1997	Telephone conversation with trial coordinator. Conference with trial coordinator. Telephone call opposing counsel. Telephone call to/from client. Telephone conversation with trial coordinator. Telephone call opposing counsel.
	January 22, 1997	Reviewed incoming correspondence from trial coordinator.
	January 24, 1997	Reviewed incoming correspondence from trial coordinator.

<u>Client</u>	<u>Date</u>	<u>Activity</u>
Simmons v. Simmons Litigation Matter (Document Book, Tabs 21 and 22)	November 6, 1996	Letter from the Member to Bruce Pugsley enclosing his client's answer, served pursuant to the Rules of Civil Procedure.
	November 19, 1996	Prepared material for and argued the motion before Mr. Justice E. Krusick in Brampton court.
R. Ahoorai Litigation Matter (Document Book, Tab 23)	November 27, 1996	Document Preparation re: Notice of Change of Solicitors. Correspondence sent to opposing counsel.
Sandra & Craig Wood Civil Matter (Document Book, Tabs 13 and 24)	December 3, 1996	Consent to an Order which identifies the Member's firm as Solicitors for the Plaintiffs.
L. Loucks Separation & Enforcement (Document Book, Tab 25)	December 17, 1996	Telephone conversation with client.

10. The Law Society also received notice from the Ontario Legal Aid Plan (Document Book, Tab 4) and information from two other solicitors that the Solicitor was practising law during the period he was suspended for non-payment of his errors and omissions levy (Document Book, Tabs 6 and 10).

Particular 2(b) The Solicitor failed to produce the books, records, accounts, and papers in connection with his practice to the Law Society in breach of section 18(1) of Regulation 708 under the *Law Society Act*; and,

Particular 2 (c) The Solicitor breached his Undertaking to the Law Society dated January 15, 1998 to provide a written response to written communications from the Law Society within seven days.

11. An audit was instructed under sections 9 and 18 of Regulation 708 as the Solicitor provided an NSF cheque to LPIC and failed to file for the fiscal year ended May 31, 1995.

12. When the investigation was started on May 28, 1996, the Solicitor's records were not up to date (Document Book, Tabs 26 to 28). Between May 1996 and February 1997, John Schoales, an Examiner with the Audit and Investigation Department of the Law Society, instructed the Solicitor to bring his records up to date so that an audit could be conducted (Document Book, Tabs 29 to 34, 36 to 39, 41 to 45, 47 and 48).

13. Schoales attended at the Solicitor's office on August 14, 1996 (Document Book, Tab 35), October 29, 1996 (Document Book, Tab 40), January 15, 1997 (Document Book, Tab 46) and February 7, 1997 (Document Book, Tab 49). On each occasion the books and records were produced but were not current. Schoales was unable to conduct a proper audit.

14. Schoales attempted to communicate with the Solicitor on February 14, 1997 (Document Book, Tab 50) and February 18, 1997 (Document Book, Tab 51) by leaving phone messages for him. As the Solicitor did not return his calls, a letter was prepared and sent to the Solicitor by both ordinary and registered mail advising him that if the outstanding records were not produced by March 21, 1997 then the matter would be referred to the Discipline Committee for review (Document Book, Tab 52). The Solicitor did not reply to these communications.

15. In December 1997, Lorraine Campbell, another Examiner with the Audit and Investigation Department of the Law Society, was assigned carriage of the Solicitor's audit file as Schoales was no longer employed with the Society.

16. On December 30, 1997 (Document Book, Tab 53) and January 15, 1997 (Document Book, Tab 54), Campbell attempted to contact the Solicitor in order to arrange a further appointment to complete the audit.

17. In consideration of the Law Society not finding the Solicitor guilty of professional misconduct with respect to failing to file his Forms 2/3 for the period ending May 31, 1996 he signed an Undertaking on January 15, 1998 (Document Book, Tab 55) to, in part, provide a written response to written communications from the Law Society within seven days of the date of that communication and to respond to telephone communications from the Law Society within two business days.

18. The following table describes Campbell's attempts to contact the Solicitor:

DATE	PARTICULARS
December 30, 1997	I left a message on the Member's voice mail asking him to please contact me on January 5, 1998 as I now have carriage of his audit file. I advised the Member that John Schoales had prepared a report to be submitted to the Discipline Committee for review. The charges were practising while under suspension, failure to maintain books and records and failure to maintain sufficient trust balances. I advised the Member that before I reported him to the Discipline Committee for failure to maintain books and records and failure to maintain sufficient trust balances, I would like to meet with him the week of January 5, 1998 in order to review the records that were produced to John Schoales. I also stated that I would like to obtain his representations with respect to practising law while suspended.
January 7, 1998	As the Member did not contact me on January 5, 1998, I left a further message on his voice mail asking that he return my call.
January 15, 1998 (Document Book, Tab 56)	Letter prepared outlining specific books, records and client files to be produced for my review prior to January 30, 1998. As Peter Jordan of the Complaints Department was meeting with the Member to discuss outstanding complaint matters, Mr. Jordan provided to the Member, my letter.

19. As of this date, the Member has not produced the books, records and client files in connection with his practice to the Law Society. No request for a time extension, or explanation of this failure to reply have been offered to the Law Society. In short, the Solicitor immediately breached his Undertaking.

V. DISCIPLINE HISTORY

20. The Solicitor does not have a discipline history.

DATED at Brampton, this 24th day of June, 1998."

RECOMMENDATION AS TO PENALTY

The majority of the panel recommend to Convocation that the Solicitor be suspended for six months from the date of the order of Convocation and indefinitely thereafter until his books and records are produced and brought up to date to the satisfaction of the Law Society of Upper Canada.

REASONS FOR RECOMMENDATION

In this case, the Solicitor and the Law Society have entered into a joint submission. The majority would accept that joint submission. That submission involves a recommendation, which we now make to Convocation, that the Solicitor be suspended for six months from the date of the order of Convocation and indefinitely thereafter until his books and records are produced and brought up to date to the satisfaction of the Law Society of Upper Canada.

Our reasons flow directly from the facts that are established. The Solicitor, who was called to the bar only in February of 1993, had established a general practice which did not appear to thrive. Faced with the difficulties around an inability to pay his Errors and Omissions insurance and notification of a suspension therefore, the Solicitor continued to practise. It was not an isolated act of practice or even a few such isolated acts, but it appears from the record before us to be a continuous practice. This disregard for the order of Convocation is grave.

Second, the Solicitor had entered into an Undertaking to provide a written response to communications from the Law Society within seven days. An Undertaking given to the Law Society is of the highest responsibility. We expect that it be honoured without question. In this case, it is clear that despite repeated attempts to communicate with him, there was a breach of that Undertaking.

The Law Society, very fairly, says: "We cannot now tell whether there is anything wrong with his practice at all because we have not been able to see any books and records". In those circumstances, the basic fundamental obligation of the Society to satisfy the public that the practice of law is being carried out in a responsible way cannot be met.

These three factors cumulatively indicate to the majority that the joint submission is an appropriate one and this is a matter which must go to Convocation.

Craig Alexander Stephenson was called to the bar on February 9, 1993.

ALL OF WHICH is respectfully submitted

DATED this 3rd day of September , 1998

Clayton C. Ruby, Chair

DISSENTING REASONS

RECOMMENDATION AS TO PENALTY

It is my recommendation that Craig Alexander Stephenson be reprimanded at Convocation.

REASONS FOR RECOMMENDATION

I am not condoning the Solicitor's misconduct, but we have here a young lawyer with no discipline history who found himself in financial difficulty and unable to pay his insurance premiums and membership fees.

We have heard that he is leaving law and he has obtained a teaching position and that he intends to produce his books and records to the Law Society by September and he intends then to administratively resign.

We have heard the lawyer, we have seen him, we have heard how he has spoken, we have judged his demeanour, and assuming that by the time this matter reaches Convocation, he has produced his books and records to the Law Society and they are satisfied with them; and assuming that he still wishes to administratively resign, it is my recommendation that he be reprimanded at Convocation. While I respect the opinion of the majority, I would have given the Solicitor until the end of August to produce his books and records to the Law Society and to wrap up his practice, and then I would have obtained his undertaking to administratively resign, and on that basis would have reprimanded him in Committee.

ALL OF WHICH is respectfully submitted

DATED the 2nd day of September, 1998

Gary L. Gottlieb, Q.C.

Ms. Braid made submissions as to service of the Report.

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

Carried

The majority recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 6 months and indefinitely thereafter until the solicitor's books and records are produced and brought up to date to the satisfaction of the Society.

It was moved by Mr. DelZotto, seconded by Ms. Carpenter-Gunn that the majority recommended penalty be adopted.

Carried

Re: Thom Warren ARTHUR - Ridgeway

Messrs. Topp and Wilson did not participate.

Mr. Seymour appeared on behalf of the Society.

Ms. Seymour advised that due to personal circumstances the solicitor could not attend Convocation and that if an adjournment was granted, attempts would be made to obtain the solicitor's undertaking not to practice.

It was moved by Mr. DelZotto, seconded by Mr. Gottlieb that the matter be adjourned to the November Discipline Convocation.

Carried

Re: David Joseph COLMAN - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Chahbar withdrew for this matter.

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

Convocation had before it the Report of the Discipline Committee dated 30th August, 1998, together with an Affidavit of Service sworn 15th September, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 11th September, 1998 (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

Philip M. Epstein, Q.C., Chair
Thomas J. P. Carey
Abdul A. Chahbar

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

Kathryn Seymour
for the Society

DAVID JOSEPH COLMAN
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 29, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 30, 1998 Complaint D40/98 was issued against David Joseph Colman alleging that he was guilty of professional misconduct.

The matter was heard in public on July 29, 1998 before this Committee composed of Philip M. Epstein, Q.C., Chair, Thomas J. P. Carey and Abdul Chahbar. The Solicitor did not attend the hearing nor was he represented. Kathryn Seymour appeared on behalf of the Law Society.

DECISION

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

Complaint D40/98

2. a) On December 4, 1997, he pleaded guilty and was convicted of the criminal offence of fraud over \$5,000 in that he, sometime between January 1, 1996 and March 20, 1997, in Toronto, by deceit and falsehood did defraud Mary Ellen Solomon of monies held in trust by the Ontario Court (General Division) of a sum exceeding five thousand dollars contrary to the Criminal Code.

Evidence

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

“AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D40/98 and is prepared to proceed with a hearing of this matter on Wednesday, September 29, 1998.

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*, R.S.O. 1990 c. S.22.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D40/98 and admits the particulars. The Solicitor also admits that the particulars, together with the facts as set out below, constitute conduct unbecoming a barrister and solicitor.

IV. FACTS

4. The Solicitor was called to the Bar in February, 1993. He has been suspended since November 1, 1996 for non-payment of his annual fee.

5. Through the 1980's and early 1990's, Gordon Humphrey cohabited with one Mary Ellen Solomon. During this period of time, a home was purchased. When their relationship ended, a dispute arose as to the division of assets. As a result, civil proceedings were commenced in the Ontario Court of Justice (General Division), Newmarket, Ontario. Proceeds obtained from the sale of their home, which totalled \$75,999.68, were deposited with the Court and later transferred to the General Division Accountant's Office ("Accountant's Office"), in Toronto, Ontario.

6. The Solicitor acted for Gordon Humphrey. At some point during the period January 1, 1996 to March 6, 1997, the Solicitor knowingly presented and filed with the General Division Accountant's Office an Order which purportedly originated with the registrar for the General Division Court in Newmarket, Ontario, along with a document purportedly executed by Mary Ellen Solomon.

7. The falsified documents created and prepared by the Solicitor, were presented to the Accountant's Office in order to facilitate the release of the \$75,000 in funds on deposit with the Accountant's Office as a result of the civil action between Gordon Humphrey and Mary Ellen Solomon.

8. Subsequent investigation revealed that the documents presented to the Accountant's Office by the Solicitor were fabricated by the Solicitor and that the purported signatures of Mary Ellen Solomon and the Deputy Local Registrar for the General Division Court in Newmarket, Ontario, were forgeries.

9. As a result of this criminal conduct, the Solicitor was successful in obtaining from the Accountant's Office a cheque payable to the Solicitor in the amount of \$75,000 and the balance was issued by the Accountant's Office to Gordon Humphrey.

10. The Solicitor deposited the \$75,000 into his trust account at the Bank of Montreal, Bloor Street West and Euclid Avenue branch. From the \$75,000 on deposit in the Solicitor's trust account, the Solicitor disbursed \$10,250 to himself and the balance to his client, Gordon Humphrey.

11. The lawyer acting for Mary Ellen Solomon, has recovered approximately \$18,000 from Gordon Humphrey which has been re-deposited with the Court. The \$10,250 disbursed to the Solicitor has not been recovered.

12. On December 4, 1997, the Solicitor appeared in the Ontario Court of Justice, Provincial Division before His Honour Judge E.F. Ormston, where he pleaded guilty to one count of fraud over \$5,000 (Document Book, Tab 1 and Tab 2, page 4, line 14).

13. His Honour E.F. Ormston registered a finding of guilt at page 5, line 30, of the Guilty Plea at Tab 2.

14. The Court agreed with the Crown's submission that the offence called for a jail term, but concluded that the Solicitor did not pose a current danger to the public and that a conditional sentence would be appropriate under the circumstances. Accordingly, the Solicitor was sentenced to a six month conditional sentence which included a number of terms that are set out in the Guilty Plea at page 8, line 7 through to page 9, line 14, at Tab 2 (see also Conditional Sentence Order at Tab 3).

15. Following the conclusion of his sentence, the Solicitor has been ordered placed on probation for a period of two years subject to a number of terms that are set out in the Guilty Plea at page 9, line 15 to line 30, at Tab 2 (see also the Probation Order at Tab 4).

16. Over and above the sentencing provisions, a compensation order was issued against the Solicitor for the amount of \$10,250. The compensation order was issued in the form of a civil order to be filed with the General Division Court and payable to Mary Ellen Solomon (Tab 2, page 10, line 1 to line 7, and Tab 5).

V. PRIOR DISCIPLINE

17. On January 22, 1998, the Solicitor was found guilty of professional misconduct for failing to produce his books and records for his law practice and for failing to file. Convocation ordered that he be suspended for one month commencing at the conclusion of his present administrative suspension and continuing indefinitely thereafter until he has made his filing and produced the books and records of his practice to the satisfaction of the Law Society. He was also ordered to pay costs in the amount of \$800 to the Law Society.

DATED at Toronto, this 20th day of July, 1998."

FINDING OF THE COMMITTEE

This matter came on before the Discipline Tribunal on July 29th at approximately 3.00 p.m. Mr. Colman did not appear. We were advised by Duty Counsel, Mr. Kram, that Mr. Colman had been in touch with him the day before, on July 28th, and advised Mr. Kram that he would meet with him at 8.30 a.m. on July 29th to review the matter, but Mr. Colman did not appear. Counsel for the Society had also previously been in touch with Mr. Colman and he was clearly aware that the matter was going to proceed on July 29th. As previously noted Mr. Colman did not appear, and in view of the previous endorsement that the matter proceed on the 29th, in view of the notice that Mr. Colman had received about the proceedings, and in view of the absence of any explanation for his absence, the Committee decided that it ought to proceed.

The Solicitor is charged with professional misconduct in that he pleaded guilty and was convicted of the criminal offence of fraud over five thousand dollars; in that, between January 1, 1996 and March 20, 1997 in Toronto, by deceit and falsehood, did defraud Mary Ellen Solomon of monies held in trust by the Ontario Court (General Division) of a sum exceeding five thousand dollars contrary to the Criminal Code.

The Agreed Statement of Facts indicates that the Solicitor was called to the Bar in February of 1993. He has been suspended since November 1, 1996 for nonpayment of his annual fee.

The Solicitor was involved in a matrimonial case in which a sale of certain assets, in particular a home, occurred. That sale netted close to \$76,000 which was deposited to the account of the General Division of the Ontario Court.

The Solicitor, acting for Gordon Humphrey, one of the parties, knowingly presented and filed with the General Division accountant's office an order which the Solicitor falsified for the purposes of obtaining the monies from the accountant. These falsified documents were used to facilitate the release of \$75,000 in funds on deposit with the accountant's office and in order to use these documents, it was necessary that the Solicitor not only fabricate the documents, but forge the signatures of Mr. Humphrey's co-vivant Mary Ellen Solomon and the Deputy Local Registrar for the General Division in Newmarket. As a result of this conduct, the Solicitor was able to obtain a cheque payable to himself in the amount of \$75,000. He forthwith deposited the money into his trust account and then withdrew from his trust account \$10,250 for himself and gave the balance to his client, Gordon Humphrey.

The lawyer acting for Mary Ellen Solomon has recovered approximately \$18,000 from Gordon Humphrey, leaving her presumably to chase Mr. Humphrey for the balance of the monies that is owed to her. Unfortunately for her, the \$10,250 disbursed to the Solicitor has not been recovered, notwithstanding that the Solicitor agreed to a restitution order when he pleaded guilty in the Ontario Court (Provincial Division) on December 4th, 1997.

The Solicitor was found guilty and a conditional sentence was imposed. The conditional sentence required that the Solicitor serve a term of probation and the usual other terms of a conditional sentence. The compensation order made at the time has not been fulfilled by the Solicitor.

We have no difficulty in finding that the Solicitor has been guilty of professional misconduct.

RECOMMENDATION AS TO PENALTY

The Committee recommends that David Joseph Colman be disbarred.

REASONS FOR RECOMMENDATION

On January 22nd, 1998, the Solicitor was found guilty of professional misconduct for failing to produce his books and records for the law practice and for failing to file. Convocation ordered at that time that he be suspended for one month commencing at the conclusion of his present administrative suspension and continuing indefinitely thereafter until he has made his filing and produced the books and records of his practice to the satisfaction of the Law Society. He was also ordered to pay costs in the amount of \$800 to the Law Society which undoubtedly has not been paid.

The Solicitor has been found guilty in provincial court of a serious offence involving a significant amount of money. The authorities binding upon us by Convocation indicate, in the absence of exceptional circumstances, misappropriation of trust monies leads to disbarment. Mr. Colman was not present. There was no attempt by him or anyone on his behalf to put forward any extenuating circumstances. We do note that in the criminal proceeding, there was presented to the court a report of Dr. Litman, a psychiatrist. We have the benefit of that very brief report that indicates in five lines that Mr. Colman had a course of psychotherapy in October, 1997, which related to problems which began one and a half to two years prior. Dr. Litman deposed that Mr. Colman's symptoms had persisted for several months and met the criteria for a diagnosis of depression. Dr. Litman went on to say that the remaining symptoms were being addressed with cognitive behavioural therapy and progress would be assessed over the next few months. For the purposes of this hearing, it is an inadequate report in the sense that it does not meet the criteria of satisfactory extenuating circumstances which would somehow lessen the penalty of disbarment.

In the absence of Mr. Colman and in the absence of any further explanation or any attempt to put forward any extenuating circumstances, the Committee is left with no alternative but to recommend disbarment for this most serious offence and it accordingly does so.

David Joseph Colman was called to the Bar on February 9, 1993.

ALL OF WHICH is respectfully submitted

DATED this 30th day of August, 1993

Philip M. Epstein, Q.C., Chair

Ms. Seymour asked that the following correction be made to the Report:

- page 5, 4th paragraph should read "sale of certain assets" not "assents"

It was moved by Mr. MacKenzie, seconded by Ms. Carpenter-Gunn that the Report as amended be adopted.

Carried

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

There were brief submissions by Ms. Seymour in support of the recommended penalty.

It was moved by Ms. Carpenter-Gunn, seconded by Mr. Adams that the solicitor be disbarred.

Carried

Re: Mary Brenda Anne DAGENAIS - Nepean

The Secretary placed the matter before Convocation.

Messrs. Topp, Epstein and Wilson withdrew for this matter.

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

Ms. Worley addressed the issue of service.

Convocation had before it the Report of the Discipline Committee dated 12th May, 1998, together with an Affidavit of Service sworn 29th May, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 22nd May, 1998 (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

Philip M. Epstein, Q.C.

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

Audrey Cado
for the Society

MARY BRENDA ANNE DAGENAIS
of the City
of Nepean
a barrister and solicitor

Duty Counsel
for the solicitor

Heard: April 8, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

The following Complaints were issued against Mary Brenda Anne Dagenais alleging that she was guilty of professional misconduct: on August 27, 1997 Complaint D251/97 was issued; on November 20, 1997 Complaint D363/97 was issued; and, on January 9, 1998 Complaint D2/98 was issued.

These matters were heard in public on April 8, 1998 before Philip M. Epstein, Q.C., sitting as a single bencher. The Solicitor attended the hearing and was represented by Duty Counsel. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D251/97/97

- 2. a) She failed to provide a reply to the Law Society regarding the on-going investigation of a complaint by Rachelle Paquin despite written communications dated October 11, 1996 and February 25, 1997 and telephone requests on January 21, 1997, January 22, 1997, January 29, 1997 and February 12, 1997.

Complaint D363/97

2. a) She failed to comply with her undertaking to the Law Society dated March 18, 1996 by failing to provide a full and complete written response to written communications from the Law Society dated October 11, 1996 and February 25, 1997 within two weeks of receipt and she failed to respond to telephone communications from the Law Society dated January 21, 1997, January 22, 1997, January 29, 1997 and February 12, 1997 within two business days.

Complaint D2/98

2. a) She failed to co-operate with the Law Society by failing to produce the books and records of her practice pursuant to section 18 of Regulation 708 of the *Law Society Act* despite attempts made by the Law Society since February 12, 1997.

Evidence

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

“AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D251/97 and D363/97 and is prepared to proceed with a hearing of these matters on April 8, 1998.

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 D251/97 and D363/97 and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 14, 1986. She practised as a sole practitioner until June 28, 1996 as which time she was suspended for nonpayment of her annual fee.
5. On March 18, 1996, the Solicitor entered into a written Undertaking to the Law Society (Document Book, Tab 1) which states, in part, as follows:

I, Mary Brenda Anne Dagenais, hereby undertake

1. *to provide a full and complete written response to written communications from the Law Society within two weeks of receipt and to respond to telephone communications from the Law Society within two business days, and;*

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

6. By letter dated April 23, 1996, Rachelle Cuddihy (Document Book, Tab 2) wrote to the Law Society, on behalf of her mother, Jeannette Paquin and advised as follows: Jeannette Paquin retained the Solicitor on April 5, 1995, by providing a \$50.00 retainer, to change her Will and title to her home. On June 1, 1995 Mrs. Paquin returned to the Solicitor's office, provided the Solicitor with a further sum of \$325.85, and was advised the addendum to her Will had been completed, however, the Deed to the house had not been changed. The Solicitor advised she needed to obtain the Provincial Death Certificate and register the same at the Court House. To date, the death certificate has not been obtained by the Solicitor. Numerous telephone calls placed by Mrs. Paquin were not responded to.
7. By letter dated April 29, 1996 (Document Book, Tab 3), Jeannette Paquin provided the Law Society with her consent to disclose any information regarding the aforementioned matter to her daughter.
8. By letter dated May 28, 1996 (Document Book, Tab 4), the Law Society forwarded to the Solicitor a copy of Ms. Cuddihy and Mrs. Paquin's letters dated April 23, 1996 and April 29, 1996. The Solicitor was requested to provide her comment, specifically to any difficulties she may have encountered in completing the change to the deed and any reason as to why the change is outstanding, within two weeks. The Solicitor was reminded of her obligation to promptly respond to communications from the Law Society. No reply was received at that time.
9. A Law Society staff employee spoke with the Solicitor by telephone on June 27, 1996 (Document Book, Tab 5). The Solicitor advised she would forward her response by July 2, 1996, by facsimile transmission. No reply was received at that time.
10. The Solicitor left a voice mail message at the Law Society on July 3, 1996 (Document Book, Tab 5). The Solicitor advised that a couple of unforeseen matters had arisen and she was required in court on Thursday and Friday. The Solicitor advised she would respond by July 8, 1996, by facsimile transmission, however, no reply was received at that time.
11. A Law Society staff employee left a telephone message for the Solicitor on July 16, 1996 (Document Book, Tab 5) requesting she advise as to when she intended to provide her response. The call was not returned at that time.
12. By registered mail, dated July 19, 1996 (Document Book, Tab 6), the Law Society forwarded to the Solicitor a copy of its May 28, 1996 letter. The Solicitor was reminded of her obligation to promptly respond to communications from the Law Society. The Solicitor was advised should she fail to provide a written response within seven days, the matter would be referred to the Chair of the Discipline Committee for further instructions. The Law Society's July 19, 1996 letter was signed for by a member of the Solicitor's family and delivered on July 25, 1996.
13. By letter dated August 1, 1996 (Document Book, Tab 7) the Solicitor advised the Law Society she would ensure her response was forwarded to the Law Society later that day or first thing the following morning. The Solicitor advised she had been occupied with a number of administrative obligations in order to comply with the Law Society's regulations relating to the closing of her practice.
14. By letter dated August 1, 1996 (Document Book, Tab 8), the Solicitor provided the Law Society with a summary of her actions taken on behalf of Mrs. Paquin.
15. By facsimile transmission, dated October 11, 1996 (Document Book, Tab 9), the Law Society advised the Solicitor a copy of her August 1, 1996 had been forwarded to Ms. Cuddihy for her consideration. The Solicitor was requested to prepare her final account, crystallize the applicable rebate and facilitate the transfer of Mrs. Paquin's file to Ms. Cuddihy as quickly as possible. The Law Society advised the Solicitor that Mrs. Paquin would be retaining alternative counsel to assist her in bringing the matter to a timely end. The Solicitor was requested to confirm with the Law Society once the above noted tasks had been completed.
16. A Law Society staff employee spoke with the Solicitor by telephone on January 22, 1997 (Document Book, Tab 10). The Solicitor advised she had forwarded the refund and complied with the Law Society's request. The Solicitor advised she would contact Ms. Cuddihy and should the refund not be received, she would re-send it.

17. A Law Society staff employee spoke with Ms. Cuddihy by telephone on January 28, 1997 (Document Book, Tab 11). Ms. Cuddihy advised that a cheque had not been received from the Solicitor.

18. A Law Society staff employee left a telephone message for the Solicitor during January, 1997 (Document Book, Tab 11) advising that Ms. Cuddihy had not received the refund cheque and requesting the Solicitor return the call.

19. The Solicitor advised the Law Society by telephone on January 29, 1997 (Document Book, Tab 12), she would deliver the cheque herself that night and would confirm delivery of the same by facsimile transmission as soon as possible. A confirming facsimile transmission was not received from the Solicitor.

20. A Law Society staff employee left a telephone message for the Solicitor on February 12, 1997 (Document Book, Tab 12) advising her response was expected by February 14, 1997 failing which this matter will proceed to the next stage. The Solicitor did not return the call. The Solicitor did not provide a written response to the Law Society.

21. By registered mail, dated February 25, 1997 (Document Book, Tab 13), the Law Society reminded the Solicitor of her obligation to promptly respond to communications from the Law Society. The Solicitor was advised should she fail to provide a written response within seven days, the matter would be referred to the Chair of the Discipline Committee for further instructions. The Law Society's February 24, 1997 letter was signed for and delivered on March 4, 1997, by the Solicitor's former office.

22. The Solicitor responded to the Law Society by facsimile transmission, dated December 9, 1997 (Document Book, Tab 14). The Solicitor further advises that the original of the correspondence and revised account as found at Tab 14 were delivered personally to Mrs. Paquin along with the original money order included therein on December 9, 1997.

22A The Complaints Officer investigating the Paquin complaint found that the Solicitor's behaviour did not warrant disciplinary action in this matter, as confirmed in her correspondence to Ms. Paquin at March 20, 1998. (Document Book Tab 14).

[The Law Society is not in agreement with paragraph 22A.]

DISCIPLINE HISTORY

23. The Solicitor was found guilty of professional misconduct and reprimanded in committee on January 15, 1991 with respect to her failure to reply to the Law Society.

24. The Solicitor was found guilty of professional misconduct, reprimanded in committee and ordered to pay costs of \$400.00 on March 18, 1996, with respect to her failure to reply to the Law Society. The Solicitor also provided her written Undertaking, dated March 18, 1996, to respond to communications from the Law Society within specific time periods. The Solicitor paid the Law Society's costs of \$400.00 on September 19, 1996.

25. The Solicitor was found guilty of professional misconduct on June 2, 1997 with respect to her failure to file for the fiscal year ended September 30, 1995. The Single Benchers recommend the matter be referred to Convocation. Should the Solicitor file by the time the matter reaches Convocation, that she be reprimanded in Convocation and should she not file by that time, that she be suspended for one month definitely and month to month thereafter until the filing was made, such suspension to commence upon the termination of any administrative suspension. No order as to costs was made. This matter is pending receipt of the Report and Decision.

DATED at Toronto this 7th day of April, 1998."

Re: D2/98

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D2/98 and is prepared to proceed with a hearing of this matter on April 8, 1998.

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 D2/98 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 14, 1986. She practised as a sole practitioner until June 28, 1996 at which time she was suspended for nonpayment of her annual fee.

5. A Law Society Examiner attended at the Solicitor's office on February 12, 1997 to conduct a review of the books and records of her practice. As the Solicitor was not in the office, the Examiner left her card and requested the Solicitor contact her by telephone.

6. The Solicitor left a telephone message for the Examiner on February 12, 1997 (Document Book, Tab 1) advising she was tied up with a couple of personal matters but that she would attempt to contact the Examiner by telephone the following morning. The Solicitor advised she had been in and out of hospital as a family member had undergone sudden and unexpected surgery. The Solicitor advised the best place to reach her was at her residence as she spent most of her time there in any event. The Solicitor left her home telephone number and requested the Examiner contact her there.

7. The Solicitor left a telephone message for the Examiner on February 13, 1997 (Document Book, Tab 2) advising she was on her way to the hospital and would be there for the greater part of the day. The Solicitor advised she had been reviewing her books and records with a financial consultant in light of the continuing problems with her former partner's bankruptcy. The Solicitor advised she would accumulate and compile all the books and records over the weekend and then they could set up an appointment the following week for the review. The Solicitor requested the Examiner return her call.

8. The Examiner returned the Solicitor's telephone call on February 13, 1997 (Document Book, Tab 2) by leaving a message on her answering machine. The Examiner advised she was in and out of the office and requested the Solicitor call back to advise of an approximate date when they could meet when the family emergency was under control.

9. The Solicitor left a telephone message for the Examiner on February 20, 1997 (Document Book, Tab 3) advising that the family emergency has resulted in a death. The Solicitor advised she would contact the Examiner at the beginning of the following week.

10. The Examiner returned the Solicitor's call on February 24, 1997 (Document Book, Tab 3). The Examiner requested the Solicitor get in touch with her when she was able to set up time, day, and place of meeting.

11. The Examiner left a telephone message for the Solicitor on her answering machine on April 1, 1997 asking the Solicitor to call when her situation enabled her to meet (Document Book, Tab 4). The call was not returned at that time.

12. By letter dated April 3, 1997 (Document Book, Tab 5), the Examiner requested the Solicitor contact her on April 18, 1997 to confirm an appointment for the review of her books and records at 9:30 a.m. on April 23, 1997 at the Solicitor's residence. The Examiner advised she would be on holidays until April 22, 1997.

13. The Examiner left a telephone message for the Solicitor on her answering machine on April 22, 1997 requesting she call to confirm their appointment for the following day (Document Book, Tab 6).

14. A representative for the Solicitor advised the Examiner by telephone on April 22, 1997 (Document Book, Tab 7) that the Solicitor was driving in from out of town. The Examiner provided the representative with a telephone number where the Solicitor could reach her upon her return.

15. The Examiner spoke with the Solicitor by telephone on April 23, 1997 (Document Book, Tab 8). The Solicitor advised she would be in Pembroke that day. The Solicitor advised she wished to complete her filing and a debt consolidation before they met. The Solicitor advised that these processes would take a couple of weeks. The Examiner advised her she would check with other departments to see how urgent the investigation was, given the fact that the Solicitor was no longer practising, and she would get back to the Solicitor.

15A No one from the Law Society contacted the Solicitor for the next five months, and the Solicitor advises that she assumed the review was no longer required.

16. A Law Society Examiner left telephone messages for the Solicitor on September 15, 1997 and September 18, 1997 requesting she return the call (Document Book, Tab 9).

17. The Solicitor left a telephone message for the Examiner on or about September 19, 1997 (Document Book, Tab 10) advising she was out of the office all that week and would not be returning until the following week. The Solicitor advised the Examiner she could leave a detailed message on her answering machine.

18. A Law Society Examiner left telephone messages for the Solicitor on September 22, 1997 (Document Book, Tab 11) and September 23, 1997 (Document Book, Tab 12) requesting she return the call.

19. The Solicitor left a telephone message for the Examiner on September 24, 1997 (Document Book, Tab 13) advising she was in Oshawa and would attempt to contact the Examiner later that day. The Examiner did not return the call.

20. By letter dated September 29, 1997 (Document Book, Tab 14), the Examiner advised the Solicitor that an examination of her books and records had been instructed pursuant to the *Law Society Act*. A pamphlet dealing the required books and records was enclosed. The Solicitor was requested to contact the Examiner as soon as possible to arrange an appointment for the audit. The Solicitor was advised that should this matter not be addressed within three weeks of the date of this letter, the matter would be referred to the Discipline Department for action. No reply was received. The Solicitor advises that the letter of September 29, 1997 was not received by her.

21. By registered mail and regular mail dated November 6, 1997 (Document Book, Tab 15), the Examiner advised the Solicitor that should this matter be not addressed immediately, the matter will be referred to the Discipline Department for action. The Law Society's November 6, 1997 letter was signed for and delivered on December 24, 1997.

22. To date, the Solicitor has not produced the books and records of her practice.

DISCIPLINE HISTORY

23. The Solicitor was found guilty of professional misconduct and reprimanded in committee on January 15, 1991 with respect to her failure to reply to the Law Society.

24. The Solicitor was found guilty of professional misconduct, reprimanded in committee and ordered to pay costs of \$400.00 on March 18, 1996, with respect to her failure to reply to the Law Society. The Solicitor also provided her written Undertaking, dated March 18, 1996, to respond to communications from the Law Society within specific time periods. The Solicitor paid the Law Society's costs of \$400.00 on September 19, 1996.

25. The Solicitor was found guilty of professional misconduct on June 2, 1997 with respect to her failure to file for the fiscal year ended September 30, 1995. The Single Benchers recommends the matter be referred to Convocation. Should the Solicitor file by the time the matter reaches Convocation, that she be reprimanded in Convocation and should she not file by that time, that she be suspended for one month definitely and month to month thereafter until the filing was made, such suspension to commence upon the termination of any administrative suspension. No order as to costs was made. This matter is pending receipt of the Report and Decision.

DATED at Toronto this 9th day of April, 1998.”

FINDING OF THE COMMITTEE

Based on the Agreed Statement of Facts and the submissions of the Solicitor, there is a finding of professional misconduct in connection with the three complaints.

RECOMMENDATION AS TO PENALTY

The Committee recommends as follows:

1. that if the Solicitor produces her books and records to the satisfaction of the Society on or before June 30, 1998, she be suspended for a period of one month, which suspension to run concurrently with her current administrative suspension or any discipline suspension;
2. that if the Solicitor does not produce her books and records by June 30, 1998, but produces them by the time the matter is heard in Convocation, she be suspended for a period of two months, which suspension to run concurrently with her current administrative suspension and any discipline suspension;
3. that if the Solicitor does not produce her books and records at all by the time the matter is heard in Convocation, she be suspended for a period of two months, which suspension to run consecutively to any administrative and discipline suspension, and continue from month to month thereafter until the books and records are produced to the satisfaction of the Society.

REASONS FOR RECOMMENDATION

The Law Society Representative and Counsel for Ms. Dagenais made a joint submission with respect to penalty. Ms. Dagenais has filed, under Exhibit 8, a document called 'Submissions', in which she acknowledges the professional misconduct, and has spared the Society the expense and inconvenience of a hearing. She has extended a genuine and sincere apology to the Society and is attempting to put her financial difficulties behind her and get her life in order.

The Solicitor is currently administratively suspended. Although Counsel for the Solicitor and the Society have made a joint submission, which in my view is somewhat unusual, in all of the circumstances, I am inclined to accept it.

22nd October, 1998

Accordingly, I recommend to Convocation that Ms. Dagenais is to produce her books and records to the satisfaction of the Society on or before June 30th, 1998. In the event that she does so, she is to be suspended for one month, which suspension is to run concurrently with the administrative suspension Ms. Dagenais is now under, or any discipline suspension that occurs as a result of a pending matter before Convocation. In the event that she does not produce the books by June 30th, but in time for Convocation, then she is to be suspended for two months concurrent, to the current administrative or pending disciplinary suspension; and in the event that Ms. Dagenais does not produce the books at all by the time Convocation hears this matter, then she is to be suspended for two months consecutive to the administrative and discipline suspension, and from month to month thereafter until the books and records are produced to the satisfaction of the Society.

In light of the Solicitor's financial position, there is no order as to costs.

Mary Brenda Anne Dagenais was called to the Bar on April 14, 1986.

ALL OF WHICH is respectfully submitted

DATED this 12th day of May, 1998

Philip M. Epstein, Q.C.

There were no submissions.

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

Carried

Ms. Worley advised that the books and records had not been produced.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 2 months the suspension to run consecutively to any administrative and discipline suspension and continue month to month thereafter until the books and records were produced to the satisfaction of the Society.

Ms. Worley made submissions in support of a 2 month suspension to run concurrently to the administrative suspension and consecutively to the discipline suspension and continue month to month thereafter until the books and records are produced.

It was moved by Mr. Wright, seconded by Mr. MacKenzie that the solicitor be suspended for a period of 2 months, such suspension to run consecutively to the administrative and discipline suspension and continue month to month thereafter until the books and records are produced to the satisfaction of the Society.

Carried

Re: Alexander MOURIOPOULOS - Dundas

The Secretary placed the matter before Convocation.

Mr. Topp withdrew for this matter.

Mr. Corbett appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 2nd September, 1998, together with an Affidavit of Service sworn 15th September, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 11th September, 1998 (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 C. Topp

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

Katherine Thompson, Student-at-Law
for the Society

ALEXANDER MOURIOPOULOS
of the Town
of Dundas
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 7, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 19, 1997 Complaint D99/97 was issued against Alexander Mouriopoulos alleging that he was guilty of professional misconduct.

The matter was heard in public on July 7, 1998 before Robert C. Topp sitting as a single bencher. The Solicitor did not attend the hearing, nor was he represented by counsel. Katharine Thompson (Student-at-Law) appeared on behalf of the Law Society.

DECISION

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

Complaint D99/97

2. a) He failed to file with the Society within six months of the termination of his fiscal year ended January 31, 1996, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of the Regulation 708 made pursuant to the Law Society Act.

Evidence

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

“AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D99/97 and is prepared to proceed with a hearing of this matter on June 10, 1998.

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 D99/97 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1984. He practised as a sole practitioner. He has been suspended from the practice of law since May 1, 1996 as a result of his failure to pay his annual fee.

5. The filing made by the Solicitor for the fiscal year ended January 31, 1995 indicated that the Solicitor retained an open trust account (Document Book, Tab 1). As a result, the Solicitor was required by s.16(2) of Regulation 708 under the Law Society Act, as it was at that time, to file a Form 2 and Form 3 within six months of the termination of the fiscal year ended January 31, 1996, that is, by July 31, 1996. The Solicitor did not make his required filing by July 31, 1996.

6. By letter dated August 9, 1996, (Document Book, Tab 2) the Law Society advised the Solicitor that he had not complied with the annual filing requirements of section 16 of Regulation 708 of the Law Society Act. The Solicitor was advised that the last filing received by the Law Society from him was for the period ended January 31, 1995. The Solicitor was requested to contact the Law Society should he believe his filing had already been made.

7. By registered mail, dated September 9, 1996, (Document Book, Tab 3) the Law Society advised the Solicitor that he had not taken the necessary steps to bring his filings up-to-date. The Solicitor was advised that failure to comply with section 16 of Regulation 708 of the Law Society Act may result in disciplinary action being taken against him. The Solicitor was requested to give this matter his immediate attention.

8. A Law Society staff employee spoke with the Solicitor by telephone on September 24, 1996. (Document Book, Tab 3) The Solicitor requested the Law Society to provide him with a set of blank Forms. The Law Society forwarded to the Solicitor a set of blank Forms that same day.

9. By letter sent via registered mail, dated March 6, 1998, signed as received on March 18, 1998, (Document Book, Tab 4) the Law Society advised the Solicitor that on February 27, 1998, Convocation had adopted the Professional Regulation Committee's recommendation permitting the Law Society to accept a Private Practitioner's Report in fulfilment of the filing requirement for members in default of their filing requirement for previous years, against whom a formal complaint is either pending hearing or has proceeded to a hearing and is pending Convocation. The Solicitor was advised that, as a result, he was no longer obliged to file a Public Accountant's Report to comply with the filing requirement. The Law Society enclosed with its letter a blank Private Practitioner's Report so that he could avail himself of the self-reporting process.

10. To date, the Solicitor has not provided the outstanding filing.

V. DISCIPLINE HISTORY

11. The Solicitor was reprimanded in Committee on May 13, 1992 for knowingly having breached an undertaking given by another Solicitor whose file he had taken carriage of.

12. On August 31, 1993, the Solicitor was reprimanded in Committee and ordered to pay costs of \$2,500 within six months, for improperly deducting fees for unrelated accounts with his client and other sums relating to a personal dispute with his client from the proceeds of sale of a property thereby compromising his client's ability to account to the mortgagor. The costs were paid in full on February 18, 1994.

DATED at Toronto this 10th day of June, 1998.”

Finding of the Committee

Based on the Agreed Statement of Fact and the material before me, I have no hesitation in making a finding of Professional Misconduct.

RECOMMENDATION AS TO PENALTY

This Committee recommends that Alexander Mouriopoulos be reprimanded in Convocation if his filings have been completed by the time the matter is heard by Convocation, failing which that he be suspended for a period of thirty days and month to month thereafter until the filings are completed to the satisfaction of the Law Society.

The Committee further recommends that the Solicitor pay costs in the amount of \$300.00, to be paid prior to his being reinstated.

REASONS FOR RECOMMENDATION

As to penalty in this matter, the submissions of the Society are both reasonable and appropriate. This Solicitor has, since January 31st, 1996, failed to comply with his obligations to file the appropriate financial reporting documents which is a problem that the Law Society simply cannot overlook.

As well, it is interesting to note that this Solicitor has a discipline record as set out in the Agreed Statement of Facts in that he was disciplined in 1993 and 1992 for unrelated matters. However, this Solicitor is no stranger to the discipline process at all.

As a result, given the fact that the Solicitor has still failed to file and notwithstanding the fact that he has been made aware of the self-filing opportunities that are now available, the appropriate penalty is that which is recommended by the Society and I therefore recommend to Convocation that if the Solicitor satisfactorily files all his documents to the satisfaction of the Society prior to the matter being heard by Convocation, I recommend a reprimand in Convocation and costs of three hundred dollars. If the filings are not completed by the time the matter reaches Convocation, I recommend to Convocation a suspension of thirty days to follow month to month thereafter until the filings are completed to the satisfaction of the Law Society.

Costs are to be paid prior to the Solicitor being reinstated.

Alexander Mouriopoulos was called to the Bar on April 10, 1984.

ALL OF WHICH is respectfully submitted
DATED this 2nd day of September, 1998

Robert C. Topp

It was moved by Mr. Wright, seconded by Ms. Carpenter-Gunn that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded if the filings were completed failing which he be suspended for a period of 30 days and month to month thereafter until the filings were completed to the satisfaction of the Society and in addition pay the Society's costs of \$300 prior to reinstatement.

Mr. Corbett made submissions in support of the 30 day suspension such suspension to commence at the end of the administrative suspension.

It was moved by Mr. DelZotto, seconded by Mr. Swaye that the solicitor be suspended for a period of 30 days such suspension to commence at the end of the administrative suspension and continue month to month thereafter until the filings are completed to the satisfaction of the Society and further to pay costs in the amount of \$300 prior to reinstatement.

Carried

Re: Pangiota Pat PAPADEAS - Windsor

The Secretary placed the matter before Convocation.

Mr. Topp withdrew for this matter.

Mr. Corbett appeared for the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 4th April, 1998, together with an Affidavit of Service sworn 17th April, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 15th April, 1998 (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

Harriet Sachs

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

Audrey Cado
for the Society

PANGIOTA PAT PAPADEAS
of the City
of Windsor
a barrister and solicitor

Not Represented
for the solicitor

Heard: September 10, 1997

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 19, 1997 Complaint D106/97 was issued against Panagiota Pat Papadeas alleging that she was guilty of professional misconduct.

The matter was heard in public on September 10, 1997 before Harriet Sachs sitting as a single bencher. The Solicitor did not attend the hearing nor was she represented. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D106/97

2. a) She failed to file with the Society within six months of the termination of her fiscal year ended January 31, 1996, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Evidence

The evidence filed before me consisted of a Service Brief which satisfied me that the Solicitor had been properly served with notice of these proceedings. I note that it is clear from this Service Brief that the Solicitor had originally agreed to have this matter proceed on July 9, but when this matter came on for hearing on July 9, she did not appear, nor did she offer any explanation to the Society as to why she did not appear.

In addition, the Society called two witnesses. The first, Irene Andrighetti, was the supervisor of the Annual Filing Department at the Law Society between October 23, 1977 and December 9, 1996. She confirmed the Solicitor's failure to file for the year ending January 31, 1996. She further confirmed that the last year for which the Solicitor did file was for the fiscal year ending January 31, 1995. The Society also called Tina Perryman, who has been employed by the Law Society since October of 1990 and is currently a review examiner in the Forms Services Department. She confirmed that it is her responsibility to review the filings when they come in. She further confirmed that she had had the opportunity to review the Forms Services file with respect to the Solicitor and as of the date of the hearing no filing had been received from the Solicitor since the last filing which had been made for the fiscal year ending January 31, 1995.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Panagiota Pat Papadeas be reprimanded in Convocation if she has made the requisite filing by the date the matter is heard in Convocation, failing which, that she be suspended for a period of one month and indefinitely thereafter until she has filed, and until she appears before a committee to explain why she did not appear at the discipline hearing. This suspension to commence after the end of any administrative suspension.

The Committee further recommends that the Solicitor pay Law Society costs in the amount of \$600.00

REASONS FOR RECOMMENDATION

The Society relies upon the filings of solicitors in order to fulfil its mandate to the public to ensure that solicitors are appropriately dealing with their trust funds. It is for that reason that when a solicitor does not file, a suspension should be imposed. Further, the Society relies upon solicitors to co-operate with them in fulfilling their duties to the public. This is the second time a hearing was scheduled and the Solicitor did not attend. It is only appropriate that the Solicitor should be required to give an explanation as to the reason for her non-attendance.

The Society has made a request that there be an order as to costs of \$600.00, which request I recommend be granted. We have no idea as to the Solicitor's financial circumstances, but in the Service Brief which was filed before me, there is evidence that the Solicitor was advised by the Society that if she did not attend and the Society was put in a position of having to call witnesses, there would be a request for costs made in view of the fact that the costs incurred by the Society would be increased. I would note that the Service Brief also disclosed that the Solicitor was given the opportunity to have this matter proceed by way of an Agreed Statement of Facts which was forwarded to her. She chose not to avail herself of this opportunity. Because of this the Society's expenses in dealing with this matter have been increased.

Panagiota Pat Papadeas was called to the Bar on February 5, 1992.

ALL OF WHICH is respectfully submitted

DATED this 4th day of April, 1998

Harriet E. Sachs

Mr. Corbett made submissions as to the issue of service.

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if she had made the requisite filing failing which the solicitor be suspended for a period of 1 month and indefinitely thereafter until she filed and until she appeared to explain why she did not appear at the discipline hearing. In addition the solicitor is to pay costs in the amount of \$600.

Mr. Corbett advised that no filings had been received.

There were questions from the Bench.

It was moved by Mr. Arnup, seconded by Mr. MacKenzie that that part of the recommended penalty "until she appears before a committee to explain why she did not appear at the discipline hearing" be removed from the penalty.

Carried

It was moved by Mr. Ruby, seconded by Mr. Crowe that the recommended penalty as amended be adopted and the solicitor be suspended for a period of 1 month and indefinitely thereafter until she filed such suspension to commence at the conclusion of the administrative suspension and in addition pay costs in the amount of \$600.

Carried

Re: David Bradford SMITH - Oakville

The Secretary placed the matter before Convocation.

Mr. Topp withdrew for this matter.

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

Convocation had before the Report of the Discipline Committee dated 2nd September, 1998, together with an Affidavit of Service sworn 15th September, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 11th September, 1998 (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 C. Topp

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

Catherine Braid
for the Society

DAVID BRADFORD SMITH
of the Town
of Oakville
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 10, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 9, 1998 Complaint D325/97 was issued against David Bradford Smith alleging that he was guilty of professional misconduct.

The matter was heard in public on June 10, 1998 before Robert C. Topp, sitting as a single Benchler. The Solicitor did not attend the hearing nor was he represented by counsel. Catherine Braid appeared on behalf of the Law Society.

DECISION

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

Complaint D325/97

2. a) He failed to produce to the Law Society the books and records of his practice pursuant to section 18 of Regulation 708, of the Law Society Act.

[Particular 2 b) was withdrawn at the hearing.]

Service

In this matter the Society provided a service brief which established beyond any doubt that the Solicitor was fully informed as to the proceedings and as to the history of this matter. It is a sad commentary that members of the Society are required to finance these sorts of extraordinary steps to bring to the attention of solicitors their duties in regard to complying with their statutory obligations.

The Committee was satisfied beyond any doubt that the Society did everything humanly possible, including having Mr. Jenkins personally attend and serve the Solicitor at his home, through his wife, and was satisfied that in the absence of Mr. Smith, the matter should proceed.

RECOMMENDATION AS TO PENALTY

The Committee recommends that David Bradford Smith be reprimanded in Convocation if, by the time this matter reaches Convocation, he has fully satisfied his requirement to produce the books and records, failing which, that he be suspended for a period of thirty days definite, such suspension to continue indefinitely until he has produced his books and records. This suspension to commence at the conclusion of any administrative suspension.

The Committee further recommends that the Solicitor pay Law Society costs in the amount of \$500, and failing payment of those costs within thirty days of the matter reaching Convocation, whether he has produced his books and records or not, that he be suspended indefinitely until such time as he makes the payment of those costs.

REASONS FOR RECOMMENDATION

In regard to penalty in this matter, the Solicitor appears not to have a discipline record, but at the same time, it is clear that he has chosen to seriously disregard his duties as a Solicitor and the position taken by the Law Society is, in my view, both reasonable and appropriate.

It is essential that the Law Society continue to be able to ascertain where funds held by a Solicitor have been delivered to, and failing that, to enquire into what happened to the funds. In this case, the Solicitor's lack of cooperation has prevented that.

Therefore, it is recommended in penalty that the Solicitor be reprimanded in Convocation if by the time this matter reaches Convocation, he has fully satisfied his requirement to produce the books and records. If he fails to produce his books and records by the time this matter reaches Convocation, it is recommended to Convocation that he be suspended for a period of thirty days definite, such suspension to continue indefinitely until such time as he has fully complied with his obligation to provide his books and records. This suspension is to commence at the conclusion of any administrative suspension.

As to costs in this matter, the position of the Society for costs in the sum of \$500 seems to be generous in the extreme, and many members of the profession who are struggling would find that this small amount hardly compensates the Society for the efforts that have been expended in attempting to obtain the compliance of the member. In Ontario today, many solicitors are in dire financial straits. It is those solicitors who pay for this kind of a problem with solicitors who simply ignore their obligations. But for the submission of the Society, I would have recommended costs in the range of \$2,500. However, given the submission before me, I recommend to Convocation that costs in the amount of \$500 be imposed upon the Solicitor, and failing his payment of those costs within thirty days of the matter reaching Convocation, whether or not he has produced his books and records, then he be suspended indefinitely until such time as he makes the payment of those costs.

David Bradford Smith was called to the Bar on April 10, 1986.

ALL OF WHICH is respectfully submitted

DATED this 2nd day of September , 1998

Robert C. Topp

Ms. Braid addressed the issue of service.

It was moved by Mr. Wright, seconded by Mr. Chahbar that the Report be adopted.

Carried

Ms. Braid advised that the books and records had not been produced and made submissions in support of the recommended penalty.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 30 days definite to commence at the conclusion of any administrative suspension and that the suspension continue indefinitely until the solicitor produced his books and records. The Committee further recommended that the solicitor pay costs in the amount of \$500 and failing payment within 30 days of the matter reaching Convocation that he be suspended indefinitely until he paid whether he produced his books and records or not.

22nd October, 1998

It was moved by Mr. Wright, seconded by Mr. DelZotto that the recommended penalty be adopted.

Carried

CONVOCATION ROSE AT 11:50 A.M.

Confirmed in Convocation this *22* day of *November* 1998

Harvey T. Strusby

Treasurer